

**SPECIAL CALL JOINT CITY COUNCIL, FINANCE COMMISSION AND UTILITIES COMMISSION
MEETING
TUESDAY, MARCH 1, 2011 1:30 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

A G E N D A

1) ITEM FOR DISCUSSION:

[A\) Presentation by GAI Consultants](#)

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

**SPECIAL CALL CITY COUNCIL, FINANCE COMMISSION
AND UTILITIES COMMISSION MINUTES
TUESDAY, MARCH 1, 2011 1:30 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Jay Kramer, Mayor; Pilar Turner, Vice Mayor; Craig Fletcher, Councilmember; Brian Heady, Councilmember and Tracy Carroll, Councilmember **Also Present:** Monte Falls, Interim City Manager; Wayne Coment, Acting City Attorney and Tammy Vock, City Clerk

UTILITIES COMMISSION: Chairman, Lee Everett; Members: Herb Whittall, Robert Blumstein, Don Hawkins, Edward Wiegner (left at 2:00 p.m.) and Alternate Member, Jane Burton

FINANCE COMMISSION: Chairman, William Teston; Vice Chairman, Richard Winger; Members: Warren Winchester and Bill Fish

Utilities Commission Excused Absence: Jason Fykes

Finance Commission Excused Absence: Laura Torres

The Mayor called today's meeting to order at 1:32 p.m.

1) ITEM FOR DISCUSSION:

A) Presentation by GAI Consultants

Mr. Jerald Hartman, Vice President of GAI Consultants, went over a one page synopsis of the FP&L issue with the City Council and Commission Members, which included their Team and the tasks of the initial interest to the City, Phase 1, Phase 2 and Phase 3 (please see attached). He said that it was their understanding that FP&L was looking at a potential acquisition of some or all of the City's electric system. He reported that his firm was accredited as America Society of Appraisers (ASA) and about 60% of the firm was on the electric side. They design substations, transmission facilities, and they do a lot of management consulting work relative to electric utilities.

Mr. Heady asked if a sale to FP&L was to happen, are Franchise Agreements in all of FP&L's territory pretty much the same.

Mr. Hartman said that most of their Franchise Agreements are the same.

Mr. Heady questioned that their Franchise Agreements were pretty much the same in terms of the rate of the Franchise Tax.

Mr. Hartman said in the Franchise Tax, the option of purchase changes quite a bit because there are options to purchase with reproduction costs, replacement costs, costs less depreciation, costs less depreciation plus going concern, etc. He noted that if they take all the agreements and break them down, there are subtleties and they have a matrix of that, which is quite extensive.

Mr. Heady asked is the matrix of the Franchise Agreements available to the City Council.

Mr. Thomas Cloud, of Gray Robinson, P.A., answered yes.

Mr. Heady asked that the City Council receive a copy of the matrix.

Mrs. Turner asked what method they would propose to evaluate (appraise) the Transmission and Distribution (T&D) system.

Mr. Hartman said that there are three classical methods for Uniform Standards for Professional Appraisal Practice (USPAP), which he is currently certified. One is the cost approach, which has three types of cost approach, which are the original cost that is trended upwards, the second is a reproduction cost and the third is the replacement cost. The reproduction cost, replacement cost, and original cost are less depreciation. In his opinion a replacement cost in like, kind, and quality, would be the type of cost approach they would consider. Regarding the income approach, the City's income statement is run as a non-for-profit entity and they would look at it as adjusted. It might not be valid because the type of entity of the City. He said in consideration of reconciliation of value, it is very difficult to adjust a non-for-profit entity based on profits to get to full fair market value. The comparable sales market for these types of systems do not transact very often. He noted that Winter Park was the first one in 50 years that transacted as a full T&D system. He said there is generation capacity bought and sold and therefore they could defer that in comps, but it is not as strong as a cost approach. Therefore, it would have a lesser weight provided on comparable sales because the City's system is unique in its configuration, density, load factor, and peaking factors. Because of that they would not find too many systems that replicate it.

Mr. Heady asked when the Public Service Commission (PSC) looks at a sale, don't they make a determination based on the turnaround investment for the investor owned utilities.

Mr. Hartman said that the PSC looks at rate base when looking at a sale. He said return on investment is based on the leverage formula for that utilities debt and equity. On a sale, it is all based on rate base, rate base carry forward, or imputation of rate base if allowed. Rate base is original cost less depreciation of invested capital.

Mr. Cloud said with the exception of rate structure, the PSC does not regulate the City. If the City wanted to purchase a system, they would not need permission from the PSC. On the other hand, when a regulated entity purchases a system, that sale is regulated by the PSC. He said the best example of this was the sale that took place in Sebring, Florida.

Mr. Fletcher said that he would like to hear from the members of the Finance and Utilities Commission.

Mrs. Carroll asked that before the Commission members speak, she would like Mr. Hartman to give a summery on the past relationship GAI Consultants has had with the City of Vero Beach and the projects they have worked on in the past.

Mr. Hartman said that they served the City of Vero Beach on the remnant of the joint project between Indian River County, the City of Vero Beach and the Town of Indian River Shores on the regionalization project for water and wastewater. He said that they were selected by each entity. Then the County pulled out and the City of Vero Beach and Indian River Shores selected GAI Consultants to represent them on appraisals of the water and wastewater systems.

Mrs. Carroll said GAI Consultants has not worked on any electrical system projects for the City.

Mr. Hartman said that is correct.

Mrs. Carroll asked which of the Councilmembers or staff have they met with in preparing their presentation today.

Mr. Hartman said that they have not met with anyone physically. The City Manager requested that they attend today's meeting at the City Council's request. He said that they did research the newspapers and they have discussed the issue with Mr. Rob Bolton, Water and Sewer Director.

Mayor Kramer referred to Phase 1. He asked would they be doing the evaluation of the City separately.

Mr. Hartman said they would do the entire T&D system and the generation. Then they would break that down with the load patterns.

Mayor Kramer asked would they also evaluate the customers as the cash generating sources (which customers generates more and causes more load).

Mr. Hartman answered yes. He said it is based on revenues, facilities and load pattern.

Mayor Kramer said then they would be able to identify which areas are more profitable.

Mr. Cloud was not sure if profitability was the right term. He said that it would be based upon the usage characteristics.

Mr. Hartman said they would look at it as optimization. He explained that there is an option to sell and there is an option to sell a certain portion. He said one decision would be to sell everything outside the City limits. Another decision would be to sell portions outside the City limits that make the most sense to sell. To understand which ones make the most sense, they would look at the load pattern, the revenue, the facilities, and the cost of service.

Mayor Kramer said that he recognized that they have an opportunity to change the borders and if they can change them to the most beneficial configuration, he would like to look at that.

Mr. Hartman said that is what they would be doing outside the City limits, not inside the City limits.

Mr. Heady asked when they do the load patterns, would they also give the Council an identification of inside or outside City limits.

Mr. Hartman said yes. He said that they would look inside the City limits as a load pattern by itself. Outside the City limits would take more analysis because they would have to break it down to see what is most favorable as far as selling all areas outside the City limits or what portion outside the City limits.

Mr. Heady asked in the analysis of load patterns outside the City limits, would they would take into consideration the distribution system, underground, etc. with respect to value.

Mr. Hartman answered absolutely.

Mr. Cloud said in some ways this is not much different than the territorial squaring off that takes place from time to time between adjacent electric utilities. The most recent was between the Orlando Utilities (OUC) and Power Corp that took place in the 1990's where they swapped territories.

Mr. Lee Everett, Chairman of the Utilities Commission, said that this is what almost every utility goes through in preparation for a rate case. He said that a rate case is settled by developing the fair value of the system and the fair rate of return to the owner of the system. He was very glad that the City has someone with this kind of experience available (GAI Consulting) because in the final analysis a Court of Law, such as a Utilities Commission, the PSC, etc., is going to have to determine whether they have indeed arrived at the fair value of the system. This kind of evidence is indispensable for showing whatever the City has to prove has been done in the right methodology and the right detail.

Mr. Heady said that the PSC or some judicial body would make some determination as to fair market value. He asked is the PSC empowered to make a determination with a municipality as to whether or not they are getting fair market value for their asset.

Mr. Everett did not have any experience with a municipal utility either being sold or purchased. He has had experience in numerous rate cases where the companies value has to be assessed and the fair rate of return has to be arrived at.

Mr. Cloud said the PSC does not make an approval for the City, but they would make a determination on if the sale is in the public interest or not because they have jurisdiction over FP&L.

Mr. Heady asked in the PSC's ruling on this case, wouldn't one consideration be that whatever FP&L does that it would not impact their current customer base.

Mr. Cloud answered yes.

Mr. Heady asked is it fair to assume that they could not pay too much based on the rate of return so that they would have to add some kind of increase to the rates of the current customer base.

Mr. Cloud said the PSC does look at the transaction and its impact to the customer bases, existing FP&L customers and the customer base after the transaction.

Mr. Heady asked then wouldn't that price be regulated to the extent that they could not give the City too little, which would dramatically increase their return on investment.

Mr. Cloud said it would be speculative to discuss what the PSC might or might not do. Normally a case like this would not go before the PSC staff unless there is a legitimate, validated, evaluation report and appraisal.

Mr. Everett said the PSC has a responsibility because they regulate the rates that are paid by FP&L customers, making sure that FP&L gets a fair price.

Mr. Richard Winger, Vice Chairman of the Finance Commission, asked is it true that FP&L has been going through this same process.

Mr. Hartman said that he would expect before FP&L makes an offer that they would look at the summer aspects.

Mr. Winger asked as part of the process of going before the PSC, would the City have access to what value they put on the system or on the rate of return.

Mr. Hartman said the fair value would be looked at based upon the purchase of sale agreement. He said that there would not be a rate base carried forward.

Mr. Winger asked would they ever know what they came to as to the value.

Mr. Hartman said they might, but it is not public record.

Mr. Winger asked what is the cost for their service (GAI Consulting).

Mr. Hartman said that they would work under the hourly rate of \$200 his time, but it would be less for people below him.

Mrs. Carroll questioned why the evaluation of the FMPA contract including the entitlements for Stanton I and II and St. Lucie with the resulting load profile was listed as item #9 under Phase 2 instead of under possibly item #4 of Phase 1. She felt that this was important to the City's decision making process prior to the evaluation of an offer from FP&L (currently under item #4, Phase 1).

Mr. Hartman said that if the basic value difference is too great then all the contractual evaluations may not be necessary. He said that they could move that item up to Phase 1 if that is what Council wants.

Mr. Bill Teston, Chairman of the Finance Commission, asked at what point of the process would the fair market value be converted into what constitutes the benefits to the citizens of Vero

Beach. He asked would they be able to couch it in terms of values so that it means something to the general public, both short and long term (reduced cost, improved service, etc.). He asked would this firm (GAI Consultants) help the City put that type of analysis together and when would this be completed.

Mrs. Turner said that they have to put this into a cost of service so all the ratepayers would know what it would cost them.

Mayor Kramer said that he would like to see it in terms of tax rates in making sure that taxes were not going to go up and to make sure that the service rates are comparable to what they are now.

Mr. Herb Whittall, Utilities Commission member, asked how long they estimate it would take to do Phase 1.

Mrs. Carroll explained that Phase 1 goes all the way through the evaluation of an FP&L offer. She thought what Mr. Whittall was asking was how long it would take to do Phase 1 without items #4 and 5. She felt that they should modify Phase 1 to include items #1, #2, #3 and #9.

Mr. Hartman said that they would modify Phase 1. He said that he has not seen all the data, but they have done this as short as three months and as long as five months.

Mr. Heady asked what is their estimated guess as to the number of hours that would be required for the four appraisals (Phase 1).

Mr. Hartman said that he would need to look through the data before he could answer that question because he does not know the level of intensity and how many people would need to work on the project.

Mrs. Carroll understood that all the information the City has been providing FP&L is on file. She asked therefore, is she correct that they have a lot of the information that GAI Consulting is going to need.

Mr. Monte Falls, City Manager, answered yes.

Mr. Heady said that Mr. Hartman indicated a three month period at the short end to finish Phase 1. He asked if the City needed an answer in a shorter period of time, do they have staff available to do that.

Mr. Hartman answered yes, they could expedite it.

Mr. Heady asked if the City chose to expedite this, would that change the cost to the City.

Mr. Hartman answered yes, because there would be travel costs for employees not located in Florida.

Mr. Heady questioned that they would be required to be in Florida in order to put these numbers together.

Mr. Hartman said some of the work could be done in their offices, but there would be some travel that could increase the cost.

Mr. Falls said that once they begin this process it becomes public record. He asked Mr. Hartman in his experience, when would it be beneficial to begin this process because they could be playing their hand too early.

Mr. Hartman said if they haven't received an offer and they are two or three months into the process, they could abate the process until the City receives an offer. He said at any time they would accept an abatement of their services at no cost to the City. They do this all the time in these types of circumstances.

Mr. Cloud said that anytime there are negotiations regarding real estate, there is a State Statute that provides a shielding from public view of that appraisal until they reach a closing.

Mr. Falls asked would all the assets be shielded.

Mr. Cloud answered yes.

Mr. Warren Winchester, Finance Commission member, echoed Mr. Everett's comments regarding the necessity and urgency to get this done and to get it done right. He said that he had the occasion to be on the waiting side of an issue that Gray Robinson defended for him and they are an outstanding law firm.

Mr. Teston asked presuming that the study goes through and there is a decision to sell, what is the time frame before the public would see any benefits from the sale.

Mr. Cloud said that it is too speculative at this time. It is too early in the process to know.

Mr. Winger felt that it was imperative to know what the system is worth. He then referred to Phase 2, items #11 and #12. He noted that the City would presumably receive cash, which is difficult for public entities to invest.

Mr. Heady said the question has come up before as to what they would do with cash and where the investment would be. He said that he did not have any desire for any City Council to make investments for the taxpayers. One of the things that they could do, which he felt was necessary, was the underfunded liabilities the City has as pointed out by Mrs. Turner. He said if the City does come to a position that they sell the utilities and ends up with some cash on hand, he would like that money put in to totally cover any unfunded liabilities that the City has so that a future City Council does not have to raise ad valorem taxes.

Mrs. Jane Burton, Utilities Commission member, agreed with Mr. Everett that this study needs to be done. If it is not done the City is going to be in the same spot one, two, or five years from now. They need to know what the utility is worth.

Mayor Kramer felt that if FP&L gives the City an offer, that they had a good head on their shoulders to know if they are in the ballpark or if the offer is unreasonable. He was of the opinion that if the City was to spend \$100,000 or more for a study, maybe it was important to wait to see if FP&L comes in with an offer that is worth entertaining.

Mr. Fletcher asked how would they know if it was worth entertaining if they do not know what the value of the property is. He felt that they needed some reasonable idea of what the property is worth before they could say yes or no and that is what GAI Consultants would give them.

Mrs. Turner felt that in order for them, as City Council, to be doing their due diligence in protecting not only the citizens, but the ratepayers as well, they need to proceed with the study.

Mr. Blumstein said that when the first idea of a sale came up a study was requested. He congratulated Council for doing this now, but felt that it was late in the game to find out what they were selling. He said that the last time they tried to sell the utilities there were Federal issues that blocked the sale. He asked would the Federal government be reviewing this.

Mr. Cloud answered no.

Mr. Heady agreed with the Mayor that they are capable of understanding whether or not the FP&L number is at all reasonable. He would hope that they all would have some type of number in their head as to what they think the value is. He said that Mr. R.B. Sloan, past Utilities Director, had given some value. He reported that the former City Manager went before the County Commission and stated that he had an evaluation and quoted a number. Mr. Heady felt that they needed to make sure that they do due diligence, which would involve having someone give them some idea of what an independent study would value this asset.

Mrs. Carroll said that in her meetings with FP&L, they mentioned that they felt as a preliminary decision they would not have utilization for the generation system. They would only be looking at T&D and that they would be including in their evaluation the cost of decommissioning the Power Plant. She felt that should be one component of Phase 1, if they choose to move forward.

Mr. Hartman felt that the prudence situation is to look at the cost of maintaining that asset for a period of time or looking at if there is a potential market to a third party.

Mr. John Lee, Acting Electric Utilities Director, said that early on FP&L did state that they did not foresee the Power Plant as a viable option. But, there are two components of that and the second component is the transmission study. He said that FP&L is not ready to release any information at all about transmission access. If FP&L cannot get the transmission access then the Power Plant does become a viable option. Therefore, until they have those two pieces, they can't really decide whether the Power Plant would eventually be decommissioned or whether that would be part of FP&L's offer.

Mr. Heady said currently when the Power Plant generates power there is a transmission process that happens and some of it is to customers here and some of it is to the grid. He asked is that correct.

Mr. Lee said they have the potential to get to the grid if FP&L has transmission capacity. They also have an agreement with FP&L that they can call on the City to shed load up to 50 megawatts at any time. He explained that shed load in the City's case means to bring up a unit.

Mr. Heady said there is an interconnect between the City's lines and the grid.

Mr. Lee said that was correct.

Mr. Heady said OUC sends the City power across FP&L lines, which the City pays a fee, and that transmission happens into the City's grid for distribution.

Mr. Lee said that is correct.

Mr. Heady said the transmission and distribution system, as it exists today, has the capacity to service all the City's current customers.

Mr. Lee said that is correct. He explained that transmission goes from the generating plant to the load center and the transmission system is designed so that they can get from Stanton I and II to Vero Beach. If Stanton I and II are no longer in the picture, then FP&L will have to design how they would get that same 95 megawatts to the City through their transmission system.

Mr. Everett said there have been times in the last several years that the Power Plant was run, not because it is the most economic Plant, but because there would be blackouts in areas if the Plant did not run and send power to where it was needed. He said that is a very important piece of capacity that if FP&L did not purchase, they would have to replace it in some form to keep this area from having blackouts.

Mr. Bill Fish, Finance Commission member, thought that he heard that GAI Consultants would look at available data from the City and then present an estimate to Council on what their services would cost.

Mr. Hartman said the appraisal services could be done like that, but the advisory services would be done hourly.

Mr. Fish asked is Council going to budget a number. He heard the amount of \$100,000 stated earlier.

Mrs. Carroll had that same question.

Mayor Kramer said that was an estimate.

Mr. Falls suggested that if it was the consensus of the City Council to move forward that Mr. Hartman and Mr. Cloud, on an hourly basis, go out and do their work in order to give the City their best estimation on what it would cost. This would give Council a target they would be shooting for.

Mr. Hartman said they could work on an hourly basis to go through the data the City has and then bring back to Council a reasonable estimate for the various tasks. He felt that it would take about two days of man time to go through the data and then one to one and a half weeks to bring the proposal to Council.

Mrs. Carroll said before Council takes a vote she would like to see a vote from the Finance Commission and a vote from the Utilities Commission so that Council could take that into consideration.

Mr. Heady said that Mr. Hartman said it would take two days. He asked would that be 20 hours.

Mr. Hartman answered no more than 20 hours.

Mr. Everett did not have any negative comments. He felt that they should have basic benchmarks to move forward.

The Finance Commission voted unanimously to move forward.

The Utilities Commission voted unanimously to move forward.

Mr. Glenn Heran said that FP&L is regulated by the PSC, which would not allow FP&L to pay too much. The City does not have representation of the PSC. However, State Representative Debbie Mayfield put out a Bill that would put the City under the PSC and give the City the representation they need. He said that it is the Council's will to sell the utilities and FP&L is the only buyer. He said that his next comments relate to GAI Consultants. He is sure they are fine individuals. But, the question they have to ask themselves is, who are these guys, who do you trust, who have they worked for and who do they work for. In looking at the background information for Gray Robinson, it states that the Firm is Lead Counsel for OUC and they represented Winter Park to enforce purchase options contained in the Florida Power Cooperation Franchise. The one thing that he found interesting was that Mr. Cloud was a presenter in 2009 at a Bonita Springs Conference. He wrote and spoke about the defense of municipal rates in Florida. Mr. Heran asked who hired these guys. They are the water and sewer consultants. They were involved in the dust up with the City, Indian River Shores and Indian River County. They were hired by a previous City Council who were defeated in the last election. The public elected this Council because they believe that they will sell the utility. He said that the past Council who hired them was a Council that did not want to divest themselves of these utilities. He asked is Council smart enough to make a decision on the value of utility. He felt that they were. He said if they want a consultant it does not necessarily have to be GAI Consultants.

Mr. Heady asked Mr. Heran if he knows of any consulting firms that have similar capabilities who are available in the State of Florida.

Mr. Heran said that he probably could get Council names of some consultants. He said what they have to ask themselves is, what if these guys (GAI Consultants) are really against the sale. Then where would they go.

Mayor Kramer said that GAI Consultants were here to help the City Council decide and they (Council) are the decision makers. GAI Consultants actually considers the General Fund, which was very important to him as to keeping taxes low. GAI Consultants were the first people to come up that wants to address General Fund deficiencies on a sale with FP&L. He has not found another group that has given a complete view that addresses the issues of taxes to the City of Vero Beach, to ratepayers, and to the taxpayers. They are the only ones that have done this. Everyone else has completely ignored taxes and the General Fund.

Mr. Heran said that was not true with himself and with Dr. Faherty. He said that they have addressed that issue for the Council. He said that if the City divests themselves of both water and sewer and electric, then why would the City need a \$5.6 million dollar transfer to the General Fund. He said they would have created smaller government. He asked has anyone raised that question. He said that he and Dr. Faherty have, but they have never been given credit for being able to do it.

Mayor Kramer said that they could run for Council to do that. He was not here to jack up taxes. He said that GAI Consultants was going to get information that would give the City options. He asked Mr. Heran to find someone else who could give the City options.

Mr. Falls said the Competitive Consultants Negotiation Act Committee (CCNAC), which was comprised of two members from City of Vero Beach, two members from Indian River County and two members from Indian River Shores, elected GAI Consultants. They were selected on their merit and then were engaged to do certain tasks. He did not want the public to think that the City picked up the phone and called one consultant firm. The City has gone through the process and this is the most expeditious way for the City to move forward. There is a process that the City has to go through.

Mr. Fletcher felt that they needed to get the process started and GAI Consultants was a good group to do it. Especially the first phase in order to give them a magnitude of what it is going to take and how much it would cost to do the full job.

Mr. Heady said that they have in front of them a proposal of \$4,000 or less to answer some threshold questions, which will take a few days. In the meantime, they may have the possibility of receiving some other names of consultants. He appreciated the CCNAC for putting GAI Consultants before them, but he did not see where, other than answering the threshold questions, if they just make that decision today that would give them time if there are other consulting firms to put some proposals before Council.

Mr. Falls said that they could do that, but they would have to go through the RFP process.

Mr. Heady said to hire someone, but that doesn't mean that they can't put something before Council to look at.

Mr. Falls explained that they would need to form a CCNAC, who would evaluate proposals and short list them with a recommendation of the top three firms to the City Council.

Mr. Ken Daige said that he has a vested interest in the City. He asked that Council move forward with the proposal. He said that both the Utilities and Finance Commission voted unanimously to move forward. He felt that they need to know the value of the system and they need to move now. He requested Council to move forward with this and not prolong it.

Mrs. Carroll said there were concerns at a past joint Utilities/Finance Commission meeting, where a vote was taken before public comments. She said that there were two members of the public who spoke today. She asked the Utilities and Finance Commission members if they wanted to change their vote.

Mr. Winchester said that every time he heard Mrs. Carroll speak during the Election she said that she wanted to sell the utility if it is a benefit to the taxpayers. He said that is what GAI Consultants is going to tell them.

Mrs. Carroll asked if there were any members who wanted to change their vote so that Council would know if today's public comments had any effect on their vote.

There were none.

Mr. Fletcher made a motion to authorize the City Manager to engage GAI Consultants to do the preliminary assessment on what it is going to cost for this issue. Mrs. Carroll seconded the motion and it passed unanimously.

Mr. Hartman wanted to be clear that the motion was to give GAI Consultants authorization to work on the budget numbers.

Mr. Cloud said that if Council wants information on a sale that they have worked on that they contact the City of Royal Palm Beach. He said that they know how to sell and buy systems. They can't go into these things with their mind made up. They have to look at the numbers and see what they mean. He wanted Council to know that they have sold as many as they have purchased and they are not afraid to give that advice if that is what the numbers say.

Mr. Heady asked were they involved with sales of municipalities to investor owned.

Mr. Cloud answered yes. He said OUC sold their Power Plant to Reliant Energy in 2000 and he handled that deal for OUC.

Mr. Heady asked is there something that they could send him on that sale from OUC to Reliant Energy.

Mr. Cloud answered yes. He said that it was the right time and the right market.

Mr. Heady asked what kind of time and market are we in.

Mr. Cloud felt that they were in the right market for figuring out how to optimize the operation of the utility and one thing that they would look at would be is it wise for them to sell some or all of their customers and assets. He said that it is absolutely the right time for that.

Today's meeting adjourned at 3:03 p.m.

/sp

**CITY OF VERO BEACH, FLORIDA
MARCH 1, 2011 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Roll Call

Mayor Jay Kramer, present; Vice Mayor Pilar Turner, present; Councilmember Craig Fletcher, present; Councilmember Brian Heady, present and Councilmember Tracy Carroll, present **Also Present:** Monte Falls, Interim City Manager; Wayne Coment, Acting City Attorney and Tammy Vock, City Clerk

B. Invocation

The invocation was given by Pastor Derrick West of First Baptist Church.

C. Pledge of Allegiance

The audience and the Council joined in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mayor Kramer added on to the agenda to set the public hearing for Mr. Vitunac's case on March 15, 2010 as item 8-A) under City Attorney's matters. He asked Mr. Heady if 9B-5) on the agenda pertained to this same item. Mr. Heady said that it did not. Mayor Kramer asked Mr. Heady when he submitted that item. Mr. Heady said before the noon deadline on Wednesday.

Mrs. Carroll informed Mr. Heady that in regards to item 9B-5) all she received was a packet of all of the minutes from November through today, which was the backup material. However, the form required to be filled out along with any backup material was not with item 9B-5). She asked Mr. Heady if that was correct. Mr. Heady checked with the City Clerk to confirm that the form was not provided with item 9B-5). Mrs. Carroll requested that this item be removed from the agenda because the form was not attached.

Mayor Kramer mentioned that he looked at the December 7, 2010 City Council minutes where Council discussed the form and felt that they need to tighten the language on exactly what the policy is.

Mrs. Carroll read the motion that was made at the December 7, 2010 meeting regarding the form that they are requiring.

Mr. Heady mentioned that he has provided Council with a stack of documents as backup material as requested by Mrs. Carroll. He said when they start discussing this matter then they will see that every meeting is related to the topic of avoiding Federal lawsuits (item 9B-5 on the agenda). He said instead of one page there are 500 pages of backup. He felt that he provided plenty of backup to have this item discussed under New Business.

Mrs. Carroll read from page 26 of the minutes dated December 7, 2010 (minutes on file in the Clerk's office).

Mr. Heady stated that under discussion at that meeting it said at "a minimum" and he has provided a whole lot more than the minimum (provided is approximately 500 pages of backup).

Mayor Kramer read what he thought the actual motion said and again felt that the policy needed to be tightened.

Mrs. Carroll continued reading the minutes. They have had this discussion at numerous meetings when Mr. Heady has tried to get items on the agenda without the form and they (City Council) decided to use the form. However, Mr. Heady has chosen at this point not use the form. Mrs. Carroll continued saying that as a society, as a group of people they have decided to make rules for their behavior and when one member chooses to not follow the rules then there are punishments. In this case his punishment is not to be allowed to have his items on the agenda. They are a society, a group of people with rules and they should follow those rules.

Mayor Kramer noted that as it stands they will add item 8-A) and strike from the agenda item 9B-5).

Mrs. Turner made a motion to accept the agenda as amended with adding item 8-A) and eliminating item 9B-5).

Mrs. Carroll commented that items 9B-3) and 9B-4) are a duplication of items that Mrs. Turner asked be discussed under item 9B-1).

Mr. Heady made a motion that they accept the agenda with the addition of item 8-A) under the City Attorney's matters.

Mr. Fletcher seconded Mrs. Turner's motion for discussion.

Mr. Heady objected to the deletion of matters on the agenda. He said that it is borderline ridiculous. He said the request is that they provide backup and there is over 500 pages of backup so the one page form is basically meaningless to this particular discussion is not attached. If you look at the form there is nothing in this discussion that fits in that particular form.

Mrs. Carroll told Mr. Heady that his item 9B-5) on the agenda states “Avoiding Federal Lawsuits.” She asked how the 500 pages of backup material (minutes from November through February) have anything to do with Federal lawsuits and how can she, as a City Councilmember understand what he wants to talk about. She asked how can a member of the public realize what he wants to talk about when avoiding Federal lawsuits has something to do with 500 pages of minutes that the City Clerk had to provide five copies of.

Mr. Heady commented that it probably was more than five copies that the Clerk had to provide. It was probably closer to ten copies. Anyway, he was sure that during the discussion she will understand how those 500 pages relate to avoiding a Federal lawsuit.

Mrs. Turner referred to the form and explained that the purpose of the form is to clarify what the discussion will be, what action is being requested from City Council, and what issues need to be reviewed. She felt that the form was critical for them to be an effective body.

Mayor Kramer agreed and said that he hates to walk into a discussion and not understand what is going to be discussed. He said that it is rather embarrassing when they don't know what they are going to be talking about. He wants to clean up the language from the December 7th Council meeting and was in agreement that the form needs to be filled out. He said the problem is avoiding Federal lawsuits is a very important topic that needs to be discussed and he hates to see it get thrown “out the window” on a technicality.

Mr. Fletcher stated that he did not think that they were “throwing it out the window.” What they are merely asking for is proper paperwork to be presented and the paperwork can be presented at a later time. As mentioned by Mrs. Carroll earlier, they do have guidelines to follow. He expressed the importance of the public having this paperwork so they will know what is going to be on the agenda and they have time to read it and decide if they want to attend the meeting or not and make comments.

Mrs. Carroll made a motion that they accept the additional item of 8-A) under City Attorney's matters and delete item 9B-5) for lack of backup. Mr. Fletcher seconded the motion.

Mr. Heady recalled that Mrs. Turner made a motion and it did not have a second, he made a motion and then Councilmember Fletcher said wait I will second it and he was seconding Mrs. Turner's motion.

The Clerk read the different motions that were made.

Mrs. Carroll rescinded her motion.

The motion made by Mrs. Turner and seconded by Mr. Fletcher passed 4-1 with Mr. Heady voting no.

Mr. Wayne Coment, Acting City Attorney, reminded Council that any item that they add on the agenda takes a unanimous vote.

Mrs. Turner made a motion that they add the hearing under item 8-A) under City Attorney's matters. Mrs. Carroll seconded the motion and it passed 5-0.

B. Proclamations

1. Certificate of Appreciation to be presented to Mulligan's Grille & Raw Bar

Mr. Rob Slezak, Recreation Director, stated that the Recreation Commission wants to recognize people who make a difference in their community. He said one organization that has done that is Mulligan's Grille & Raw Bar. Because of the contributions that this restaurant has made they are able to have their annual Easter Egg Hunt this year and that would not have been possible without their contribution.

Mrs. Angie Schepers, Representative from Mulligan's Grille & Raw Bar, thanked Council and the Recreation Commission for the certificate and presented Mr. Slezak with a check for \$2,000 to cover the costs to have the Easter Egg hunt.

Mayor Kramer read and presented the certificate to Mrs. Schepers.

C. Public Comment

Mr. J. Rock Tonkel, Grand Harbor, reported that there was a major power outage in Grand Harbor this morning. He said that this was the second major outage within the last month. He recalled that last summer there were some small outages. He expressed what an inconvenience this is for many people. He wondered since this is one of the major public services that the City provides to its citizens, what kind of incident review do the (City Council) or management does. In the two years that he has been attending their meetings, he has never heard anyone reporting on the number of outages and what it meant in terms of cost or implication for the City. He requested that Council consider adopting an incident review system and make it mandatory for management to report on a regular basis. He said given the fact that this is not an infrequent situation. He alerted Mr. Falls this morning that he was going to be bringing this issue up today and he (Mr. Falls) may have a response to this particular situation. Mr. Tonkel brought up 32963 newspaper and their reporting on City employees sick and vacation time accrual. He was assuming that it is accurate data which shows it is an enormous cost to the City. He noted that he represents 1,000 people in Grand Harbor that pay their share of all City costs through the public utilities. He didn't know if it was the City Manager's responsibility to conduct an audit or to begin the process of changing policies. Having this banked vacation and sick time does not occur in private business. It is something that Council should consider adopting a change in policy. He said in another month or so he will come back and ask about the progress.

Mrs. Carroll asked staff if they knew of any incidents that attributed to the outages in Grand Harbor.

Mr. Falls stated that the power has been restored in Grand Harbor. On their agenda under consent items. That item 5 is an item to replace some switchgear in an area surrounding Grand Harbor that has been problematic. He said that once this switchgear is replaced it should take care of the outages that have been occurring in the Grand Harbor area. He will provide Council a report periodically of where and when outages occur.

Mrs. Carroll told Mr. Tonkel since this report was a public record that he could get a copy of it.

Mr. Falls said to first let him look at the format and then he will bring something to Council.

Mr. Heady told Mr. Tonkel that these reports that he spoke of have come up for discussion and he recalls some of the comparisons in getting power restored is not out of line with other power providers. The record indicates that they are very good in terms of restoring power. He also mentioned that later on in the meeting he has it on the agenda to discuss pension, sick pay, and vacation pay benefits. He mentioned that he tried to talk about these items at the last meeting, but they were removed from the agenda by Mrs. Carroll so he was not allowed to speak on them.

Mrs. Carroll mentioned that these items have also been put on the agenda by Mrs. Turner and since Mr. Heady followed the rules this time they will be speaking on those items.

Mr. Steve Myers, Teamsters, asked if he could reserve his comments until such time as they discuss items 9B-1), 2) 3) and 4). Council had no problems with this request.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – February 1, 2011- Requested by City Clerk**
- 2. Regular City Council Minutes – February 15, 2011 – Requested by City Clerk**
- 3. Special Call City Council Minutes – February 10, 2011 – Requested by City Clerk**
- 4. Special Call City Council Minutes – February 22, 2011 – Requested by City Clerk**
- 5. Council Approval for Bid #AURSI RFQ – 3-01/24/2011/PJW Stock Switchgear – Requested by T&D Director**

Mrs. Turner pulled item 2D-2) “Regular City Council Minutes – February 15, 2011”. She will get with the Clerk on the corrections that need to be made to the minutes and they can be put back on the next Council agenda for approval.

Mrs. Carroll made a motion to adopt the amended consent agenda. Mr. Fletcher seconded the motion.

Mr. Heady suggested that they get an update on item 2D-5) "Stock Switchgear" since it was discussed by a citizen earlier in the meeting.

Mr. Randall McCamish, Transmission and Distribution Director, reported that this new switchgear is all insulated so they needed to change their specs somewhat in order to get bids for this. Once these new switchgears are installed it should help with the power outages that are occurring at Grand Harbor. The delivery time for the switchgears to come in is approximately sixteen weeks (four months). They cleaned up the old switchgear this morning and were able to get the power back on in this area around 9:00 a.m.

Mr. Tonkel commented that after hearing this it now raises a question about what kind of preventative maintenance has been done and how long has the problem been known. He said now they have four months of some uncertainty given the maintenance problems with a product not working in this salty environment. He said an incident report would alert the Council to these sort of problems. He hoped that any instances could be avoided over the next four months (time to get the new switchgear installed).

The motion passed unanimously.

3. PUBLIC HEARINGS

None

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution of the City Council of the City of Vero Beach, Florida, Releasing from all City Easements the five-foot rear easements along the North line of Lot B and the South line of Lot O in Block 32, McAnsh Park Subdivision (Replat of Lots 3, 4, 5, 31 and 32, 2541 Buena Vista Boulevard). – Requested by Interim City Manager**

The City Clerk read the Resolution by title only.

Mr. Falls reported that the various City departments, as well as outside utilities, have reviewed this release of easement and have no problems with it. The only company that they did not hear back from was Comcast cable. Any work involved with this is being paid for by the property owner. He would recommend that Council approve the Resolution.

Mr. Heady made a motion to approve the Resolution. Mrs. Carroll seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes, and Mayor Kramer yes.

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

None

6. CITY CLERK'S MATTERS

None

7. CITY MANAGER'S MATTERS

A) City Council Approval of Proposed Improvements at the Vero Beach Museum of Art; Site Plan Application #SP10-000007 – Requested by Director of Planning and Development

Mr. Tim McGarry, Planning and Development Director, reported that the Vero Beach Art Museum is requesting approval of its plans to expand the museum. The museum is proposing to remove 1,022 square feet of existing space and the construction of 21,740 square feet in two stories on the west side of the existing building for art storage, offices, and mechanical equipment and a separate 375 square foot mechanical room located on the southeast corner of the existing building. They are also going to reconfigure the driveway that now runs on the west side of the building. This project was approved and applauded by the Architectural Review Commission when they looked at it. On February 17, 2011, the Planning and Zoning Board unanimously approved the site plan application for the proposed improvements subject to conditions recommended by staff and approval by the City Council pursuant to the lease agreement. He said one issue that has come up has to do with the service road on the west side. He said that the lease agreement that they have is that this road was provided as an easement for public access looking to the north when there are large events. There is an easement running in the City's favor to allow this, as well as requirements to maintain it by the City. He said that once a building permit is approved for this and the way that the lease reads, the easement would automatically terminated. At this point he felt that the lease agreement needs to be amended to take into configuration the road and they are recommending that the maintenance of the road be given to the museum. He will be coming back with this lease amendment for Council to formally approve.

Mrs. Carroll commented that in looking at this configuration, a large percentage of the area that is currently leased to the museum at the lower left hand quadrant is used very often on weekends by trucks with their boat trailers. She never realized that the museum allowed people to park their boat trailers at this location. She asked if there was adequate parking to take the extra volume on the weekends.

Mr. McGarry explained that part of the demand will be handled by what is available. He said since that is the museum's leasehold property, people have been using it and the museum has allowed it.

Mrs. Carroll wondered if they could use the field property to the north of their green demarcation line to open it up for some additional parking.

Mr. Falls stated that they could take a look at that and see how they could safely get boat trailers in there. He said that it will be a little problematic. He said because of the change of the configuration of the driveway it has the big curve and that would be a difficult maneuver for someone pulling a trailer. Mrs. Carroll told him that he was not looking at the property that she was referring to. Mr. Falls knew where Mrs. Carroll was referring to and reiterated to access that property with a boat trailer it would be difficult to pull the trailer up the curved driveway. Someone would probably have to go down Dahlia to Riverside Park Drive and come up through the parking lot. He said that there is sufficient land, unless there is an event planned, then they could set aside for overflow boat trailer parking. He said staff will work to come up with a designated area for this.

Mrs. Carroll thanked the museum for allowing the citizens to use this property for parking trailers.

Mr. Ralph Evans, Legal counsel representing the museum, stated that the only request that the museum has with this site plan is for the City to reconsider the maintenance responsibility for this driveway. He said that in the past the road services as entrance and exit to the main parking lot to the north. He commented that the museum is self-surviving and relies on donations. It has a budget of approximately \$4.3 million dollars. What they see being added to the museum has more to do with sufficiently sustaining the art museum itself to protecting art that not only the museum owns, but that appears at exhibitions. The museum would request that the City maintain this road.

Mayor Kramer asked how much does the museum pay to lease this land. He was told one dollar a year. He then asked who designed the road. He was told Schulke architects and it was under the direction of the museum. He asked if there is a reason that the road has to go all the way through Dahlia.

Mr. Falls explained that the road serves as an entrance and exit to the open area of Riverside Park that hosts major events. He said in regards to the maintenance issue, the City has not had to do any maintenance on the road in the past and would not anticipate any maintenance in the future. He said that staff does not object to maintaining the road as long as they can set out the design standards for the base and the sub-grade in the asphalt and as long as it is built to their standards.

Mayor Kramer stated that the only problem that he has is they keep letting people use property for one dollar a year and then they absorb expenses on top of that and it turns out to be a negative deal for the taxpayers of the City.

Mrs. Turner mentioned that the museum is a great jewel and benefit to the City of Vero Beach. She does not believe that the museum is a road contractor or has expertise. The City is designed to handle maintenance of public roads and she was sure that they would

be able to do it more effectively and efficiently than the museum would. She asked that Council consider allowing the City to maintain this road.

Mrs. Carroll commented that last year the City had required last year that Riverside Theater take over maintenance of their property. She asked who currently mows or maintains the grass around the retention pond. She was told that the lease outlines that they maintain the retention pond.

Mr. Falls added that they have worked with the Center for the Arts and Riverside Theater on maintaining the grounds. He asked that the City be able to look at the design and work with the museum's contractor on this.

Mrs. Turner commented that if the museum would be willing to accept that the City review the design standards and specifications she felt it would be a win/win situation for all of them.

Mr. Fletcher made a motion that they agree with the concept and for staff to bring back an amended lease on what needs to be changed and the amendment that the museum would subject themselves to the City's design criteria. Mrs. Carroll seconded the motion and it passed unanimously.

B) Request for Public Service Commission Extension – Docket No. 090524-EM; Complaint of Faherty and Heran regarding City of Vero Beach – Data Request - Requested by Interim City Manager, Acting City Attorney, and Acting Electric Utilities Director

Mr. John Lee, Customer Service Director, recalled that there was a complaint filed to the Public Service Commission (PSC) by Dr. Steve Faherty and Mr. Glenn Heran and then it was put into abeyance. It was his understanding that after speaking with the two gentlemen that their time was about to run out so they chose to renew it. The Public Service Commission's staff is looking at the complaint. They (PSC) sent the City a list of questions that they would like to have answered and they gave a time frame that expires on Thursday. Staff came to the Council and asked for an extension, which the PSC has agreed to. He then called the PSC attorney and she said that should not be a problem, but asked that the request be sent through the City Attorney's office. The letter was sent by Mr. Coment on February 21st and all the questions that could be answered by staff have been answered. He said that all the questions that needed to be answered by the consultant have been answered and provided to the City. Some maps were asked for, which the City GIS Department has prepared. All this information has been sent to the City Attorney for his review. Mr. Lee understood that the Tallahassee law firm that represented them before has offered to review the information that the PSC has asked for (at no charge) before they submit the information to the PSC.

Mr. Heady wanted it made clear that they now have all the answers to the questions being asked by the PSC.

Mr. Lee said that is correct.

Mr. Coment commented that the information is sitting on his desk waiting for review and Mr. Shef Wright, Tallahassee attorney, has offered to review the material before it is sent to the PSC. If Council agrees then they will let Mr. Wright review the documents.

Mrs. Carroll asked what Mr. Wright's time frame is.

Mr. Falls stated that Mr. Wright told them that he can perform the review as soon as the City gets the material to him. He said that they are fine to the time extension given to them by the PSC.

Mr. Heady asked how long an extension was granted.

Mr. Coment answered the request was for two weeks, but he has not heard anything back from the PSC attorney.

Mr. Lee explained that he spoke with the attorney from the PSC and she told him to send a letter from the City Attorney and they will grant the extension. He reiterated that the extension is not a problem. The PSC wants five copies of everything that they send them, so he wanted to make sure that everything is correct before the City sends out the information.

Mr. Heady questioned if the answers to the questions were not in electronic form and needed to be sent to the PSC by hard copy.

Mr. Lee told him that they would be doing both. However, the information that they send Mr. Wright will be in electronic form.

Mrs. Carroll asked if they are being asked to approve the request here (letter already mailed out) or are they being asked to approve the consultant taking a look at the documents.

Mr. Falls explained that they needed approval from the City Council to take advantage of the law firm who is reviewing the documents at no charge.

Mr. Heady made a motion to accept the attorney's offer and have a two week extension. Mrs. Turner seconded the motion and it passed unanimously.

Mr. Heady asked that when they do file the questions with the PSC that the complainants be provided with a copy.

C) South Beach Speed Limit Reduction – Requested by Assistant City Engineer

Mr. Falls reported that South Beach is the third neighborhood that has made a request that the speed limit in their area be reduced.

Mr. Bill Messersmith, Assistant City Engineer, reported that the current speed limit in the South Beach neighborhood is currently 30 mph. This is the posted speed limit on East Causeway Boulevard, Ocean Drive, Sandpiper Lane, Coquina Lane and Seagull Drive, and is the default (un-posted) speed limit on the remainder of the neighborhood streets – Ocean Place, Jasmine Lane, Pirate Cove Lane, Turtle Cove Lane and Coral Avenue. In May 2010, the City conducted a poll of the neighborhood property owners and residents. The results of the poll show a majority (70%) of the respondents (92 in favor out of 132 total respondents) are in favor of the speed limit reduction from 30 to 25 mph. The speeds have been tracked throughout the neighborhood and are outlined in the backup material.

Mrs. Turner commented that they were not looking at a major speed limit reduction.

Mr. Messersmith added that by lowering the speed limit it will help the Police Department. He also said that 25 mph is an excellent speed for a residential neighborhood.

Mr. Falls mentioned that down the road they would also be looking at some sidewalk improvements in this area.

Mrs. Turner made a motion to approve the South Beach speed limit reduction. Mrs. Carroll seconded the motion and it passed unanimously.

8. CITY ATTORNEY’S MATTERS

A) Date for Public Hearing requested by Legal Counsel to Charles Vitunac

Mrs. Carroll made a motion to schedule the public hearing to hear the Resolution titled “A Final Resolution of removal by the City Council of the City of Vero Beach, Florida, pursuant to Article III, Section 3.03 of the City Charter, removing the City Attorney from Office as a Charter Officer after the Public Hearing requested by the City Attorney; providing an effective date” on March 15, 2011 at 9:00 a.m. Mr. Heady seconded the motion and it passed unanimously.

9. CITY COUNCIL MATTERS

A. Old Business

1. Filling personnel vacancies in Finance Department – Requested by Vice-Mayor Turner

Mrs. Turner asked the City Manager for an update on the status of the Assistant Finance Director. She also wanted to know when the position for a new Finance Director was advertised and what is being done for this position.

Mr. Falls reported that they have made an offer and it has been accepted for the new Assistant Finance Director. The only thing that they are waiting for is the required drug testing that needs to be done.

Mr. Robert Anderson, Human Resource Director, passed out a list of the different places where the Finance Director's position will be advertised (please see attached). He said that they have received one application already.

Mrs. Carroll wondered what kind of experience that the new Assistant Finance Director has.

Mr. Falls went over his experience and some of the places that he has worked. He said that he has background in utilities and working in municipalities. His title will be Assistant Finance Director.

Mr. Heady asked if anyone internally applied for the job. He was told no.

Mrs. Turner wondered why they waited until last Thursday before they started advertising the position.

Mr. Falls wanted to make sure that Council did not have any responses to the description of the job before he moved ahead.

Mrs. Turner reiterated that the hiring of these positions is a priority by City Council.

Mr. Falls understood.

2. FPL Report – Requested by Councilmember Heady

Mr. Lee gave an update on the progress of FP&L. He said that this has been a busy week. He briefly went over some of the highlights of the week. He emailed Mr. Tim Gerrish, who is their FP&L contact and asked him if he could go through his list of questions and if there were any particular ones that he thought had fallen through the cracks to let him know. He said that FP&L brought some staff members to the City on Wednesday and met with T&D. Then he made a telephone conference call to Mr. Gerrish where himself, Mr. Falls and Mr. Maillet were present. He mentioned to Mr. Gerrish that he shows that they are between 90 and 92% of having all of the questions answered that he has sent to him. Mr. Lee told him that he showed 15 questions still as being outstanding. He said that seven (7) of the questions need to be answered by the Power Plant and (8) are finance questions. He said that five of the seven questions from the Power Plant will be answered by tomorrow. With the financial questions, Mr. Maillet wanted to know exactly what FP&L is asking for. He said that the request for these questions came in the beginning of January and it has been stated that only one of those questions has been answered. But he said that some of the questions had been answered by other departments, which just left eight (8) unanswered questions. When they

telephoned Mr. Gerrish, Mr. Maillet asked him to clarify what he was asking for. Mr. Gerrish said that he could not answer those questions, but told Mr. Maillet that he would have someone from their accounting/finance department give Mr. Maillet a call. At this point no one from FP&L has contacted Mr. Maillet. Mr. Lee noted that he received an email from Mr. Gerrish yesterday requesting to spend some time with them on Thursday to talk about some service and IT issues. He was told that they may get another set of questions concerning customer service questions. Where they are right now is out of more than 200 questions, they still have eight (8) financial questions and two (2) environmental questions at the Power Plant that still need to be answered. He said that the one person who could answer the environmental questions is on Family Medical Leave. They are trying to get this information together, but they want it to be exact and verifiable, which could be another week before FP&L receives this information. Now they are at 93-95% of having all of the questions answered.

There were some questions from Council about the employee that is out on FMLA leave and being the only employee that can answer the environmental questions.

Mr. Lee explained that in talking to Mr. Gerrish about those two (2) environmental questions that need to be answered, he said that it is not an issue with him. He was told by Mr. Gerrish that they will be sending more questions today so it is obvious that they are still under the due diligence phase.

Mrs. Carroll stated that she received an email from Mr. Gerrish on February 15th that said of the accounting/financial questions given to the City on January 3rd only one question had been responded to. So what Mr. Lee was saying is that Mr. Gerrish's email was incorrect, he actually had more answers and just didn't realize it.

Mr. Lee said that he believes what Mr. Gerrish was referring to was what they refer to as the accounting document and he was saying embedded in that are the financial questions.

Mrs. Carroll continued by saying that she received another phone call last week from Mrs. Amy Brunjes trying to get an update. Mrs. Carroll will pass this information on to her. She noted that earlier in the meeting they approved some upgrades and buying equipment for the system. She asked Mr. Falls if they were letting FP&L know so that they could modify their evaluations based on these upgrades and continuous work that they are doing to keep things in working order. Mr. Falls referred this question to Mr. Lee.

Mr. Lee explained that what they have done is give FP&L a five-year maintenance plan. He referred to the item that they approved today and said that was just simple switchgear and a part of regular maintenance. At some point FP&L wants them to provide a snapshot of their system and then from that day forward report anything and they would be happy to do that.

Mr. Falls asked Mr. Lee to telephone or email Mr. Gerrish and let him know that their financial people have not been in touch with Mr. Maillet.

Mrs. Carroll expressed that this issue is of the up-most importance to the members of the Council and that all efforts should be made by City employees to obtain this information and give it to FP&L as quickly as possible.

Mr. Falls added that they hope to be at 100% of having all of the questions answered very shortly.

3. OUC contract – Requested by Councilmember Heady

Mr. Heady started off by saying that the OUC contract has been a bone of contention for a long time. There have been statements and beliefs that have been contradictory and he would say unraveling of some of the events that led up to the OUC contract. He said what they do now know it has been revealed to City Council over the last year, is that the OUC contract that was on the table on April 7th that the Council had the opportunity to look at went back to Boston with the consultant that the City hired and it was never maintained in City Hall. The terms of the contract were talked about several times and the terms that were contained in the contract were explained to the Finance Commission, Utilities Commission and City Council at a public noticed meeting. The approval by City Council in April 2008 was based on a contract that contained clauses that were reflected in the presentations given by their consultant. At the April 15, 2008 City Council meeting OUC was in attendance when the contract was discussed and voted on. At the time the only thing available to the public was a redacted copy. After he (Mr. Heady) was elected in November he was given an unredacted copy of the contract and it became apparent that there were changes to the contract. In questioning the City Council that were involved at the time and questions to the Mayor at the time it became apparent that the Mayor was given the signature page to sign, but was not told of any changes and he believed the contract that he was signing was the one presented to them and discussed at the Utilities Commission, Finance Commission and the public meeting held on April 15th. He signed a signature page and it was sent to OUC and that signature page was returned and executed by OUC. In the City's file the signature page is attached to a document that does not conform to the redacted copy. In contract law if you change the terms of the contract, those changes must be known to the parties and the changes were not known to this party in the City. He did not know if the changes were known to OUC. Then in November 2009 or early December, he went to OUC and asked the Chief Counsel about some clauses in the contract that he had questions on and asked him where these numbers come from and he did not know. The City Attorney (Charlie Vitunac) has been questioned many times about this contract and has said that the contract, including the changes would be in effect because City Council did not object to them. Mr. Heady would make the argument that the Council couldn't object to things that they did not know about. There have been former Councilmembers say that the changes were a complete surprise to them and they didn't know about the numbers in the contract that were added. There have been discussions with Charlie Vitunac about a couple of redactions, in particular penalty clauses and how could a redaction not be long enough to fit what is on the contract that is in the current file. This Council was told that the numbers were blank. There were no numbers there. He said he would submit to City

Council that if there were no numbers there that if you have blank lines and there is no number there then the amount is zero. He said you can't at sometime in the future add whatever number you want and have that be legally binding to the parties. He asked OUC whether they inserted that number and they said no. He knows that this City Council did not insert those numbers because the Clerk would have a record of it. There are some questions as to where the numbers came from and there are questions as to the legal enforceability of a contract where someone goes in and changes it. In the meantime on January 1, 2010, OUC became the supplemental power supplier to the City of Vero Beach and has provided power to the City since that time. He knows the Mayor has been to OUC and he said that OUC was more than cooperative to him and he saw what Mr. Heady saw, which was a well run utility. The Mayor walked away with some of the same feelings that he did. He thinks that the City, until they decide what they are doing with FP&L, needs supplemental power. They don't have the capacity to supply all of the needs all of the time. It is time to come to some resolution about this contract and that needs some discussion. He said discussion is needed here at this level and OUC level. The legal counsel that they now have can tell them what he thinks. But, Mr. Heady feels that there are some legal issues as to whether or not this contract, particularly the terms that have been added to the contract, are legally enforceable. He is not looking to totally void the arrangement that they have with OUC, but feels that this Council should make it known that they will not saddle their ratepayers or residents with terms of a contract that were never agreed to by any City Council.

Mayor Kramer commented that when he met with OUC they were very willing to work with the City on the changes that they are going through. He said one thing stated over and over was when they did the original OUC contract, they really did not foresee the issues coming up that they are dealing with today. He did not think that OUC had a problem with revisiting some of these issues. He said first they need to find out what they are going to do and then talk to OUC.

Mr. Heady stated that there is going to come to a point in time where they are going to have a decision to make with respect to FP&L. In the meantime it is clear that there are certain terms in the contract that no one wants to take responsibility for except to the extent that they know these things were not in the contract that was voted on. It is important that they don't saddle their ratepayers with terms no one ever agreed to. He said to have City taxpayers on the hook for large dollar amounts when they were never in the contract or never agreed to is a burden that he does not think that they should saddle their ratepayers with. They should make it clear to OUC that these documents changed and changed without the City's knowledge. He said it was important for them to notify OUC and they seem to be more than willing to negotiate and deal with the City. In the dealings since they have become the supplemental provider in talking with staff they seem to have a good working relationship with the people who make things work. He thought that the contract people were more with management then operating people. He said someplace along the line they need to fish or cut bait. He thinks it is important that the taxpayers not be saddled with some expense that they have not agreed to by any City Council. He thinks that there are some areas when looking towards the future that OUC may be a big part within the City of Vero Beach. However, he doesn't see OUC being a

big part of the corporate limits. However, they still have an important power partner with OUC and he would like them to sit down and acknowledge the difficulties that they have with the contract.

Mrs. Turner felt that Council has been incredibly patient. At every Council meeting they continue to go over the history of the OUC contract. She asked Mr. Heady to ask for some action or to prepare a plan. He said his contention is that this contract is not a valid contract and the fact that they have been operating under it then there only other option is to engage an attorney to review the terms and then to approach OUC.

Mrs. Carroll said that she was about to say the same thing. One of the things required on the form that they fill out is to put down a statement of the proposed solution to the public need or issue. She said that each time they discuss this they do not come up with a plan because they have not been provided with one. She asked Mr. Coment is there not legal precedence as to the enforcement of a contract that the City has been acting under.

Mr. Coment answered that at the February 1st meeting, Mr. Vitunac supplied Council with a binder of his response to some of Mr. Heady's contentions in regards to the OUC contract. Included in that he was tasked to look at a simple question, is the current OUC contract that was signed by former Mayor Tom White valid and enforceable against the City of Vero Beach. He urged Council to read his memorandum of thirteen or fourteen pages. He said it is the State of the Law of the OUC contract that was executed by Tom White. He said that there are three (3) options that they could look at: 1) Do as in the memorandum as they did in one county and tell the provider of services that they don't think this is a good contract and they are not going to pay them anymore. The county he referred to was sued by the provider and lost. 2) Sue OUC and ask a court to determine what are the City's rights; keeping in mind that the OUC contract does provide for attorney fees and if the City lost they would be on the hook to pay for OUC's attorney fees or 3) Negotiate with OUC on any changes that you want to make, which he feels would be the cleanest way.

Mrs. Carroll asked Mr. Heady what is his statement of the proposed solution.

Mr. Heady noted that he filled the answer on the form to read "undetermined". He said that some of the facts that he just presented did not come out until Charlie Vitunac answered the questions at the meeting in which a motion was made to effect his termination on February 1st. The third option that Mr. Coment just suggested is the one that he has recommended in the past. He felt that they should sit down with OUC and explain to them exactly where the difficulties are with respect to the contract. Mr. Heady brought up that Mr. White testified that he executed the contract that the Council voted on and not the one attached to the signature page. Mr. White stated that he was not told of any changes at all and believed that the contract he was signing was the one that was voted on. Mr. Heady did not think what they needed to do is start a lawsuit with their partner. He would be happy to be the Councilmember to go to visit OUC with the City Attorney or the City Manager and talk to them. He made a motion that himself, the City Manager and the City Attorney (Utility Director if he wants to) take a trip over to OUC

and sit down and discuss the problems and see what happens. The motion died for lack of a second.

Mayor Kramer felt that because they were having GAI Consultants come and talk to them about their electric maybe possibly they could talk to them about the OUC contract and where they can go from here. He said that it looks like GAI has a lot of experience dealing with OUC. He said they could just ask GAI what can be done and Council could hear some of their ideas.

Mr. Heady stated that even with a consultant, he feels that if they went and talked to OUC about some of the difficulties with the contract they might get some indication from them as to whether or not they would agree with our position on the enforceability of the contract. He didn't think that taxpayers needed to spend money on consultants and discussion with OUC would be the first good step.

Mayor Kramer commented that in the meetings that he has had with OUC, they do believe that they have a contract that is enforceable and he is sure that they would defend the contract. He felt that a trip could be made to ask OUC what changes could be made and discuss them. He said that OUC realizes that there are some things that were not thought about when the contract was in its original negotiation stages.

Mrs. Carroll asked Mr. Coment if there were any possible financial or legal ramifications to the City of Vero Beach that could be a result of opening up these discussions.

Mr. Coment could not think of anything. He said that when it comes to taking action and the Council declaring that the contract is not enforceable or whatever action they may take then that would probably bring OUC to defend the contract. He said but just discussing the contract, he doesn't know of any issues that could be raised.

Mrs. Carroll made a motion that Mr. Coment and Mayor Kramer visit OUC to open up these negotiations. Mayor Kramer said Mr. Heady's motion died for lack of a second. Mrs. Carroll asked that Mr. Heady provide documentation with all the information that he has shared with Council. Mrs. Turner seconded Mrs. Carroll's motion.

Mrs. Turner amended the motion that the discussion items that are to be discussed with OUC are clearly delineated and distributed to the Council prior to that meeting.

Mrs. Carroll asked Mr. Heady if he would mind delineating all of the items that he mentioned today.

Mr. Heady stated that all of the items he mentioned today will be in the minutes.

Mr. Coment told Mr. Heady that most of the discussion was geared towards is the contract valid or not. He heard the Mayor say that OUC feels that they have a valid contract. It seems to him that they might want more substance as to what they want

changed in the contract and what would the change be to. This would give them more of a basis as to what they want to negotiate.

Mayor Kramer thought that the whole premise was around the penalty clause.

Mr. Heady stated that he has lots of questions about the contract and the penalty clauses are certainly two of the driving forces. He understands that part of the Mayor's duties are to represent the City. However, in this particular case there is a Councilmember that probably knows the facts and the circumstances and has those things committed to memory more than the Mayor does. However, he feels that Mayor Kramer is qualified and knowledgeable. But again, in this case, he has fought this and tried to ensure that the City residents are not saddled with huge penalties not disclosed until two years after the signing of the contract. He has experience in this from 2008 through March 2011 and to put all that in writing they would be receiving a book and it would probably take two months to write what he has in his head.

Mr. Fletcher commented that when the Mayor and staff go to visit OUC they are going to want to know specifically line by line what items are a contention to the City. This is what they are looking for. They will need to delineate each item in the contract that is being contested.

Mr. Heady felt that Charlie Vitunac put together a document that demonstrated some of the changes and he has done that a couple of times. He does not think that all of the changes that were in the document attached to the signature page were included in the City Attorney's analysis from February 2010. His objection would be that the contract has changed dramatically and materially from what the City Council in 2008 voted on.

Mr. Fletcher stated that this is an item that will have to go to court. They, OUC, believe they have a contract.

Mr. Heady did not think it would have to go to court if they were to sit down with their partner and debate it.

Mrs. Carroll rescinded her motion and asked Mr. Heady to go through the contract and list exactly what he feels are the points of negotiation and bring them back to the Council so they can go through the specific line items so Council knows exactly what they are asking Mayor Kramer and Mr. Coment to talk to OUC about. Mrs. Turner seconded this.

Mrs. Carroll asked Mr. Heady if he would do this for them and present it at the next Council meeting. Mrs. Carroll said they were not asking that it not be Mr. Heady that go to OUC because they are afraid he will say something wrong.

Mr. Heady felt that those documents exist and he will have the City Clerk make another pile of documents. Mrs. Carroll told Mr. Heady that was not what she was asking for. All they need is his line items. Mr. Heady said if she wants line items, the line items are delineated because the City Attorney put together a presentation in February of last year,

which he colored coded all of the changes. What we have is a document attached to a signature page that is different than the document that was voted on.

Mrs. Turner commented that was immaterial to OUC. She said they could care a less. That is an internal problem that the City has. She said that the contract was handled in a poor sloppy manner but that issue is immaterial to OUC. She said that if they are going to go to OUC then what do they want to address. The 50 million dollar penalty, the 20 million dollar penalty, what negotiation room if any, will they mitigate their damages if the City should terminate the contract, etc. These are the type of bullet points that need to be made. They are not looking for a stack of history. She said we have gone over this history ad nauseam. She said it is time to get some direction to move forward.

This item will be brought back to their next meeting.

Council took a five- minute break at 11:23 a.m.

B. New Business

1. City Personnel Rules – Requested by Vice-Mayor Turner

Mrs. Turner addressed the City personnel policy. She said the last time that the personnel rules were totally updated was in October 2002. There have been some minor changes, which have not been widely disseminated. What she will be doing today is suggesting ways on how they can address vacation, sick leave, retirement, and performance appraisals. She said that there other areas of the personnel policies that probably should be looked at, but at another time. She stated that any revisions to the personnel policies require a Resolution to be passed by Council. They will also require a review by a labor attorney, specifically what they were looking at is modifying any benefits that may have been earned by employees up to today's date. The Police Union is up for renewal in September of this year and the Teamsters contract has another two years remaining. She referred to her memo on personnel policy revisions and it is suggesting for vacation time it be use it or lose it. A three year period from date of resolution will be given to utilize accumulated vacation before forfeiture. A maximum of five days vacation may be carried forward to the next year with the written approval of the City Manager.

Mayor Kramer commented that after looking at the vacation accrual it seems to him that one of the things that looks bad in the Press is that when people retire they get a big chunk of money from the City when they cash out all their vacation days. It would seem to him that after someone had accrued a certain number of days throughout the year why not at the end of the year pay them or allow them to put the money into a pension plan, such as a 401k plan. He said stop using this accrual method within the City so when someone retires the City pays out this big lump of money. He said that it would be beneficial to the employee at the end of the year if they were allowed to put the money for the vacation days not used into a 401k. He said that after maybe twenty years they might have doubled or tripled their money. He would like to see all of these accruals off

of the City's books and not have these big numbers walk out the door at the time of retirement.

Mrs. Turner added that if they could settle these things on an annual basis it would also reduce the payout. He said now when someone leaves they are paying out these vacation/sick benefits at the employees' highest salary level as opposed to disbursing this liability on an annual basis.

Mrs. Carroll disagreed with allowing an employee to work an entire year and then have the extra benefit of putting his vacation pay into a 401k. She said that now they have increased their total year liability for that employee by his two or three weeks of extra benefit that he is getting. She would agree with what Mrs. Turner has brought up "use it or lose it" without having extra benefits.

Mr. Fletcher said that he also would go along with use it or lose it.

Mayor Kramer commented that when comparing the City with other cities around the area, their benefits are pretty close to what other places are offering.

Mr. Falls stated that currently the surrounding municipalities and Indian River County do have similar policies that allow the accrual of annual leave and sick time and some of those policies do pay out more working days than the City does and some of them are less. He said that when they compete for labor they have to compete against other municipalities in their County. They need to be offering pay and benefit packages similar to theirs. These things need to be kept in mind if they are going to look at any modifications to their plan.

Mrs. Carroll asked the City Manager to provide them a matrix of the various municipal organizations and their policies.

Mr. Falls hopes to have something to Council within a week.

Mr. Heady agreed that these cash outs are a problem and past Councils have, by allowing this continuation of carryovers have increased the budget requirements for future Councils and they could get stuck for some pretty large numbers if a lot of employees decided to cash in any one given year. The suggestion that vacation days be carried forward with the approval of the City Manager is fine, but one of the things that is missing here is the need for vacation days. He said that when you take a vacation you come back with your batteries recharged and your productivity level is increased. There is a benefit to the taxpayers of the City when someone takes a vacation. There are also times because of retirement and employees leaving the City, it is hard for some individuals to be able to take a vacation. He does not have a problem with the City Manager approving vacation carry-overs, but he thinks that it needs to be done judiciously. He thought that the Mayor's suggestion in regards to the 401k was a good idea if they could do that in extenuating circumstances. In the final analysis the first five words of Mrs. Turner's statement "use it or lose it" sums up where he thinks that they should be.

Mrs. Carroll commented that requiring the written approval of the City Manager for carryover of vacation time would require a reason. Are they paying an employee for 52 weeks a year or 54 weeks a year. This would create a precedent that would have to be given to every employee.

Mr. Fletcher mentioned that there was a consensus that they want to do the use it or lose it issue. The problem now becomes how to implement this and that would be to instruct the City Manager to revise the existing Human Resource Policy. He wasn't sure how this is to be implemented because of the different unions involved.

Mayor Kramer felt that when they had the matrix to compare with other municipalities then they could figure out how to do this.

Mr. Fletcher continued by saying what policies would need to be changed in order to implement this. He said that would be an instruction from the City Council to the City Manager.

Mrs. Turner commented that from her preliminary research any changes to these policies will require a Resolution. It will also require a labor attorney review and in their union contracts they are required to give at least two weeks notice to the union as to any proposed changes in the policy. She said then once the contracts are opened to negotiations then they would have to be addressed again with union representatives.

Mr. Fletcher reiterated that they needed to give some instructions to the City Manager and the question now is what are those instructions going to be.

Mr. Steve Myers, Teamsters, stated that they have entered into a three year bargaining agreement and that agreement does not expire until September 30, 2013 and they will not talk about those things in that collective bargaining agreement until October 1, 2013. He said notwithstanding the fact that they have a contract and there are other employees in the City. He said that it is not fair to them to go after employees that have sacrificed time and time again and are wearing two hats. He said that there are employees throughout this whole organization because of the freezes in jobs, that are working multiple jobs. In some cases they are doing so without any increase in compensation. These are the same employees who have had no pay increase for the past several years and have had furlough days for two years in a row. Now they want to take vacation time, which is a form of compensation taken away from them. He said maybe not this Council, but the previous Council has allowed this City to run at the bare minimum of employees. The Mayor mentioned a 401k plan, he said that the City does not have a 401k. He was not quite sure what they have in mind in regards to the 401k. He said that there may be problems today that hopefully won't be here in five years because the economy will turn around as it always does. He said although Mr. Heady's suggestion that it might make good sense to pay for these things now, he doesn't know if they could afford to pay for these things now. He doesn't know if they could afford their employees to take off the 2, 3, or 4 week vacation time that they may have accrued each year. He said in regards to vacation

time/pay, he hoped that they would consider not making any changes that would adversely affect any employee within this organization until such time that they have gone through the budget process and have had a chance to study the items. He said that their employees have sacrificed a lot. They have not had any pay increases for a couple of years. They have to take unpaid leave every month and now they are wanting to take away what little benefits that the employees do have. He said that is wrong.

Mr. Fletcher explained to Mr. Myers that they were not taking away anyone's benefit. They are just requiring the employees to use it.

Mr. Myers was sorry that his comments have fallen on deaf ears. He was trying to be specific with some of the reasons that these changes should not be made.

Mr. Heady told Mr. Myers that just because a Councilmember doesn't agree with him does not mean that his comments have fallen on deaf ears. He does not think that any Councilmember is going after the employees. He said that he is not. They are not trying to take away vacation benefits, but rather saying that the employee needs to use their vacation benefits. He said if there is not a 401k or similar tax protected way of giving the employees a benefit, that could be discussed down the road. The Mayor's suggestion was to make sure that even employees who could not take a vacation would be afforded the dollar value benefit. No one is suggesting that they take anything away. He heard Mr. Myers say that now they can't afford to do these things. Mrs. Turner has said a three year period would be given. He said they can't afford part is precisely the problem that they find themselves in because of prior Councils allowing these things to occur to the extent that there are millions of dollars of potential liability for the City. He thinks that the suggestion on the table is to stop accruing these expenses for some future Council and no one suggested taking benefits away from any employee.

Mr. Myers told Mr. Heady that unless he is going to get with the City Manager to increase staffing levels in every department that there is going to be a hard time allowing all the employees to take vacation. He hears all the time from the employees, why is my vacation being denied, why can't I take my vacation now, etc. If they bring in more staff then there will be plenty of opportunities for employees to take more time off.

Mr. Heady wanted the name of any employee who has been denied a vacation.

Mr. Falls explained that vacation time is always granted if it can be accommodated with the work schedule. There have been some instances where more than one employee is requesting time off at the same time and the time could not be granted. He agreed with Mr. Myers that staffing level has been reduced and the furloughs have created another day off per employee.

Mrs. Carroll noted that she runs a business and as a business owner sometimes her employees ask for time off and because of a big project in the works they have to be denied. She said that is the function of running a business and there will be times when an employee cannot take a vacation at the same time when another employee is going to

be out of the office. She brought up the furlough days and commented that she spoke with a member of the public recently who told her that she called the Police Department because she had some concerns that there was not enough Police force in her neighborhood and she was told by someone at the Police Department that they don't have enough coverage in the City because each employee has to take a furlough day each month. She said that this type of opinion to her is horrifying.

Mr. Myers commented that sometimes the truth hurts and that is the reality of what is going on in the City.

Mr. Fletcher agreed that sometimes the truth does hurt and the truth is that there is not enough taxes to pay for everything. The City is running out of money and we don't have an option and we are not going to levy more taxes. This is not taking anything away, just requiring the employee to use what they have.

Mr. Myers commented that he is saying because there is going to be an increase in taxes. Mr. Fletcher made it clear that was not what he said. He said they were not going to have an increase in taxes.

Mayor Kramer asked that in order to move on could they have the City Manager do a matrix comparison and then also provide a plan on how this would be implemented and its possible effects.

Mr. Falls said that he would put the matrix together and suggested that he consult their labor attorney and find out about the vesting of benefits and how this is implemented moving forward.

Mr. Fletcher stated that there always is the option of implementing this for new employees instead of standing employees.

Mr. Heady wanted to make sure that the public and City employees who are listening clearly understand that he did not suggest that they take things away from these union employees. In fact, in Mrs. Turner's suggestion they were given a three year period to utilize the accumulated vacation time. No one is suggesting that they take any benefits away from any employee, union or otherwise.

Mrs. Turner moved on to sick leave. She initially approached this as a use it or lose it concept, but after having further discussions with staff felt that having some accumulation of sick leave is of value to the City. The whole concept of accumulating sick leave was to provide a bridge for the employees in the event of a serious accident or illness. She said that unfortunately the system has been allowed to evolve and they end up with a large unfunded liability at the resignation or retirement of an employee. She suggested looking at other options where this liability is funded on an annual basis. It would allow the employees to accumulate a certain amount of sick leave to protect them in the event of a catastrophic problem.

Mr. Fletcher agreed that these are issues that they all ran on during their campaign. The past Councils' have passed these things on and on and now it has come to a critical mass. Again, he would ask the City Manager to come up with a plan on how to implement this.

Mr. Heady sympathized with some of the concerns that they have heard about with the accumulation of sick days. He does not have a problem with an employee accumulating sick days to be used for a time in the future if there is some type of illness that strikes. He said those accumulative sick days would tie the employee over until some type of long term disability kicks in. His concern with sick leave is the payment out to employees who did not take it and use that as an additional benefit. He said that is what they need to address. Sick days are meant to help employees pay for illnesses for the time that they are out sick. If they don't have to use their sick time they should be thankful that they were not sick this year. This is not a benefit that they collect a check for at the end of employment.

Mrs. Carroll commented that her business has moved calling sick leave to paid time off. They allow employees to use that time over the course of the year or they can use it for other types of reasons for paid time off.

Mayor Kramer brought up again that he wanted to see a matrix showing how the other cities compare and what they do. One thing that seriously concerns him is that in a market of employees it is their best of employees that are most marketable. If they make decisions for employees to go somewhere else, it will be their best employees who will leave. He doesn't want them to get to the point where they discourage people from wanting to work for the City of Vero Beach.

Mr. Falls will bring back a matrix on both the vacation and sick time issues. He said one thing to think about is that most places have sick leave incentive programs. Here at the City the average employee uses somewhere around four (4) days of sick days a year. If you don't have an incentive program then you tend to see sick usage go up. Then there is productivity loss. He said that he will get these two matrixes to Council, let them digest it and then they will talk about it again.

Mrs. Turner stated that the next item she wanted to discuss was to place a limit on a retired City employee that they may not work more than 60 days for the City while receiving a City pension.

Mayor Kramer mentioned that there are a few cases where this is going on. He said if this is something that has to happen he would like to see some sort of written explanation as to why.

Mrs. Turner said then you would add no more than 60 days without notification to the City Council telling them why it is necessary.

Mrs. Carroll asked Mr. Anderson how many people they have on the City payroll receiving both a City pension and are currently employed.

Mr. Anderson answered none, but said that there was one employee retired, but working for a temp agency.

Mrs. Turner understood that this person has been doing that for two years.

Mrs. Carroll understood that there was a person in the Finance Department who was retired and still employed by the City (Jackie Mitts). She was told that was correct and that Mr. Steve Maillet was officially retired beginning March 1st.

Mrs. Carroll did not realize that the City was using temp agencies.

Mr. Falls explained that the particular employee hired at the T&D department by the temp agency is not a full time position. He said to hire an employee full time would cost the City more because they would be paying full time pay and benefits. He has been told that this is the best way to cover this economic need at this time.

Mrs. Carroll asked if this person was the only person working through a temp agency for the City at this time.

Mr. Falls said he was the only person that he was aware of. He noted that in the past they have hired workers from day labor.

Mrs. Turner asked if there were any other comments on this other than adding that it would need to be approved by City Council.

Mr. Heady mentioned that this was getting close to interfering with the City Manager's duties. He didn't have a problem with giving the approval to the City Manager.

Mr. Falls stated that if Council wants to restrict it to 60 days he does not have a problem staying with that number. He did mention that there would be situations that come up with some positions where they don't receive adequate applications. He cannot predict the future, but will do his best to get someone on board and would like the new employee to have a training period.

Mrs. Turner understood that. She said that this is to provide some incentive and planning once they know an employee is planning to retire/or resign. The City has become quite relaxed in replacing personnel.

Mrs. Carroll thought in this case maybe they should have this policy say a retired City employee may not work more than 60 days for the City while receiving a City pension without City Council approval.

Mr. Falls mentioned that once Mr. Maillet gave his notice that he was going to retire he (Mr. Falls) started working immediately to start the process of filling that position. He

said that if 60 days from the date Mr. Maillet submitted his retirement, he will do his best to get someone hired for that position.

Mrs. Carroll explained that their comments were not about Mr. Maillet's recent retirement, but about his first issuance of a retirement notice almost a year ago.

Mr. Falls recalled that Mr. Maillet rescinded his notice and he was back as a full time employee.

Mr. Anderson reported that Mr. Maillet handed in his retirement notice and the former City Manager talked him into staying and Mr. Maillet agreed to stay for another year. In the meantime, he has decided to retire again. He mentioned that Mrs. Mitts is still working on closing out FEMA requirements.

Mr. Falls said he was happy to abide by the 60 day policy, but the City Manager should have the ability to notify the City Council in the event that a retired employee has to work more than 60 days after he has retired.

Mrs. Turner brought up Performance Appraisals. What she is suggesting is a simple format. She said that annual performance appraisals shall be performed for all employees. At a minimum the supervisor will provide in writing the following: Three things the employee successfully accomplished this year, three areas needing improvement and an overall performance rating of 1-5, (5 being the best). The supervisor must place at least 10% of their employees in each rating group. A meeting is to be held between the employee and supervisor to discuss the appraisal. Upon completion the employee may add comments. The document will be signed and dated by both parties and returned to the Human Resource Department for filing.

Mr. Fletcher mentioned the evaluation forms that he used back in 2001/2002 when he gave formal reviews for Charter Officers. The City Clerk can provide them with the forms and they can mark them up however they would like to.

Mrs. Carroll commented that at the County they use a more extensive type of appraisal. She said that one of the things they implement is any employees that were listed as a one or a five backup was needed. She said she was told that this backup was used if they did need to let someone go the issues were documented and discussed with the employee. Also if the employee deserved a raise, the matter was documented as to why he/she deserved a raise.

Mr. Fletcher suggested getting a copy of what the Police Department uses since they already are doing it.

Mr. Falls added that one of the reasons that Indian River County does performance appraisals is to be able to give merit increases.

Mr. Myers commented that the union was not opposed to any type of performance appraisals as long as they can be involved in the process of constructing the evaluation. He didn't agree with using a 1 to 5 rating system.

Mr. Fletcher told Mr. Myers to get with the City Clerk who would give him a copy what he used in the past.

Mr. Heady told Mr. Myers what this really does is to make the management staff do their job. He said that with any group of employees that you have some that are in the top and some on the bottom. He does not think that this is an easy ranking process for management staff to implement, but it certainly forces management to tell them who is where.

Mr. Myers suggested working with the City Manager and staff in coming up with a process to try to make this as fair and subjective as they could.

Mr. Fletcher stated that to some point these things are always subjective. He said they must tell people what they are doing right and what they are doing wrong and put it in writing.

Mr. Falls commented that he will be putting some history together of across the board raises that the City has received for the last ten (10) years. He said that there was some reporting in a local publication indicating that the City employees had received 5, 6, even 7% across the board raises. He does not recall that ever happening in the 20 years that he has been with the City.

Mrs. Carroll understands that some of the employees and the union may feel that Council is trying to take something away from them. But, they do need to recognize the economics of Indian River County. There is an unemployment rate of 16%. She said in her business she can hire someone and pay them less than what she would have had to pay them a couple of years ago because of the times. The City does not have the money to keep the staffing levels that they had a couple of years ago, so that needs to be thrown into the "balance" scale.

Mrs. Turner realizes that she was overly optimistic in suggesting having by March 15 a Resolution to them to modify the personnel policies. She wanted some help from the Council on how to proceed in getting a Resolution prepared. She asked if any of Council was willing to take one of these items and work on them.

Mr. Fletcher said that he would take the performance appraisal and bring it back.

Mr. Coment explained to Council that the things they just talked about are things that would be addressed in the Personnel Rules. He said that the Personnel Rules would have to be amended and the way that you do it is with a Resolution.

Mrs. Turner realizes that some of these items might have to be addressed on an individual basis.

Mr. Heady understood the concern about the Resolution just mentioned by the City Attorney. However, that doesn't stop this Council from making a motion to do something that would tell the City Attorney what they want to do and he can take whatever legal steps are necessary to get it done. This would be giving him clear direction.

At this time, Council took a lunch break and reconvened this meeting at 3:15 p.m.

2. Pension Benefits – Requested by Councilmember Heady

Mrs. Carroll felt that there were not too many issues left to discuss, although they may want to reschedule the workshop items. However, she felt that they need to discuss item B) - Summer Council Meetings, as there are members of the Council who would like to schedule their summer vacation. She said that she would like to discuss this item under her matters. Council agreed.

Mr. Heady said that Mrs. Turner touched on some pension issues under City Personnel Rules. He said that in the past they have seen where Councilmembers have deferred the cost of things to some future years by not paying for a benefit in the year that it is earned. He said in the discussion under vacation benefits it was pointed out that an employee earns a vacation benefit at rate "A" and then retires and gets paid for that benefit at rate "A" times two because their salary has gone up. Pension benefits are not dissimilar. For example, an employee is given a pension benefit and they collect that benefit twenty years later, the cost is different. He spoke many times about paying for benefits in the year that they are earned and he knows that the City Manager has heard him. He knows that the City Manager has been working on this, but he (Mr. Heady) did not know if they have ever polled the Council to get a consensus regarding this. He felt that the fiscally responsible thing to do is pay for a benefit in the year that it is earned. He said that there was a Union Representative who attended today's meeting that tried to spin some of this into that Council is trying to take benefits away from City employees. Mr. Heady said that is not what he is trying to do at all. What he is trying to do is to make sure that his actions don't cause an expense for his future grandchildren and a future City Council. He was not sure what actions they would need to take that would affect a change of policy. He asked to accomplish that goal, would they have to look at changing from a defined benefit to a defined contribution. If so, then that is what they need to do. He again stated that he was not trying to take anything away from City employees. All he was saying was that whatever benefit the employees receive, that benefit needs to be paid for in that budget year.

Mrs. Turner said how much they would be required to pay for those benefits in the budget year has to be determined before they are asked to vote. She said that right now they are facing greater than \$27 million dollars in unfunded pension liabilities. She has been trying to get the actual number since the end of November, but has been

unsuccessful. She said that the number of \$27 million dollars was the closest round number that she has. She asked how do they propose moving forward.

Mrs. Carroll asked why Mrs. Turner has been unable to get this information. She said that she has seen many communications from Mrs. Turner requesting this information.

Mr. Falls said the information has not been received from the actuary, but he hopes to have something by the first of the week. He noted that the delay is on the actuary's end.

Mrs. Carroll asked is this a paid consultant.

Mr. Falls said that the City hires a private firm.

Mrs. Carroll said therefore the hired firm has had this request for almost three months. She asked is there nothing in the contract that states if they are asked a question that they have to give a response back quicker than three months. She felt that someone was dropping the ball. She did not know why the actuary is not providing the information.

Mr. Falls said the actuary would be making a presentation to Council and they can ask him the reason for the delay. Mr. Falls said that he cannot answer that question.

Mrs. Turner said another question regarding the pension was do they want to consider making any adjustments to the program. She said that the City of Fellsmere and Indian River Shores have a 401a or a 401k, in addition to their defined benefit plans. She felt that these were options that they need to look at if they want to add this for new employees. She noted that they might not see any cost savings today, but it would help limit the unfunded liabilities in the future.

Mr. Heady said when they talk about something being unfunded and passing cost onto future generations that it is kind of meaningless, but Mrs. Turner did a very good job in informing the public exactly how meaningless it is not. He said it is around \$27 million dollars in underfunded pension plans. One of the Finance Commission members spoke about if the City receives cash in a possible sale of utilities, how the City would invest that. Mr. Heady asked if the City was to wind up with some amount of money could that money be put into the underfunded pension plans so that they don't continue to pass this cost off to future generations. He felt that this Council could make a decision and they need to make it before the July budget hearings. This is the year that the underfunding of pension plans and pension benefits stops. Whatever Council does going forward, they need to pay for the benefit in the year earned. The representative of the Union discussed Union contracts and the City has contractual obligations that have to be met. Mr. Heady said that he was not suggesting they not meet the obligations that they are already bound to by past Councils. He did not want to vote for a budget that doesn't pay for the benefits in the year that they are earned. In order to do this, they need to give the City Manager some direction so he knows that it is not just him (Mr. Heady) that wants a budget that comes back to them that is funded. He understood that was not going to pay back the \$27 million dollars. But, at this juncture, he felt that they needed to at least give the City

Manager a firm consensus from this Council that whatever benefits they are going to include for the employees that the benefit be paid for in the year earned.

Mrs. Carroll asked Mr. Heady if he has a proposed solution. She asked does he have something to bring forward for Council to vote on or is this a discussion item at this point. She asked what more he would need to bring this forward.

Mr. Heady said that he would like to see this Council tell the City Manager that whatever benefits they give in terms of a pension that they are paid for in the year that they are earned. His proposal would have component parts of employee discussion, perhaps before the Finance Commission, a City Council workshop, etc., to discuss with employees how they want to see their pensions go forward in the next year. If they are not contractual bound in a defined benefit plan then maybe they should have a workshop meeting to speak with the employees to find out what the employees want. If they want the City to take the dollar amount that they currently spend on their pension plan and put it into a defined contribution that would be fine with him. He did not want to dictate to employees, he would like some input from them. But, the one thing that he would like to be insistent on is that they pay for the benefit in the year that it is earned.

Mayor Kramer would agree with that, but he would like to see what the numbers are.

Mr. Falls suggested that they have a joint meeting with the City Council and the Finance Commission and have Mr. Rocky Joyner, Actuary, attend the meeting to give a presentation on where the City is currently with the plan and then to make some recommendations as to some options to be considered. He said that he could ask Mr. Joyner that those options include paying for the benefits in the year that it is earned.

Mrs. Turner said that she has a few questions for Mr. Joyner and would put them together in a memorandum.

Mayor Kramer asked what the time frame is.

Mr. Falls said that he would call Mr. Joyner to find out when he is available.

Mrs. Turner asked if there were changes that could be made for cost savings.

Mr. Fletcher asked where the benefits/retirements are described.

Mrs. Turner answered in the Personnel Rules.

Ms. Barbara Morey, Risk Manager, explained that the City has the plans separate from the Personnel Rules, which are located on the City's "O" Drive. She stated that she would give Council copies. The last one they did for the general employees was effective as of October 2010. She said that she is putting together what the employees had before, what they have now, and what the differences are. She reported that the Police Pension plan is different and is more geared toward Section 185.

Mr. Heady asked was it fair to say that in principal, this City Council agrees that pension benefits to employees who are covered under union agreements need to be met. But, any pension benefit that is not already contractually bound, that this Council agrees that in this budget there will be a number that will pay for pension benefits in the fiscal year. So, they would pay for the benefits in the year they are earned. He asked is that a consensus that they agree needs to happen.

Mr. Fletcher said the problem is how they make that happen.

Mayor Kramer said that he would like to see the numbers and he definitely does not want to continue contributing to unfunded benefits. He wanted to make sure that number does not increase.

Mrs. Turner agreed stating that they need to get the detailed number.

Mr. Heady understood that they don't have the number and he wouldn't expect the City Manager to come up with those numbers at today's meeting. But, he felt that if Council agrees in principle that they are going to stop passing off costs to future generations then they would be giving a clear message to staff.

Mr. Fletcher felt that staff got the message.

Mayor Kramer agreed.

Mr. Heady said then the consensus of Council is that pension benefits need to be paid for in the year that they are earned.

Mr. Falls said that he sent Council a memorandum last week regarding another petition to unionize about 70 more employees. He wanted Council to be aware that when they change benefits for one group and not the entire group, they are going to encourage additional memberships (union). He suggested that they try to implement something that is in the same time table for everyone.

Mr. Heady said that is fine. But, that doesn't change the position that the City pays for it in the year that it is earned. That is not making one person's benefit less than the other. It is just increasing what they have to do in the budget process.

3. Sick Pay Benefits – Requested by Councilmember Heady

Mr. Heady said sick pay benefits were basically the same thing as pension benefits. He would like the same kind of principle adopted by this Council that they pay for the benefit in the year that it is earned. He said if Council is going to give someone a sick pay benefit of two weeks, then they have a fund to pay for it. He understood that this is going to be tough at budget time. He also understood the realities of the election in that if he was to run for reelection and if they do all of these things it would probably be

political suicide for him. But, it is the fiscal responsible thing to do. If they are going to give a benefit, then they should take that amount of money and put it in a fund where that is only what that fund can be used for (lockbox). Then they could adjust sick pay benefits in terms of whether or not someone can cash in on them at the end of their employment or forfeit them at the end of the year. There is more to the sick pay benefits than just paying for it in the year that it is earned. He said that he would like to include in the budget to pay for that benefit and not saddle a future Council or future generation with huge liabilities. If that principle is agreed to by this Council, then it was only fair that they tell the City Manager that this is what they would like to do.

Mayor Kramer did not see a problem with heading towards that goal and doing that.

Mrs. Turner said that Mr. Falls has heard Council that this is the direction they want to go.

Mr. Heady said then it is the consensus of this Council that whatever the sick plan benefits costs the City, that the cost for that would be in next year's budget for those benefits earned in that year.

Mayor Kramer said that he would like to see the numbers first.

Mr. Fletcher said that he was not going to blindly vote for taxes increased just so they can pay for the benefits. He said that he wants to see the numbers.

Mrs. Turner said that Council is asking the City Manager to prepare the budget on that basis.

Mr. Heady said regardless of what the number is, they are either going to pay for it now or pay for it later. He felt that the fiscal responsible thing for Council to do is put in the budget the cost of the benefit or they would be passing the cost on to future generations. Without seeing the numbers, in principle, he was absolutely opposed to passing off costs to future generations. Government in general, whether it is City, County, State, etc., they need to start being responsible about spending money.

Mr. Falls said so Council could have an idea of the scale of that number, over the last nine years it looked to be about \$240,000 a year, which is about less than two percent of payroll.

Mrs. Turner asked is that just for sick pay.

Mr. Falls said that is the average sick payout over the last nine years. He explained that some years have been higher and some years have been lower.

Mr. Heady said the average sick pay paid out was not at all what he is saying.

Mr. Falls explained that is the first number that he could use as a comparative number.

Mr. Heady said if he was to give to him, as City Manager, two weeks in sick pay he would know what that cost would be. What he is saying is that they know what the benefit is and they need to take that dollar amount and make sure that money is put away for sick pay benefits. If that number totaled \$350,000 then that is the funding they need to put away, not the \$240,000 that was drawn upon the previous year because employees don't use all of their sick pay and they bank it. He explained that he wants to bank the payment for that sick pay in the year that it is earned so that they don't saddle a future Council or future generation.

Mrs. Carroll said the discussion earlier in terms of use it or lose it, if an employee receives a raise the next year and has five sick days left over, that employee is now getting paid at a higher level than when that employee banked it. In a use it or lose it policy, then they pay an employee for 52 weeks of work for 52 weeks.

Mr. Heady said there is something that needs to be banked because they would be telling an employee that they have two weeks of sick pay, they know what the pay is and they know what the number (cost) is that they need to put away. If they start doing that this year, because an employee doesn't use it, then they would be increasing the bank. Whether or not they use it or lose it doesn't change the fact that this Council put an amount of money in the bank necessary to cover the benefits in the year that it was earned.

4. Vacation Pay Benefits – Requested by Councilmember Heady

Mr. Heady said that vacation benefits were the same thing. If they give a certain number of days of vacation pay, they know what that cost is and if they add up all the employees and all the vacation benefits that they earn in the coming year, that they include in the budget for that year enough money to pay for that benefit in an account so that money is there and a future generation does not wind up paying for it. The use it or lose it principle will come into play if they tell employees that they need to take their vacation or lose their vacation. If Council chooses to make this policy and employees choose not to take their vacation then that money would increase the reserves in that account. If they pay for all the employees in that fiscal year, then they would have done what he felt was the responsible thing to do, which is pay for that benefit. What is currently happening is that employees are banking that vacation and at the end of their employment they are receiving their vacation in pay at the rate they are leaving at. He understood this. He was not asking to cut employee benefits. He was only suggesting that they take whatever that cost is and put it in an account so that money is there and available and it would not be passed on to a future generation. He asked does he have consensus from Council that they want that number presented to them in the budget that is going to be presented to them in July.

Mayor Kramer said that he would like to see the numbers. When Mrs. Turner spoke, she had a different way of doing that which would essentially do the same thing (not having an accrual of vacation days in the future).

Mrs. Turner said the principle is that they don't want unfunded liabilities continuing to grow. That they are going to put a halt to this in some manner. She felt that having that number to look at was essential. She said that this might guide further policy changes.

Mr. Heady said that if they put that number aside (in a lockbox), it would not force future Councils to wind up with unfunded liabilities.

Mrs. Carroll asked Mr. Heady when referring to a lock box, is he speaking of a bank account. She asked does he want the City to open a separate bank account.

Mr. Heady said it would be an account that is locked where the funds are specifically used for a particular benefit. That funding could not be used for anything other than that benefits. He said if they are going to put money in an account that is for employee vacations, then he doesn't want any Council to be able to access that funding.

Mrs. Carroll asked how difficult would it be to cut checks for employees from various accounts.

Mr. Heady said that no one stated that they would cut checks from different accounts.

Mr. Falls said when they budget for salaries; those salaries include annual leave, sick leave and the regular work schedule. He thought that what they were talking about was the longstanding policy of the City and other municipalities where there were some accruals allowed and some payouts of those accruals. They talked earlier in today's meeting that staff would look at those policies and consult with some labor attorneys to see what invested rights employees may have in their accruals. Then they could come up with a dollar value. He asked Mr. Heady is that the number he is looking for.

Mr. Heady answered no, that is an accrual. What he was speaking about was that they make this year the year that they stop passing off costs to future generations. If they wind up where they don't spend that money, then that money would spill over into next year's budget. He wants the money that pays for sick days, vacation days, pension, etc., to be put aside and categorical for employees so that Council could not use that funding for other things. He wants that money to be guaranteed for the employee and that the money is paid for in the year that it is earned. He said if that money is in an account and is not used, then all the better for future Councils. At least money would be there.

Mayor Kramer asked why have a "lock box." Why don't they just give the money to the employees at the end of the year.

Mr. Heady said that Council needs to make decisions on what they are going to do with sick pay. He said that his items on the agenda involve budget constraints that they have a dollar amount, for whatever the benefits are, put some place where they are categorical and cannot be spent on anything other than that benefit.

Mr. Anderson asked Mrs. Carroll about cutting checks from separate accounts.

Mrs. Carroll said she was trying to get Mr. Heady to explain his lockbox concept. She said she believes Mr. Heady knows what he is talking about but she doesn't know if anyone else does.

5. Avoiding Federal Lawsuits – Requested by Councilmember Heady

This item was removed from today's agenda.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

- A. Mayor Jay Kramer's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

Mayor Kramer reported that he has been doing people's taxes at the United Way office on Saturdays. He reminded Council that the next Coffee with the Council will be held at the Theater Guild. He mentioned that there is a parade on March 12th and he didn't know if the other Councilmembers wanted to participate. Council agreed that they would like to participate in the parade.

- B. Vice Mayor Pilar Turner's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

Mrs. Turner attended the Piper event where they displayed the new jet, she attended a Mental Health Symposium at the County, Downtown Friday and the event for the Youth Sailing program.

- C. Councilmember Tracy Carroll's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

Mrs. Carroll represented the City at some Chamber of Commerce functions; she attended the Planning and Zoning Board meeting, an event for the Vero Heritage Center, the Mental Health Symposium, Downtown Friday and three different events that have occurred at Riverside Theater. She had meetings with different groups and asked if the Dodgertown property the City owns could be available for additional fields for other sports.

- D. Councilmember Brian Heady's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**

3. Comments

Mr. Heady wanted it made clear that the Dodger facility is not City owned, that the County owns the majority of it (in regards to some comments made earlier by Mrs. Carroll in her report).

Mrs. Carroll responded she meant to say the old golf course vacant property the City owns.

Mr. Heady thanked everyone involved with the Royal Palm Pointe 10 Year Anniversary celebration. He said that the Mayor was correct in some of his comments regarding the Council at that time in looking forward, that they did have what is now a tremendous facility and the Mayor properly thanked that Council for their efforts. He pointed out for the public that in addition to that Council, Mrs. Tammy Vock, City Clerk, did a lot of work at that time for the project and she did a lot of work in putting together the 10 Year Anniversary celebration. The current City Manager carried a key role then and now. He said that the amount of effort that is put into that facility and in putting on the celebration, the Recreation Department does a fantastic job. He thanked everyone for both their past and current efforts at Royal Palm Pointe.

Mr. Heady said that they spent a lot of time at the beginning of today's meeting in removing Councilmember matters, such as his item, Avoiding Federal Lawsuits. He said there has been some concern about supplying adequate backup and there are hundreds of pages of backup, but he forgot the one page document designed by Mrs. Carroll. He neglected to include that one page in the backup and therefore that item (Avoiding Federal Lawsuits) was removed from the agenda and the rationale was that there was not proper backup. At the last meeting there were items of his removed from the agenda on the same line that he did not provide adequate backup. The item on today's agenda (Avoiding Federal Lawsuits) ...

Mrs. Carroll asked are they going to allow Mr. Heady to bring up the entire item that they removed from the agenda and discuss it during his comments. She asked is the Mayor just going to allow Mr. Heady to talk about anything that was removed from the agenda.

Mayor Kramer encouraged Mr. Heady to bring that up at the next City Council meeting so Council would have some idea on how they could add to the conversation.

Mr. Heady said his comments are still his comments. His point of avoiding Federal Lawsuits is that Council allows items on this agenda, there were handouts given during this meeting, there were items by the public at the last Council meeting that had zero backup that were allowed on the agenda and there are Constitutional provisions that have a higher authority than any motion, Resolution, memorandum, here in the City. Those Constitutional provisions require equal protection, which would mean that they can't allow one person to put items on an agenda under different circumstances than they allow someone else. He said that he would put this on the agenda for the next meeting. He

asked is Council going to require the full backup for this item again or would the backup provided for this meeting suffice along with the cover sheet.

Mayor Kramer said that would work.

Mr. Heady said therefore, it would not be required that he include today's backup. That he would only need the cover sheet.

Mayor Kramer said just a cover sheet.

E. Councilmember Craig Fletcher's Matters

- 1. Correspondence**
- 2. Committee Reports**
- 3. Comments**

Mr. Fletcher reported that he arranged a meeting with Phil Madsen, MPO, and the people from downtown and a lot of discussion took place about the twin pairs and the next step would be to have a strategy on how to implement some of these things.

*** Please Note: After today's Regular City Council meeting there will be a City Council Workshop**

ITEMS FOR DISCUSSION

- A) Evaluation Forms for Charter Officers – Requested by Council**
- B) Summer Council Meetings – Requested by Councilmember Carroll/City Clerk**

Mrs. Carroll read a letter prepared by the City Clerk (please see attached) asking them if there were any meetings this summer that Council wished to cancel and that the week of July 18-22, 2011 is scheduled for budget hearings. She said she would like discussion on if the Council wanted to cancel summer meetings.

Mr. Heady made a motion that Council cancel their July 5th Council meeting and hold off on cancelling their August 2nd City Council meeting. Mr. Fletcher seconded the motion and it passed unanimously.

Mr. Heady noted that this item was on the agenda without the proper form being filled out.

Mayor Kramer said it did receive unanimous support.

Mr. Heady said that was fine. He does not object to City business being discussed at any time.

Mrs. Carroll said that the cover sheet is required of Councilmembers and this was from Mrs. Vock.

Mr. Heady said Mrs. Carroll asked for it to be brought up under her matters and it was allowed to happen.

C) Council Priority Items – Requested by Mayor Kramer

11. ADJOURNMENT

Mayor Kramer made a motion to adjourn today's meeting at 4:12 p.m. Mr. Fletcher seconded the motion and it passed unanimously.

/tv

**CITY OF VERO BEACH
DEPARTMENTAL CORRESPONDENCE**

TO: Honorable Mayor and City Councilmembers
DEPT: City Council

VIA: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: John T. Lee, Acting Electric Director
DEPT: Finance/Customer Service

DATE: February 11, 2011

RE: Utility Consultants



MK Falls 2/11/11

*John T. Lee
2/11/2011*

Recommendation:

- This is an item for the City Council's information and direction for staff.

Background:

On Thursday, February 10th, a conference call was held with members of GAI Consultants, Gray Robinson, P.A., and members of the City's staff. The City was represented by the Interim City Manager, Finance Director, Water and Sewer Director and Acting Electric Utilities Director. The purpose of the conference call was to determine if GAI would be interested in working with the City Council concerning electric issues. Specifically, would GAI be able to address the complex issues of a full sale or a partial sale of the Electric System to Florida Power and Light. Gray Robinson, P.A., would serve as GAI's legal expert.

The GAI staff members noted that GAI Consultants is a large company with offices in nine states, including Florida. The GAI offices in Florida are in Boca Raton, Orlando and Jacksonville. Approximately 65% of the company revenues are based on work for the

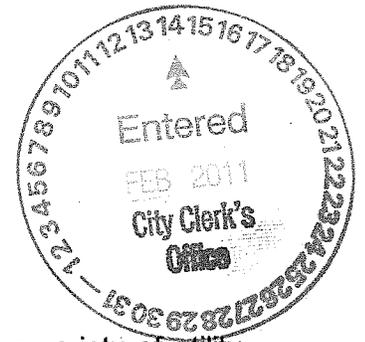
Honorable Mayor and City Councilmembers
Utility Consultants
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electric industry. GAI agreed to mail to the City, brochures that highlight their professional consulting experience.

GAI was asked if they would be available to discuss the issues with the Finance Commission, Utilities Commission and City Council, perhaps in a joint workshop. GAI indicated that they would welcome the opportunity to discuss this complex matter and suggested that two key members of their staff would be available the first week in March.

The City Manager informed GAI that the City Council would be made aware of GAI's willingness to meet and discuss the issues and GAI's ability to assist the City of Vero Beach.

GRAY ROBINSON MUNICIPAL UTILITIES



COMBINING EXPERIENCE AND KNOWLEDGE

Throughout its 40-year history, GrayRobinson has assisted its clients with a variety of utility-related issues. Far from being a single-faceted "boutique" firm focusing on one aspect of utility matters, GrayRobinson strives to capitalize on the insight gained while working on diverse and complex utility matters.

The firm is experienced in:

- Preparation and negotiation of all types of franchise and utility contracts;
- Franchising, creation and start-up of public and private utilities through interlocal agreement, special district, community development district, legislation, profit and not-for-profit corporations, PSC certification and joint city-county arrangements;
- Preparation and handling of all aspects of the acquisition of utilities, including negotiated sales, franchise purchase option acquisitions, arbitrations and eminent domain;
- Creation, preparation and consummation of all types of financing, including revenue bonds, special assessment bonds, MSTU bonds and capacity sales programs;
- Preparation and handling of all types of franchising utilities litigation involving contract disputes, arbitrations, eminent domain proceedings, rate cases, RICO actions and any other type of litigation proceeding in federal or state court;
- Preparation and handling of rate cases before the Florida Public Service Commission, cities and counties throughout the State of Florida;
- Assistance and preparation of all legal aspects related to utility master plans, capital improvement elements and sewer and water elements in comprehensive plans within the State of Florida;
- Preparation and handling of all aspects related to the permitting, siting and acquisition of solid waste and resource recovery facilities.

Complex Utility Related Matters Handled by the Firm

Mr. Cloud and the utilities team have been involved in several significant public and private utilities cases including the following in the last five years.

ORLANDO UTILITIES COMMISSION SALE OF INDIAN RIVER POWER PLANT. The firm was lead counsel for OUC in the \$205 million sale of a portion of its Indian River Power Plant System assets in Brevard County. This transaction made headlines and allowed OUC to not only reduce its debt but also to diversify and provide energy at a lesser cost to the community.

ORLANDO UTILITIES/SOUTHERN COMPANIES JOINT POWER DEAL. The firm represented OUC in negotiating an agreement with the Southern Company and the Florida Municipal Power Agency for the permitting, construction, and operation of a 415 MW power plant.

SIEMENS WESTINGHOUSE POWER CORPORATION. The firm represents Siemens Westinghouse Power Corporation in power plant equipment supply, turnkey construction and development deals. Such representation includes the drafting and negotiation of the deal contracts, such as the partnering agreements with constructors, power equipment supply, turnkey construction and operations and maintenance agreements.

LAKELAND / FMPA DISPUTE. The firm represented the city of Lakeland in a contractual dispute with FMPA regarding a gas supply contract.

SALE OF ROYAL PALM BEACH UTILITY TO PALM BEACH COUNTY (2006). The firm successfully represented Royal Palm Beach in selling its water and sewer system to Palm Beach County for \$70 million plus a 20-year rate covenant.

FLORIDA POWER ELECTRIC FRANCHISE LITIGATION (1999-2005). The firm represented Winter Park, Apopka, Edgewood, Casselberry, Belleair, Longwood, Maitland and Oviedo, in litigation to enforce purchase options contained in Florida Power Corporation franchise. Seven of the eight cities received renewed purchase options and all of their attorneys' fees. The eighth city, Winter Park, became the first city to acquire an electric distribution system in Florida in 70 years. The firm successfully represented Winter Park before the Florida Supreme Court in Florida Power Corp. v. Winter Park.

BAY COUNTY/GULF COAST ELECTRIC CO-OP UTILITY ACQUISITION (2008). The firm represented the County in acquiring a sewer system from an electric cooperative at a price based upon depreciated rate base.

TROPICANA V. PORT ST. LUCIE RATE CASE (2005-2007). The firm successfully defended Port St. Lucie against a \$9 million claim filed by Tropicana. The Court rejected all Tropicana's claims.

MARION COUNTY CONSOLIDATION (1995-2005). The firm has acted as utilities counsel to Marion County since 1995, representing the County in dozens of acquisitions, donations, grants, territorial agreements and developer contributions resulting in a five-fold increase of the County's water and sewer system customer base, 3 territorial agreements, and the acquisition of 20 systems.

HAINES CITY/DAVENPORT TERRITORIAL DISPUTE (2003-2005). The firm successfully guided Haines City in a complex annexation/utility territorial dispute preserving the City's Chapter 180 territory.

CITY OF BUNNELL. The firm has been recently retained by the City to handle all its water and sewer matters.

LAKE WORTH SEWER DISPUTE. The firm represents and Palm Beach State College and six Palm Beach cities, including the City of South Palm Beach, in a sewer billing dispute with Lake Worth.

CITY OF FORT MEADE. Since 2005 as City Attorney, Mr. Cloud has handled all utility matters for the City, including water, sewer, and electric matters.

CITY OF POLK CITY. As City Attorney, Mr. Cloud has handled utility matters for the City, including water and sewer matters.

ORANGE COUNTY UTILITIES. The firm has represented Orange County Utilities (“OCU”) as an Assistant County Attorney (from 1999 to 2008) and as outside counsel (from 2008 to present) in a variety of complex utility matters, including water utility matters. These matters include cooling water supply agreements between OCU and Orlando Utility Commission (“OUC”), supplemental site certification of the Stanton Energy Center, consumptive use permitting for traditional groundwater sources, as well as alternative water supplies (including the St. Johns River/Taylor Creek Reservoir Alternative Water Supply Project, and the St. Johns River near SR 46 Alternative Water Supply Project), development agreements relating to the provision of reclaimed water, interlocal agreements relating to the provision of stormwater as supplemental water supply for power plant cooling water; interlocal cooperative and funding agreements between St. Cloud, Tohopekaliga Water Authority, Orange County, Polk County, and Reedy Creek Improvement District (together these agencies are sometimes known as “STOPR”) in matters relating to water supply development and wetland monitoring. The firm also represents Orange County in the development and updating of its water supply facility work plan. The firm represents Orange County in regional water supply planning efforts of the South Florida Water Management District and the St. Johns River Water Management District. The firm represented the County in the development of the Central Florida Coordination Area rules promulgated by the South Florida Water Management District, the St. Johns River Water Management District, and the Southwest Florida Water Management District. The firm advises Orange County in matters relating to minimum flows and levels rules or proposed rules and water reservation rules.

TOWN OF MONTVERDE. Since 2010, the firm has represented the Town of Montverde in matters relating to the renewal of its consumptive use permit.

Additional Relevant Cases

SOUTHERN STATES UTILITIES/FLORIDA WATER SERVICES (1985-2003). The firm represented the largest private water and sewer company in Florida, Southern States Utilities, its parent Topeka Group, their successors, Florida Water Services and Allete, and a variety of subsidiaries throughout Florida. The firm handled literally hundreds of matters for Southern States, from due diligence analysis for a SPSC transfer of thousands of customers to franchise, rate, and contract negotiation in more than half of Florida’s counties.

THE PORT ST. LUCIE REGIONAL SEWER PLANT CASE. In 2004, the firm represented Port St. Lucie in five cases against St. Lucie County and various citizenry groups, resulting in favorable settlements dismissing all claims against the City and allowing the City to construct its new six million gallon per day regional wastewater treatment plant.

ORANGE COUNTY UTILITY AUTHORITY. The firm represented Orange County in community-wide negotiations concerning a partial merger with the Orlando Utilities Commission and Orlando. Institutional criteria prevented the merger.

ST. JOHNS COUNTY TERRITORIAL DISPUTE (1999). In the matter of the St. Johns County Water & Sewer Authority territorial dispute, Tom Cloud acted as legal advisor to the St. Johns County Water and Sewer Authority in their review of a requested 25,000-acre franchise territorial extension by a private utility, Intercoastal. The Authority adopted Mr. Cloud's recommendation to deny the franchise extension request.

PEACE RIVER/MANASOTA RWSA (1991). The firm successfully represented North Port in the creation of the Peace River/Manasota RWSA by securing capacity and arrangement rights tot the city cooperatively with 4 counties.

PALM BAY ACQUISITION (1989-1992). The firm has represented the City of Palm Bay in its successful acquisition of the Port Malabar Water and Sewer System owned by General Development Utilities, Inc. The firm successfully enforced the City's utility franchise agreement, which allowed the City to acquire through arbitration proceedings the water and sewer system owned by GDU. The firm still represents Palm Bay.

NORTH PORT ACQUISITION (1989-1992). The firm successfully represented the City of North Port in its successful acquisition of the North Port Water and Sewer System previously owned by General Development Utilities, Inc. The City's utility franchise agreement was similar to that of the City of Palm Bay. After two years of litigation, the firm successfully negotiated a Purchase and Sale Agreement and closed the transfer of this system to the City.

PORT ST. LUCIE ACQUISITION (1994-1996). The firm achieved a successful settlement on behalf of the City of Port St. Lucie in a pending utility condemnation case against General Development Utilities ("GDU"). In return for a release of all claims by GDU for compensation, damages, fees and costs involved in the condemnation of a 29,000 customer water, wastewater and gas system, the City agreed to pay \$18.75 million. When added to the \$45 million deposit previously made to GDU by St. Lucie County in 1990, the total cost for the former GDU system was \$63.75 million. The settlement resulted in a zero rate increase for the City.

ORANGE COUNTY ACQUISITION (1997). The firm represented Orange County in the purchase of the University Shores Water and Wastewater System for \$13.1 million.

In addition, the firm has provided utilities law assistance to other Florida cities and counties including:

- The City of Atlantis
- The City of Bartow
- The City of Bunnell
- The City of Daytona Beach
- The City of Eagle Lake
- The City of Edgewood
- The City of Fort Meade
- The City of Groveland
- The City of Hollywood
- The Town of Howey-in-the-Hills
- The City of Lake Mary
- The City of Lakeland

- The Town of Lantana
- The City of Longwood
- The Town of Manalapan
- The City of Melbourne
- The City of New Smyrna Beach
- The Town of Palm Beach
- The Village of Palm Springs
- The City of Polk City
- The City of Port St. Lucie
- The Village of Royal Palm Beach
- The City of Sanibel
- The Town of South Palm Beach
- The City of Tampa
- The City of Valparaiso
- The City of Vero Beach
- Bay County
- Brevard County
- Charlotte County
- DeSoto County
- Flagler County
- Lake County
- Marion County
- Martin County
- Orange County
- Palm Bay County
- Seminole County



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EXPERIENCE

Thomas A. Cloud is a Shareholder in the law firm on GrayRobinson and is the head of the firm's Public Law Department. He has extensive state and local government experience in municipal, public infrastructure, energy, water, environmental, land use, and all aspects of utilities law. Mr. Cloud has represented a variety of cities, land owners, developers, industrial clients, public and private utilities, individuals, and local governments. He is City Attorney for Haines City, Fort Meade, and Polk City. These include:

Cities:

Apopka
 Atlantis
 Bartow
 Belleair
 Bunnell
 Cape Coral
 Casselberry
 Daytona Beach
 Eagle Lake
 Edgewood
 Fort Meade
 Groveland
 Haines City
 Hollywood
 Howey-in-the-Hills
 Kissimmee
 Lakeland
 Lake Mary
 Lantana

Longwood
 Maitland
 Manalapan
 Melbourne
 New Smyrna Beach
 North Port
 Orlando Utilities Commission
 Oviedo
 Palm Bay
 Palm Beach
 Palm Springs
 Polk City
 Port St. Lucie
 Riviera Beach
 Royal Palm Beach
 Sanibel
 Sebastian
 South Palm Beach
 Space Coast League of Cities

Tampa
 Umatilla
 Valparaiso
 Vero Beach
 Winter Park

Counties:

Bay
 Brevard
 Charlotte
 DeSoto
 Flagler
 Lake
 Martin
 Marion
 Orange
 Seminole
 VGMC

Mr. Cloud has extensive experience in the following areas:

Land Use/Environmental:

Comp Plans
 DRIs
 Rezoning
 Site Plans
 Impact Fees
 Special Districts
 Permits

Special Facility Siting
Administrative/Judicial Litigation

Utilities:

Mergers and Acquisitions
Territorial Disputes
Start Ups
Franchises
Rate Setting
System Permitting
Bulk Sales Contracts
Developer Contracts
Refundable Advance Contracts
Administrative/Judicial Litigation

BACKGROUND

Mr. Cloud is a native Floridian hailing from Lakeland, Florida. He graduated from Wake Forest University in Winston-Salem, North Carolina with a Bachelors of Arts, *magna cum laude* with Honors in History in 1976, and received his Juris Doctorate with Honors from Florida State University in 1979. Tom has been a practicing attorney in Orlando since 1979, specializing in environmental and land use law, local government law, public utilities law, and administrative law.

EDUCATION

- **Wake Forest University, B.A.** (*magna cum laude*, Honors in History, 1976)
- **Florida State University, J.D.** (Honors, 1979)

LECTURES AND PUBLICATIONS

For almost 30 years, Mr. Cloud has been a frequent author and lecturer in Florida on a variety of municipal, land use, and legal topics.

- Bar Journal Article, "Allocating Limited Sewage Treatment Plant Capacity," February, 1982
- ELULS Manual, Volume I & II, Co-Editor, 1986
- 11th FMAA Annual Seminar, Amelia Island Plantation, "A Brief Overview of Florida Municipal Franchise Law," July, 1992
- 18th FMAA Annual Seminar, Amelia Island Plantation, "Turf Wars: A Brief Study of Water and Sewer Service Area Authority and Disputes in Florida," July, 1999

- 22nd FMAA Annual Seminar, Amelia Island Plantation, "Birch Rods in the Cupboard: Municipal Franchise Purchase Options in Florida," July, 2003
- ELULS Article, "Public Facilities and Land Development Contracts," 2005
- 24th FMAA Annual Seminar, Amelia Island Plantation, "Turf Wars 2005: A Brief Study of Water and Sewer Service Area Authority and Disputes in Florida," July, 2005
- Stetson Law Review, "Birch Rods in the Cupboard: The Link Between Municipal Franchise Purchase Options and Franchise Fees in Florida" Vol. 35, No. 2, Winter 2006
- 27th FMAA Annual Seminar, Key Largo, "Standing to Sue and Florida Cities," July, 2008
- 28th FMAA Annual Seminar, Bonita Springs, "Defense of Municipal Rates in Florida," July, 2009
- Land Use Law Conference, Tampa, "Annexation and Contraction: A Brief Essay on the Florida Law of Municipal Boundaries," August, 2009

PROFESSIONAL

- Florida Bar
 - Environmental and Land Use Law Section, 1990-present
 - Executive Council, 1981-present
 - Chairman, 1987-1988
 - City, County and Local Government Law Section
- Florida Municipal Attorneys Association, Executive Council
- American Bar Association
- Selected as Florida's Legal Elite by *Florida Trend* Magazine, 2004-2005
- Selected as top attorney by *Super Lawyers*, 2006

CIVIC

- Florida Chamber Growth Management Leadership Committee
- First Presbyterian Church of Orlando
- Boone High School Foundation Member, Board of Directors
- Wake Forest University National Alumni Council
- Greater Orlando Chamber of Commerce Leadership Programs, Board of Directors
- Mid-Florida Homebuilders Association, Program Committee
- Leadership Orlando Program, Greater Orlando Chamber of Commerce
- Leadership Central Florida Program
- Leadership Florida Program
- Lake Apopka Restoration Council
- Music Mission Kiev, Board of Directors
- Orange County Historical Commission

- First Florida Battery, Inc., Board of Directors
- Historic Lakeland, Inc.



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EXPERIENCE

Tom served on the 1986 and 1988 charter commissions that resulted in sweeping changes to the form of government for Orange County, including the creation of the county office known as the Orange County Mayor. In 1990, the first county mayor, Linda Chapin, asked Tom to serve as her county attorney. He accepted and stayed in the position for twelve years, serving under three county mayors (Mayors Chapin, Mel Martinez and Rich Crotty) and gaining a reputation statewide for his expertise in all areas of local government law. In 2001, his leadership resulted in the County Attorney's Office being given the ABA's Jefferson Fordham Award for government law-office accomplishment – a recognition that the office was perhaps the top government law office in the nation.

Upon leaving the county in 2002, Tom rejoined GrayRobinson. He specializes in all aspects of state and local government law, such as land use, taxation and finance, utility law, constitutional law, administrative law, and litigation law. He is General Counsel to the Orange County Property Appraiser and the Orange County Library District and serves as Town Attorney for the Towns of Windermere and Howey-in-the-Hills. In 2003 and 2004, Tom was once again appointed to serve on the Orange County Charter Review Commission and was elected by its members to serve as the Commission Chairman.

BACKGROUND

Tom is a native Floridian and nearly a life-long resident of Orlando. He graduated from the United States Naval Academy and served six years as a Navy pilot and flight instructor. Upon resigning his commission, he received a Masters degree in public administration from the University of West Florida and his J.D. from the University of Florida. He then served as the primary assistant to founding partner J. Charles Gray, from 1978 to 1985 when Gray was the Orange County Attorney.

EDUCATION

- **United States Naval Academy, Bachelor of Science (1969)**
- **University of West Florida, Master of Public Administration (1976)**
- **University of Florida, J.D. (1978)**

PROFESSIONAL

- The Florida Bar
 - Local Government Law Section
 - Environmental and Land Use Law Section
- Judicial Nominating Commission, Ninth Judicial Circuit, Member, 1989-1991
- National Lawyers Association
- Selected as Florida's Legal Elite by *Florida Trend* Magazine, 2006-2008
- Best of the Bar, *Orlando Business Journal*, 2006
- Florida *Super Lawyers*, 2010

CIVIC

- Florida Association of County Attorneys, Officer and Director
 - President, 1997-1998; Chair, 1998-1999
- Orange County Charter Review Commission, Chairman, 2004
- Orange County Charter Review Commission, Member, 1988, 2004
- Orange County Citizens Charter Committee, Chairman, 1986
- Coalition for the Homeless of Central Florida, Member, Board of Directors, 2003-Current
- Mayor Buddy Dyer's Downtown Transition Strategic Task Force, Member, 2003
- Workforce Advantage Academy, Member, Board of Directors, 2003-2004
- National Association of Christians and Jews, Director, 1993-2000
- Central Florida Zoological Society, Inc., Director, 1986-1987



Anthony J. Cotter

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Tony is a Florida native. He graduated from the University of Florida with a Bachelors of Science in Zoology (1984); studied geology in graduate school at the University of Florida and then earned his law degree at the University of Florida (1990). Upon graduating law school, Tony joined GrayRobinson as an associate in the Public Law Department with a focus on land use, public utility and environmental law related matters. In 1993, Tony left GrayRobinson to pursue a public service opportunity with the St. Johns River Water Management District.

From 1993 to 1999, Tony served as an assistant general counsel with the St. Johns River Water Management District. While at the water management district, Tony advised the District's Governing Board, senior management, and district staff on a variety of regulatory and operational issues. At the District, his practice focused on environmental resource permitting, consumptive use permitting, and rulemaking. Additionally, Tony represented the District before the Florida Division of Administrative Hearings and state courts.

In 1999, Tony left the Water Management District to work in the environmental and land use law section of the Orange County Attorney's Office. While serving Orange County, Tony represented the County in matters relating to environmental resource permitting; consumptive use permitting; water, wastewater and reclaimed water utility regulation; solid waste management and landfill development; air permitting, power plant siting; brownfields; green government and climate change initiatives; large conservation land acquisitions; and the creation of a county-owned mitigation bank.

In 2008, Tony rejoined GrayRobinson as a shareholder. His practice focuses on environmental, utility and land use matters. Tony represents private and public clients on matters ranging from air permitting, consumptive use permitting, solid waste permitting, wetlands permitting, stormwater permitting, hazardous waste permitting, contaminated property and brownfield development, implementation of environmental management systems, and water resource planning.

Tony has represented Orange County Utilities ("OCU") as an Assistant County Attorney (from 1999 to 2008) and as outside counsel (from 2008 to present). During this time Tony has represented OCU in a variety of complex utility matters, including water utility matters. These matters include cooling Kwater supply agreements between OCU and Orlando Utility Commission ("OUC"), supplemental site certification of the Stanton Energy Center, consumptive use permitting for traditional groundwater sources, as well as alternative water supplies (including the St. Johns River/Taylor Creek Reservoir Alternative Water Supply Project, and the St. Johns River near SR 46 Alternative Water Supply Project), development agreements relating to the provision of reclaimed water, interlocal agreements relating to the provision of stormwater as supplemental water supply for power plant cooling water; interlocal cooperative and funding agreements between St. Cloud, Tohopekaliga Water Authority, Orange County, Polk County,

and Reedy Creek Improvement District (together these agencies are sometimes known as "STOPR") in matters relating to water supply development and wetland monitoring. Tony also represents Orange County in the development and updating of its water supply facility work plan. Tony represents Orange County in regional water supply planning efforts of the South Florida Water Management District and the St. Johns River Water Management District. Tony represented the County in the development of the Central Florida Coordination Area rules promulgated by the South Florida Water Management District, the St. Johns River Water Management District, and the Southwest Florida Water Management District. Tony advises Orange County in matters relating to minimum flows and levels rules or proposed rules and water reservation rules.

Since 2010, Tony has represented the Town of Montverde in matters relating to the renewal of its consumptive use permit.

EDUCATION

- **University of Florida, B.S. (1984)**
- **University of Florida College of Law, J.D. (1990)**

PROFESSIONAL

- The Florida Bar
 - Administrative Law Section
 - Environmental and Land Use Law Section
 - Co-Editor, *The Environmental and Land Use Law Section Reporter*, 2010-2011
 - City, County and Local Government Law Section
- American Bar Association
 - Ethics Committee of Environment, Energy and Resources Section
 - Membership, Vice-Chair, 2006-2008
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Middle District of Florida

CIVIC

- Central Florida Ballet

PUBLICATIONS

- Cotter, A.J., 2010. *Florida Water Infrastructure: Sustainability during Uncertain Times*, 2010 Eastern Water Resources Conference, American Bar Association Section of Environment, Energy, and Resources
- Cotter, A.J., 2006. *The Confluence of Growth Management and Water Policy*, 2006 Environmental and Land Use Law Annual Update, Environmental and Land Use Law Section of The Florida Bar, pp. 23.1 – 23.17.
- Angelo, M.J., and A.J. Cotter, 2005. *Silent Spring Redux: Redressing the Failure of Environmental Law to Protect Birds and Their Habitat*, 20 Natural Resources & Environment 22.
- Antista, J. V., D. Boardman, T. A. Cloud, A. J. Cotter, K. J. Plante, and K. B. Smith, 2000. Chapter 1, Federal, State, and Local Environmental Control Agencies, TREATISE ON ENVIRONMENTAL AND LAND USE LAW, REG files.

- Cloud, T.A., F.S. Fields, Jr., A.J. Cotter, and M. Plante, 1997. Review of Federal, State, Regional and Local Environmental Control Agencies, Chapter 1 (Revised), FLORIDA ENVIRONMENTAL AND LAND USE LAW, Vol. I.
- Cloud, T.A., F.S. Fields, Jr., and A.J. Cotter, 1993. Review of Federal, State, Regional and Local Environmental Control Agencies, Chapter 1, FLORIDA ENVIRONMENTAL AND LAND USE LAW, Vol. I.
- Emmel, T.C., and A.J. Cotter, et al., 1988. Habitat requirements and status of the endemic Shaus= Swallowtail in the Florida Keys. Florida Game and Fresh Water Fish Commission, Nongame Wildlife Section, Tallahassee, Florida. Final Project Report No. GFC-86-023.
- Cotter, A.J., and T.C. Emmel, 1987a. The historical and current status and distribution of the Florida Banded Tree Snail, *Liguus fasciatus* Mueller, in South Florida and the Florida Keys. (Abstract) *Atala* 15(1-2): 16-17.
- Emmel, T.C., and A.J. Cotter, et al., 1987b. The current status and distribution of the unique Florida Tree Snail, *Liguus fasciatus* Mueller. Florida Game and Fresh Water Fish Commission, Nongame Wildlife Section, Tallahassee, Florida. Final Project Report No. GFC-86-034.

SPECIAL EDITOR

- TREATISE ON ENVIRONMENTAL AND LAND USE LAW, REG files (2000).
- Chapter 18, Compliance and Enforcement Programs of the Water Management Districts.
- Chapter 19, Mitigation Banking in Florida.

SELECTED PRESENTATIONS

- *The Emerging Economic, Demographic, Consumer and Infrastructure Trends Driving Central Florida's Future*, Urban Land Institute Central Florida, Panelist: Session III: Water Infrastructure Trends, November 5, 2010
- *Legal Issues relating to the Development of Alternative Water Supplies and the Future of Water Law in Florida*, Florida A&M University, Water Law Class, October 2010
- *Case Studies: South Florida's Storm Water Treatment Areas: Upper St. John's River Project; and Tampa Bay, the Region*, Water Choices Forum, Part 1: Water Quality, Florida Earth Foundation Seminar, October 2010
- *Planning for Sustainable Water Infrastructure*, 2010 Eastern Water Resources Conference, American Bar Association Section of Environment, Energy, and Resources, May 2010
- *Water Supply Sustainability for the 21st Century*, Florida Water Law Conference, CLE International, January 2008
- *Supplying Water for a Sustainable Florida*, Annual Update of the Environmental and Land Use Law Section of The Florida Bar, August 2007
- *The Urban Water Supply and Growth Waterloo*, Annual Update of the Environmental and Land Use Law Section of The Florida Bar, August 2006
- *The Current State of Florida Water Law: East Central Florida*, Florida Water Law Conference, CLE International, March 2004



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EXPERIENCE

Heather Ramos specializes in all aspects of state and local government law, such as land-use law, taxation and finance, utility law, constitutional law, administrative law and litigation. She assists clients with issues relating to annexation, land use and zoning changes, real estate acquisitions and sales, real estate financing and legislative and governmental affairs on both a local and state level.

Heather's experience involves the representation of private and public entities in the development of commercial, residential and mixed-use projects in all phases of development. She helps landowners obtain all forms of local government approvals, ranging from zoning and comprehensive plan amendments, special exceptions, variances and conditional use permits to the negotiation of development agreements, development orders and annexation agreements. Her past experience involves utility agreements, planned unit developments, subdivision plats, annexation agreements, vested rights, impact fees, concurrency, transportation mitigation, road construction agreements, wetlands mitigation and permitting and many other aspects of land use and real estate development.

For the private sector, Heather typically assists clients throughout the entire development process beginning with the site selection, contract negotiation, due diligence and land acquisition and continuing with the procurement of land use approvals and entitlements. For the public sector, Heather is the assistant Town attorney for the Town of Windermere and the Town of Howey-in-the-Hills, and the assistant City attorney for the City of Haines City. She was a member of the litigation team that successfully defended the City of Port St. Lucie in a water rate challenge. She has drafted numerous ordinances to assist local governments with the adoption of water and sewer special assessments. She is currently assisting Howey-in-the-Hills with every aspect of its plan to expand its water plant, and with its negotiation with other municipalities for sewer service.

She is the assistant lead counsel for the Orange County Library District and assistant counsel to the Orange County Property Appraiser. She also serves as counsel for the Volusia Growth Management Commission and for the Haines City Code Enforcement Division. She has assisted in the establishment of Community Redevelopment Agencies and other local government financing mechanisms.

BACKGROUND

Heather was born in Washington D.C. and raised in Melbourne, Florida. After attending the University of Central Florida and receiving her Bachelor's degree in Accounting, Heather

enrolled in Stetson University College of Law with a scholarship. She graduated cum laude and received her Juris Doctor from Stetson in May 2002.

EDUCATION

- **University of Central Florida, B.A.** (Accounting, with honors, 1999)
- **Stetson University College of Law, J.D.** (Top 10%, *cum laude*, 2002)
 - Moot Court Board Member
 - FAWLS (Florida Association for Women Lawyers) Member

PROFESSIONAL

- The Florida Bar
 - Local Government Law Section
 - Environmental and Land Use Section
- Orange County Bar
 - Environmental and Land Use Committee, Co-Chair, 2004-2005
- Selected as Florida's "Legal Elite" by *Florida Trend Magazine* in "Up & Comers" category, 2009
- Florida *Super Lawyers* "Rising Star," 2009

CIVIC

- Cystic Fibrosis Foundation, Board of Directors, 2004-Present
- Orlando Regional Chamber of Commerce, Board Member, Leadership Alumni, 2006-2008
- Orlando Regional Chamber of Commerce, Vice-Chair Membership, Executive Committee, Leadership Alumni, 2006
- Tiger Bay Club, Membership Committee Member, 2005-2007
- Florida Hospital Cancer Institute, Board Member, 2004-2007
- Leadership Orlando, Graduate, Class 63, 2004
- League of Women Voters, Board Member, 2003-2005

**CITY OF VERO BEACH, FLORIDA
MARCH 1, 2011 9:30 A.M.
REGULAR CITY COUNCIL MEETING
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

A G E N D A

1. CALL TO ORDER

- A. Roll Call
- B. Invocation – Pastor Derrick West/First Baptist Church
- C. Pledge of Allegiance

2. PRELIMINARY MATTERS

- A. Agenda Additions, Deletions, and Adoption
- B. Proclamations
 - 1. Certificate of Appreciation to be presented to Mulligan’s Grille & Raw Bar
- C. Public Comment
- D. Adoption of Consent Agenda
 - 1. Regular City Council Minutes – February 1, 2011- Requested by City Clerk
 - 2. Regular City Council Minutes – February 15, 2011 – Requested by City Clerk
 - 3. Special Call City Council Minutes – February 10, 2011 – Requested by City Clerk
 - 4. Special Call City Council Minutes – February 22, 2011 – Requested by City Clerk
 - 5. [Council Approval for Bid #AURSI RFQ – 3-01/24/2011/PJW Stock Switchgear – Requested by T&D Director](#)

(The matters listed on the consent agenda will be acted upon by the City Council in a single vote unless any Councilmember requests that any specific item be considered separately.)

3. PUBLIC HEARINGS

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) [A Resolution of the City Council of the City of Vero Beach, Florida, Releasing from all City Easements the five-foot rear easements along the North line of Lot B and the South line of Lot O in Block 32, McAnsh Park Subdivision \(Replat of Lots 3, 4, 5, 31 and 32, 2541 Buena Vista Boulevard\). – Requested by Interim City Manager](#)

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

6. CITY CLERK'S MATTERS

7. CITY MANAGER'S MATTERS

A) City Council Approval of Proposed Improvements at the Vero Beach Museum of Art; Site Plan Application #SP10-000007 – Requested by Director of Planning and Development

B) Request for Public Service Commission Extension – Docket No. 090524-EM; Complaint of Faherty and Heran regarding City of Vero Beach – Data Request - Requested by Interim City Manager, Acting City Attorney, and Acting Electric Utilities Director

C) South Beach Speed Limit Reduction – Requested by Assistant City Engineer

8. CITY ATTORNEY'S MATTERS

9. CITY COUNCIL MATTERS

A. Old Business

1. Filling personnel vacancies in Finance Department – Requested by Vice-Mayor Turner

2. FPL Report – Requested by Councilmember Heady

3. OUC contract – Requested by Councilmember Heady

B. New Business

1. City Personnel Rules – Requested by Vice-Mayor Turner

2. Pension Benefits – Requested by Councilmember Heady

3. Sick Pay Benefits – Requested by Councilmember Heady

4. Vacation Pay Benefits – Requested by Councilmember Heady

5. Avoiding Federal Lawsuits – Requested by Councilmember Heady

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Jay Kramer's Matters

1. Correspondence

2. Committee Reports

3. Comments

B. Vice Mayor Pilar Turner's Matters

1. Correspondence

2. Committee Reports
 3. Comments
- C. Councilmember Tracy Carroll's Matters
1. Correspondence
 2. Committee Reports
 3. Comments
- D. Councilmember Brian Heady's Matters
1. Correspondence
 2. Committee Reports
 3. Comments
- E. Councilmember Craig Fletcher's Matters
1. Correspondence
 2. Committee Reports
 3. Comments

* **Please Note: After today's Regular City Council meeting there will be a City Council Workshop**

ITEMS FOR DISCUSSION

- A) **Evaluation Forms for Charter Officers – Requested by Council**
- B) Summer Council Meetings – Requested by Councilmember Carroll/City Clerk**
- C) Council Priority Items – Requested by Mayor Kramer**

11. ADJOURNMENT

Council Meetings will be televised on Channel 13 and replayed.

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

2D-5



City Council Agenda Item Meeting of March 1, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager

MK Falls 2/22

DATE: February 22, 2011

SUBJECT: Council Approval for Bid #AURSI RFQ-3-01/24/2011/PJW
Stock Switchgear

REQUESTED BY: Randall McCamish, T&D Director

The following is requested as it relates to the above-referenced agenda item:

Request Council review and approval based on the attached supporting documentation.

Request Council review and possible action.

No action required. (Information only)



Electrical T & D

To: Monte Falls, Interim City Manager
From: Randall McCamish, T & D Director *RM*
Via: John T. Lee, Acting Electric Utilities Director *JTL 2/22/2011*
Date: 02/22/11
Re: Council Approval for Bid #AURSI RFQ-3-01/24/2011/PJW Stock Switchgear

Recommendation:

Place this on the City Council agenda for March 1, 2011. There were (4) bids that responded. This purchase is for stock replenishment for (3) three 600 amp dead front switchgears. We are recommending Gresco Utility Supply, Inc., receive the bid in the amount of \$62,040. For reliability and safety we are no longer purchasing live front switchgear. We recommend City Council approve the amount of \$62,040.

Funding: The funding for this switchgear was budgeted in our fiscal 2010-2011 year and will be charged to account # 403.5400.531.667368.

Background:

We have (3) three pieces of live front switchgear that are not functioning properly and need to be replaced. The failing switchgear is located in Grand Harbor. The dead front switchgear will increase the life expectancy and reliability over live front gear because it will prevent salt air intrusion and will keep animals out. Dead front switchgear is in use by virtually all other utilities to provide longer life and far better reliability for our customers.

RM/la

Attached Bid Information



RESOLUTION NO. 2011 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, RELEASING FROM ALL CITY EASEMENTS THE FIVE-FOOT REAR EASEMENTS ALONG THE NORTH LINE OF LOT B AND THE SOUTH LINE OF LOT O IN BLOCK 32, McANSH PARK SUBDIVISION (REPLAT OF LOTS 3, 4, 5, 31 AND 32, 2541 BUENA VISTA BOULEVARD).

WHEREAS, pursuant to Section 2-373 of the Vero Beach Code of Ordinances, City Council is authorized to abandon and/or release utility easements; and

WHEREAS, the City of Vero Beach has easements over, across, and under the property described hereinbelow and depicted in the sketch attached to this Resolution as Exhibit "A;" and

WHEREAS, the property owner has requested the release of the City-held easements which encumber his property; and

WHEREAS, the property owner has granted a new utility easement (2010-EG-0080), as recorded in Official Record Book 2479, Page 1694, of the Public Records of Indian River County, Florida, to replace the easement now being requested for release; and

WHEREAS, the Public Works and Engineering Department of the City of Vero Beach has determined that the existing easements are no longer needed by the City and that the release would be in the public interest,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

1. As recommended by the Public Works and Engineering Department of the City of Vero Beach, Florida, the City Council of the City of Vero Beach, Florida, does hereby abandon all right, title, and interest that it may have in the following easements, being more particularly bounded as shown and described in Exhibit "A" attached hereto and incorporated herein by this reference, as follows:

SEE ATTACHED EXHIBIT "A" (SHEET 1 OF 2) – Legal Description of Easement Property

SEE ATTACHED EXHIBIT "A" (SHEET 2 OF 2) – Sketch of Easement Property Description

2. The release of these rear lot easements does not constitute a release of nor affect the three-foot side lot easements on Lots "B" and "O."

3. This Resolution shall become effective upon final adoption by the City Council.

This Resolution was heard on the _____ day of _____, 2011, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote:

Mayor Jay Kramer	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Vice Mayor Pilar E. Turner	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Councilmember Brian T. Heady	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Councilmember A. Craig Fletcher	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Councilmember Tracy M. Carroll	<input type="checkbox"/> Yes	<input type="checkbox"/> No

ATTEST:

CITY OF VERO BEACH, FLORIDA:

Sign: _____
Print: Tammy K. Vock
Title: City Clerk

Sign: _____
Print: Jay Kramer
Title: Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are personally **known to me** and **did not** take an oath.

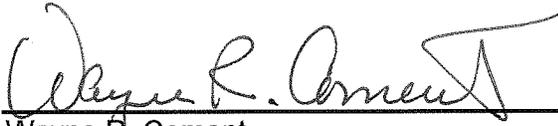
NOTARY PUBLIC

[NOTARY SEAL]

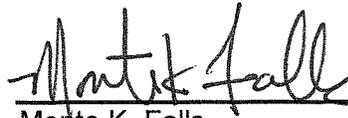
Sign: _____
Print: _____
State of Florida at Large
My Commission Number: _____
My Commission Expires: _____

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

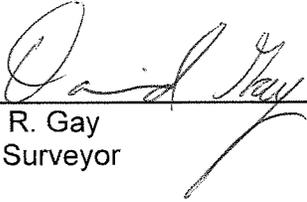


Wayne R. Coment
Acting City Attorney



Monte K. Falls
Interim City Manager

Approved as to technical requirements:



David R. Gay
Chief Surveyor

This document was prepared in
The Office of the City Attorney
Post Office Box 1389
Vero Beach, Florida 32961-1389

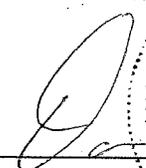
EXHIBIT "A"
PROPERTY DESCRIPTION
RELEASE OF EASEMENT #2010-RE-0380
Parcel #33-39-02-00005-0320-00000.2

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Block 32 of the replat of Blocks 3, 4, 5, 31 and 32, McAnsh Park Subdivision, as recorded in Plat Book 2, Page 55 of the Public Records of Indian River County, Florida, and being more particularly bounded and described as follows:

The 5 foot rear easements along the north line of Lot B and the south line of Lot O in said Block 32;

Containing 888 square feet more or less.

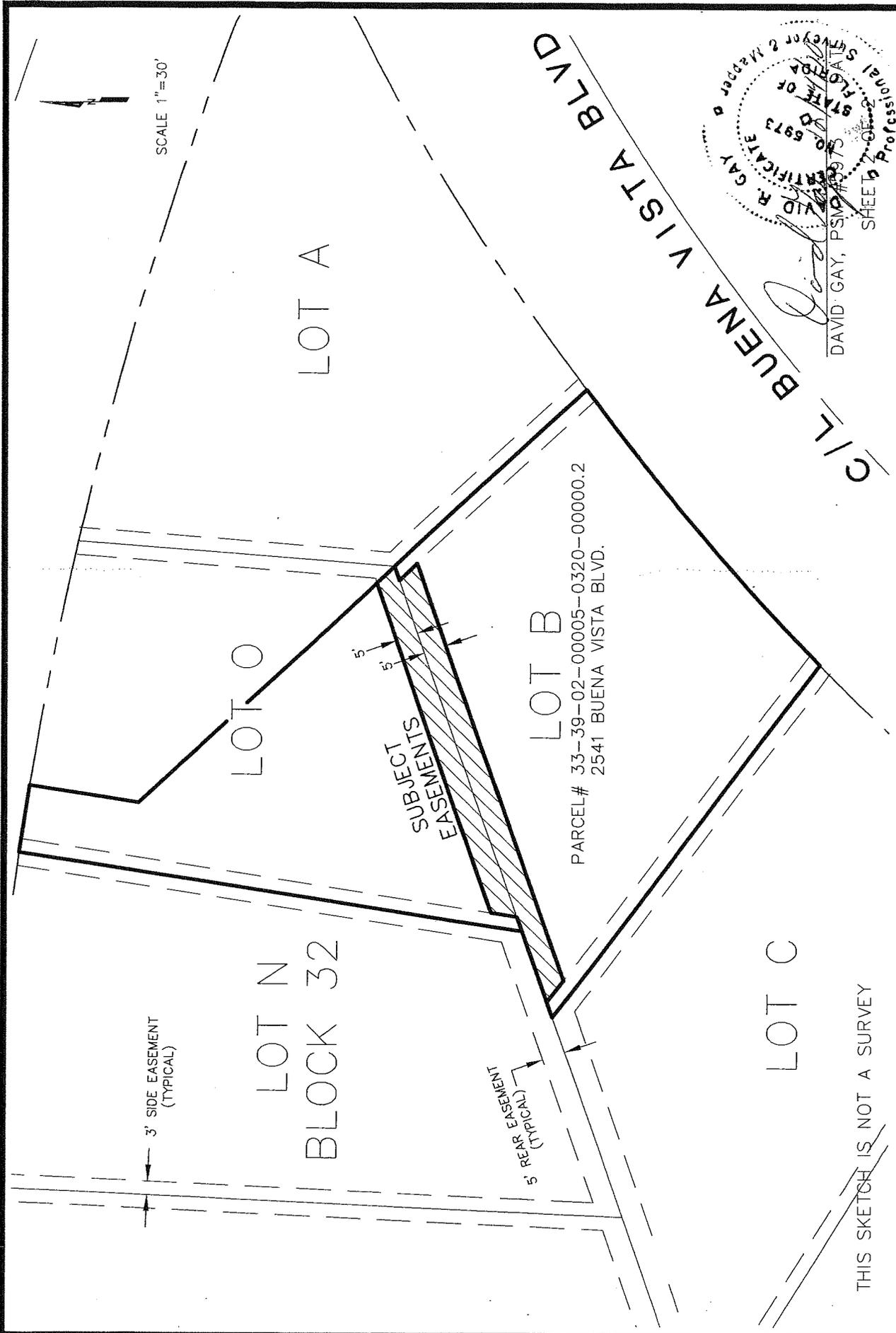
Note: The release of these rear lot easements does not constitute a release of nor affect the 3 foot side lot easements on Lots "B" and "O".



David R. Gay, PSM #5973



DAVID R. GAY
PROFESSIONAL SURVEYOR
STATE OF FLORIDA
LICENSE NO. 5973
CERTIFICATE



THIS SKETCH IS NOT A SURVEY

DAVID GAY, PSM # 29910
 CIVIL ENGINEER
 STATE OF MICHIGAN
 LICENSE NO. 6973
 SHEET 7 OF 7
 PROFESSIONAL SEAL

CITY OF VERO BEACH		EXHIBIT "A"		REV. NO.	AUTHORIZED BY
DEPARTMENT OF PUBLIC WORKS		UTILITY EASEMENT		DRWN. BY	DATE
SURVEY DIVISION		BLOCK 32, REPLAT MCANSH PARK		DATE	DESCRIPTION
		12/2010	BMM	12/2010	DC
		CITY PROJECT NO. 2010-RE-0380			

CITY OF BUENA VISTA BLVD

LOT N
 BLOCK 32

LOT O

LOT A

LOT B

LOT C

SCALE 1"=30'

3' SIDE EASEMENT (TYPICAL)

5' REAR EASEMENT (TYPICAL)

SUBJECT EASEMENTS

PARCEL# 33-39-02-00005-0320-00000.2
 2541 BUENA VISTA BLVD.



DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: David R. Gay, PSM, Chief Surveyor *DRG*
DEPT: Public Works

DATE: February 21, 2011

**RE: Release of Easement Application #2010-RE-380
Replat of Blocks 3, 4, 5, 31 & 32, McAnsh Park
2541 Buena Vista Boulevard**

The referenced application has been received for consideration by the City and was routed for review by various City departments, as well as outside utilities. We have attached copies of their responses which were mostly favorable pursuant to the condition that a new easement is granted for relocation of existing utilities.

As such, a new easement has been granted into which electric, telephone and cable television utilities will be moved. The applicant is responsible for all costs associated with the relocation of these utilities.

Please note that Comcast Cable did not respond. Copies of our additional attempts to urge their response are also attached.

Therefore, we do not object to releasing the 5' rear easements along the north line of Lot B and the south line of Lot O, Block 32, McAnsh Park.

Please contact us if you have any questions.

Attachments

DRG/ntn

T:\REVIEWS\Release of Easement\2010-RE-0380 2541 Buena Vista Blvd\Recommendation Memo_MFalls_Feb 17 2011.docx



APPLICATION FOR RELEASE OF EASEMENT

City of Vero Beach - Public Works Department
1053 20th Place - P.O. Box 1389
Vero Beach, FL 32961-1389
(772) 978-4870 / Fax (772) 978-4879

(Applicant must furnish: Copy of Deed, Parcel Number, Property Sketch)

Date Received: 12/8/2010 Application No. 2010-R/E-1380

Legal Description of Property:

LOT "B" AND A PORTION OF LOT "O", BLOCK 32, REPT.
MCANSH PARK, P.B. 2, PG. 55 (SEE ATTACHED SURVEY)
PARCEL # 33-39-02-0005-0320-100000000

Owner: HARRY DAVID DANIEL Address: 2541 BUENA VISTA BLVD

Applicant: SAME Address: SAME

Phone: (H) 778-3391
(C) 559-9134 Signature: [Signature] Date: 12-8-10

I/We hereby request release of the easement described as follows:

REAR 5' EASEMENT, LOT "O" AND LOT "B", BLOCK 32,
REPT OF MCANSH PARK P.B. 2, PG. 55

Reason(s) for Request: ADDITION TO EXISTING RESIDENCE, EXISTING
OVERHEAD UTILITIES TO BE REDIRECTED UNDERGROUND VIA
NEW EASEMENT

Use back of sheet for additional space, if necessary.

MAKE CHECK PAYABLE TO: CITY OF VERO BEACH - \$125.00

001.0000.369.090100

Prepared by and return to:
Office of the City Attorney
P.O. Box 1389
Vero Beach, FL 32961-1389

2121781
THIS DOCUMENT HAS BEEN
RECORDED IN THE PUBLIC RECORDS
OF INDIAN RIVER COUNTY FL
BK: 2479 PG:1694, Page1 of 5
02/22/2011 at 09:38 AM,

JEFFREY K BARTON, CLERK OF COURT

**UTILITY AND ACCESS EASEMENT DEED
(2010-EG-0080)**

THIS INDENTURE made and entered into this 25th day of JANUARY 2011, by and between CATHERINE H. DANIEL (the "Grantor"), whose mailing address is P.O. Box 1724, Vero Beach, FL 32961-1724, and the CITY OF VERO BEACH, a Florida municipal corporation (the "Grantee"), whose mailing address is P.O. Box 1389, Vero Beach, FL 32961-1389:

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and their respective heirs, legal representatives, successors and assigns.)

WITNESSETH:

That Grantor is the owner in fee simple of that certain real property (the "Property") lying, situate and being in Indian River County, Florida and more particularly described as:

Indian River County Parcel ID #33-39-02-00005-0320-00000.2, as recorded in Official Record Book 937, Page 1349 of the Public Records of Indian River County, Florida.

That Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the Grantee, its successor and assigns, a non-exclusive easements in perpetuity for utility purposes, more particularly described in Exhibit "A" (the "Easement Premises"), attached hereto and incorporated herein by reference, which shall run with and be a burden upon the Property.

Grantee hereby reserves for itself, its successors and assigns, the right to use the Easement Premises for purposes not inconsistent with the easement granted herein, including without limitation, the right of ingress, egress and passage by Grantee and its employees, agents, customers, and invitees, on, over, under, across, and through the Easement Premises for inspection, construction, and maintenance of utility lines, equipment and facilities.

Grantor shall retain the right to pave, sod and install minor landscaping (but not trees) within the Easement Premises. Notwithstanding the foregoing to the contrary, Grantor shall not install, nor allow the installation of trees, buildings, or other vertical structures within the Easement Premises. Should the Grantor plant or construct improvements which interfere with the Easement rights granted herein, such improvements shall be subject to removal or destruction by the Grantee, without liability or responsibility thereof on the part of the Grantee.

The undersigned hereby covenants and warrants that Grantor owns the said land described herein and the undersigned, as or on behalf of Grantor, has the right to grant these easements.

IN WITNESS WHEREOF, the Grantor has duly authorized and caused this Indenture to be executed in her name as of the day and year first herein written.

GRANTOR:

WITNESS:

Sign: Jennifer Baker
Print: Jennifer Baker

Sign: Catherine H. Daniel
Print: Catherine H. Daniel

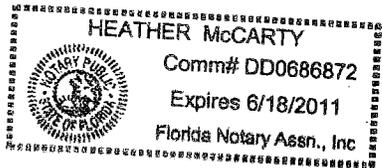
Sign: Sheer Photo
Print: Sheer Photo

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 25th day of January 2011, by Catherine H. Daniel, as Grantor. She is **[circle one]** personally known to me **OR** produced **[describe ID shown]** 0540-128-57-6840 as identification, and **[circle one]** did **OR** did not take an oath.

NOTARY PUBLIC

Sign: Heather McCarty
Print: Heather McCarty
State of Florida at Large
My Commission No:
My Commission Expires:



ACCEPTANCE OF CONVEYANCE

The foregoing conveyance is hereby accepted by the City of Vero Beach, Florida, as evidenced by the signature of the undersigned, who is authorized to accept this conveyance.

ATTEST:

CITY OF VERO BEACH

Tammy K. Vock
Tammy K. Vock
City Clerk

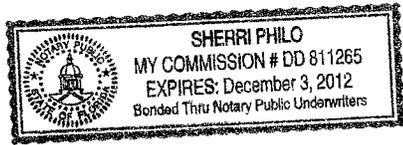
Jay Kramer
Jay Kramer
Mayor

[CITY SEAL]

Date: February 17, 2011

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing Acceptance of Conveyance was acknowledged before me this 17th day of February, 2011 by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me and did not take an oath.



NOTARY PUBLIC

Sign: Sherril Philo
Print: Sherril Philo
State of Florida at Large
My Commission No.: _____
My Commission Expires: _____

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

Wayne R. Convent
Charles P. Vitunac
City Attorney

Monte K. Falls
Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Joseph R. McCamish
Joseph R. McCamish
Director, Transmission & Distribution

EXHIBIT "A"
PROPERTY DESCRIPTION
UTILITY EASEMENT #2010-EG-0080
LOT "B" AND PART OF LOT "O", BLOCK 32,
REPLAT MCANSH PARK SUBDIVISION
PARCEL # 33-39-02-00005-0320-00000.2

Situated in the State of Florida, County of Indian River, City of Vero Beach and being a part of Lots B and O of Block 32, Replat of Blocks 3, 4, 5, 31 and 32, McAnsh Park Subdivision as recorded in Plat Book 2, Page 55, of the Public Records of Indian River County, Florida and being more particularly bounded and described as follows:

A strip of land 5 feet in width, lying 2.5 feet on both sides of the following described centerline;

Commencing at a point of intersection between the westerly right-of-way of Buena Vista Boulevard and the common corner of Lots B and C of said Block 32, run north 53°30'36" west along the southwesterly line of Lot B for a distance of 95 feet to the Point of Beginning;

Thence north 70°46'35" east for a distance of 27.84 feet;

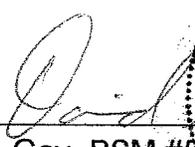
Thence north 28°54'11" east for a distance of 39.69 feet;

Thence south 84°45'02" east for a distance of 46.23 feet;

Thence south 66°15'19" east for a distance of 5.29 feet to a point on the northwesterly prolongation of the northerly line of Lot B, said point being the Point of Terminus.

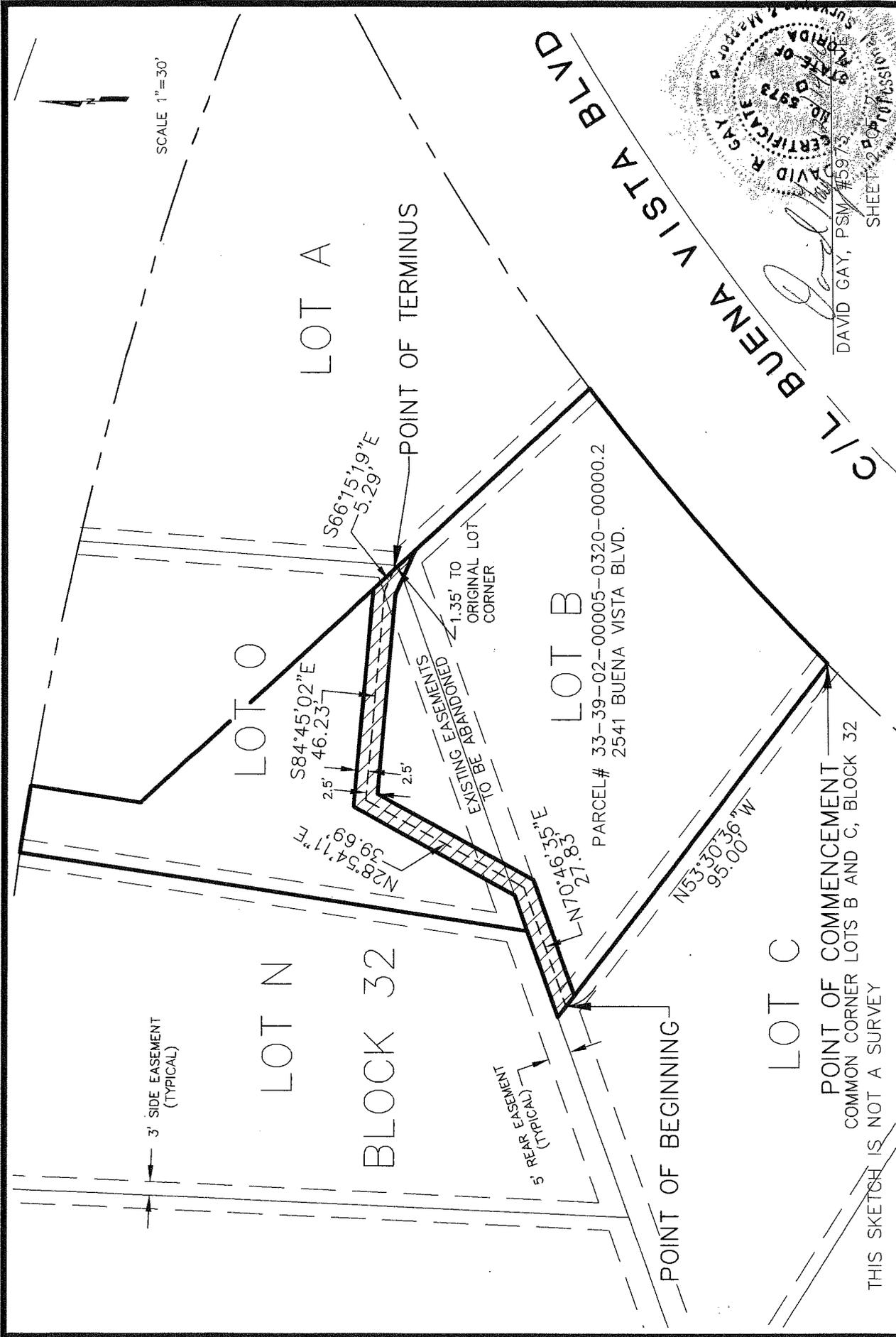
Note: the side lines of this easement should be lengthened or shortened accordingly to meet the property lines of the grantors property;

Containing 595 square feet more or less.


David R. Gay, PSM #5973



The seal is circular with a double border. The outer border contains the text "DAVID R. GAY" at the top and "Professional Surveyor" at the bottom. The inner border contains "STATE OF FLORIDA" at the top and "LICENSE NO. 5973" at the bottom. The center of the seal contains the word "CERTIFICATE".



CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS SURVEY DIVISION	SKETCH OF PROPERTY DESCRIPTION		EXHIBIT "A"	REV. NO.	AUTHORITY
	UTILITY EASEMENT BLOCK 32, REPLAT MCANSH PARK		CITY PROJECT NO. 2010-EG-0080	DRWN BY	DATE
			DATE 12/2010	DRWN BY BMM	CHKD BY DC

CITY OF VERO BEACH

RELEASE OF EASEMENT REVIEW SUMMARY

Application No. **2010-RE-0380**
 Applicant **Harry David Daniel**
 Property Address: **2541 Buena Vista Boulevard**
 Subdivision: **Replat of Blocks 3, 4, 5, 31 & 32, McAnsh Park**
 Parcel No. **33-39-02-00005-0320-00000.2**
 Related Project No. **2010-EG-0080**

Application Reviewed By:

COVB Electrical Engineering
 COVB Water & Sewer
 COVB Planning & Development
 AT&T
 Comcast Cable
 Florida City Gas Co.

X
X
X
X
X
X

Do Not Object Do Not Object
Object with Object
 Conditions

X		
X		
X		
	X	
No Response as of 2/17/2011		

Date: **February 17, 2011**

The City of Vero Beach Public Works Department has received a request to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

5' rear easements along the north line of Lot B and the south line of Lot O, Block 32.

Note: A new easement has been granted for the relocation of existing aerial lines to buried lines. See attached "Easement Granted" sketch.

The Department of Public Works has reviewed the responses and comments received from the other reviewing departments/agencies and we recommend the following action:

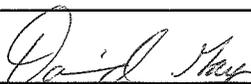
DO NOT OBJECT
 DO NOT OBJECT WITH COMMENTS
 OBJECT

X

Our comments and/or conditions of approval are as follows:

Applicant responsible for the cost of relocating AT&T and Comcast facilities into the new easement.

Reviewed by Public Works:



 Printed Name: **David Gay, Chief Surveyor**

 Date of Review: **2/21/11**

CITY OF VERO BEACH
 DEPARTMENT OF PUBLIC WORKS
 (772) 978-4870
 (772) 978-4879 FAX

To: COVB Electrical Engineering	X	AT&T	X
COVB Water & Sewer	X	Comcast Cable	X
COVB Planning & Development	X	Florida City Gas Co.	

From: David R. Gay, PSM
 Chief Surveyor

Date: December 16, 2010

RE: **RELEASE OF EASEMENT REQUEST**

Applicant: **Harry David Daniel**
 Property Address: **2541 Buena Vista Boulevard**
 Subdivision: **Replat of Blocks 3, 4, 5, 31 & 32, McAnsh Park**
 Parcel No. **33-39-02-00005-0320-00000.2**
 Application No. **2009-RE-0380 2010-RE-0380**
 Related Project No. **2010-EG-0080**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

5' rear easements along the north line of Lot B and the south line of Lob O, Block 32.

NOTE: A new easement will be granted for the relocation of existing aerial lines to buried lines. See attached "Easement Granted" sketch.

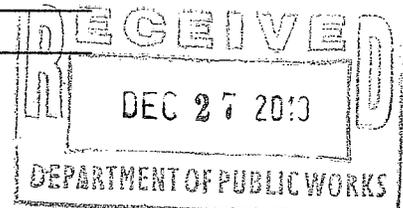
Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT
 DO NOT OBJECT WITH CONDITIONS
 OBJECT

✓

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: Ted Fletcher
 Printed Name: Ted Fletcher
 Agency: CITY OF Vero Beach Electric
 Date of Review: 12-27-10



CITY OF VERO BEACH
 DEPARTMENT OF PUBLIC WORKS
 (772) 978-4870
 (772) 978-4879 FAX

To: COVB Electrical Engineering	<input type="checkbox"/>	AT&T	<input type="checkbox"/>
COVB Water & Sewer	<input type="checkbox"/>	Comcast Cable	<input type="checkbox"/>
COVB Planning & Development	<input type="checkbox"/>	Florida City Gas Co.	<input type="checkbox"/>

From: David R. Gay, PSM
 Chief Surveyor

Date: December 16, 2010

RE: **RELEASE OF EASEMENT REQUEST**

Applicant: **Harry David Daniel**
 Property Address: **2541 Buena Vista Boulevard**
 Subdivision: **Replat of Blocks 3, 4, 5, 31 & 32, McAnsh Park**
 Parcel No. **33-39-02-00005-0320-00000.2**
 Application No. ~~2009-RE-0380~~ **2010-RE-0380**
 Related Project No. **2010-EG-0080**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

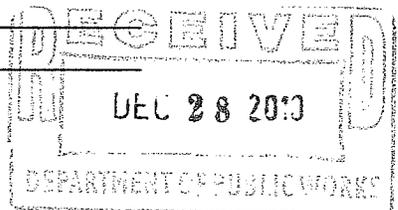
5' rear easements along the north line of Lot B and the south line of Lob O, Block 32.
NOTE: A new easement will be granted for the relocation of existing aerial lines to buried lines. See attached "Easement Granted" sketch.

Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	<input checked="" type="checkbox"/>
DO NOT OBJECT WITH CONDITIONS	<input type="checkbox"/>
OBJECT	<input type="checkbox"/>

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: *Jerry A. Gilbert*
 Printed Name: JERRY A. GILBERT
 Agency: WATER & SEWER
 Date of Review: 12-28-10



**CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX**

To: COVB Electrical Engineering	<input type="checkbox"/>	AT&T	<input type="checkbox"/>
COVB Water & Sewer	<input type="checkbox"/>	Comcast Cable	<input type="checkbox"/>
COVB Planning & Development	<input type="checkbox"/>	Florida City Gas Co.	<input type="checkbox"/>

From: David R. Gay, PSM
Chief Surveyor

Date: December 16, 2010

RE: **RELEASE OF EASEMENT REQUEST**

Applicant: **Harry David Daniel**
 Property Address: **2541 Buena Vista Boulevard**
 Subdivision: **Replat of Blocks 3, 4, 5, 31 & 32, McAnsh Park**
 Parcel No. **33-39-02-00005-0320-00000.2**
 Application No. ~~2009-RE-0380~~ **2010-RE-0380**
 Related Project No. **2010-EG-0080**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

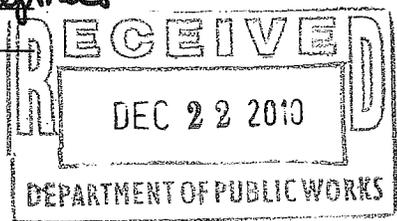
5' rear easements along the north line of Lot B and the south line of Lob O, Block 32.
NOTE: A new easement will be granted for the relocation of existing aerial lines to buried lines. See attached "Easement Granted" sketch.

Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

DO NOT OBJECT	<input checked="" type="checkbox"/>
DO NOT OBJECT WITH CONDITIONS	<input type="checkbox"/>
OBJECT	<input type="checkbox"/>

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

Signature of Agency Reviewer: *Timothy J. McCann*
 Printed Name: Timothy J. McCann
 Agency: Department of Planning & Development
 Date of Review: 12/21/10



✓

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
(772) 978-4870
(772) 978-4879 FAX

To: COVB Electrical Engineering
COVB Water & Sewer
COVB Planning & Development

X
X
X

AT&T
Comcast Cable
Florida City Gas Co.

X
X

From: David R. Gay, PSM
Chief Surveyor

Date: December 16, 2010

RE: **RELEASE OF EASEMENT REQUEST**

Applicant: **Harry David Daniel**
Property Address: **2541 Buena Vista Boulevard**
Subdivision: **Replat of Blocks 3, 4, 5, 31 & 32, McAnsh Park**
Parcel No. **33-39-02-00005-0320-00000.2**
Application No. **2009-RE-0380**
Related Project No. **2010-EG-0080**

The City of Vero Beach Public Works Department is requesting to abandon the drainage/utility easement(s) on the referenced property. A property description and sketch is attached for your information.

Description of requested easement release:

5' rear easements along the north line of Lot B and the south line of Lob O, Block 32.

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Please indicate below whether your department/agency approves or disapproves of this action so the information may be considered by the City. Please sign this form and transmit a copy via fax to (772) 978-4879. The original signed form should be returned to the City of Vero Beach Public Works Department at 1053 20th Place, Vero Beach, FL 32960.

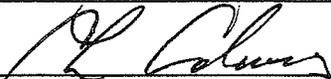
DO NOT OBJECT
DO NOT OBJECT WITH CONDITIONS
OBJECT

✓

If you OBJECT to this action or DO NOT OBJECT WITH CONDITIONS, please briefly explain why:

APPLICANT TO PROVIDE NEW EASEMENT AND WILL BE RESPONSIBLE FOR
RELOCATION COSTS ASSOCIATED WITH AT&T'S FACILITIES IN EXISTING EASEMENT.

Signature of Agency Reviewer: _____



Printed Name: _____

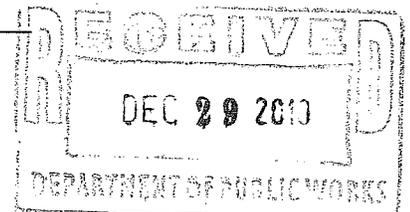
Charles L. Adams

Agency: _____

Area Manager C&E

Date of Review _____

AT&T - Florida



Nichols, Nancy

From: Nichols, Nancy
Sent: Monday, February 14, 2011 3:10 PM
To: 'donald_stephens@cable.comcast.com'
Cc: Gay, David
Subject: FW: Release of Easement 2541 Buena Vista Blvd.
Attachments: Routing Letter_Comcast.pdf

Contacts: Donald Stephens

Mr. Stephens:

Due to the amount of time that has transpired between the date of our request and today, if we have not received your response by the close of business on Tuesday, February 15, 2011 we will assume there is no objection from Comcast for this release of easement request.

Thanks for your time.

-Nancy

From: Nichols, Nancy
Sent: Monday, February 07, 2011 11:52 AM
To: 'donald_stephens@cable.comcast.com'
Subject: Release of Easement 2541 Buena Vista Blvd.

Mr. Stephens:

Attached is a copy of a release of easement application sent to you on December 20, 2010. We have not yet received your response.

We sent 2 release of easement applications out at the same time (this one and one on Royal Palm Pointe), and the numbers got a little confused. That may be the cause of your response not being received yet. Could you please review this and return the form ASAP? Yours is the only response I have not received.

Thank you.

Nancy T. Nichols
Senior Administrative Assistant
City of Vero Beach
Public Works Department
nnichols@covb.org
(772) 978-4872

Tracking:

Nichols, Nancy

From: Nichols, Nancy
Sent: Monday, February 07, 2011 11:55 AM
To: 'donald_stephens@cable.comcast.com'
Subject: RE: Release of Easement 2541 Buena Vista Blvd.
Attachments: Routing_COVB_Jan 25 2011.pdf

Mr. Stephens:

Attached is a copy of the new easement document which is currently being executed by the City.

-Nancy

From: Nichols, Nancy
Sent: Monday, February 07, 2011 11:52 AM
To: 'donald_stephens@cable.comcast.com'
Subject: Release of Easement 2541 Buena Vista Blvd.

Mr. Stephens:

Attached is a copy of a release of easement application sent to you on December 20, 2010. We have not yet received your response. This easement will be replaced by a new easement.

We sent 2 release of easement applications out at the same time (this one and one on Royal Palm Pointe), and the numbers got a little confused. That may be the cause of your response not being received yet. Could you please review this and return the form ASAP? Yours is the only response I have not received.

Thank you.

Nancy T. Nichols
Senior Administrative Assistant
City of Vero Beach
Public Works Department
nnichols@covb.org
(772) 978-4872

7-A



City Council Agenda Item

Meeting of March 1, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager

MK Falls 2/23

DATE: February 23, 2011

SUBJECT: **City Council Approval of Proposed Improvements at the Vero Beach Museum of Art; Site Plan Application #SP10-00007**

REQUESTED BY: Timothy McGarry, AICP – Director of Planning and Development

The following is requested as it relates to the above-referenced agenda item:

_____ Request Council review and approval based on the attached supporting documentation.

_____ Request Council review and possible action.

_____ No action required. (Information only)

DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, PE
Interim City Manager

FROM: Timothy J. McGarry, AICP 
Director of Planning and Development

DATE: February 22, 2011

SUBJECT: **City Council Approval of Proposed Improvements
at the Vero Beach Museum of Art; Site Plan
Application #SP10-000007**



Request

Pursuant to its lease agreement with the City, the Vero Beach Museum of Art requests City Council approval of its expansion plans for the museum. The staff requests that this item be placed on the City Council's March 1, 2011, regularly scheduled meeting agenda. As a condition of City Council approval of the project, the staff recommends that the current lease agreement be amended to address providing a public easement across and over the reconfigured service road and requiring maintenance of the service road by the Museum.

Background

The Vero Beach Museum of Art proposes the removal of 1,022 square feet of existing space and the construction of 21,740 square feet in two stories on the west side of the existing building for art storage, offices, and mechanical equipment and a separate 375 square foot mechanical room located on the southeast corner of the existing building. On February 17, 2011, the Planning and Zoning unanimously approved Site Plan Application #SP10-000007 for these proposed improvements subject to conditions recommended by staff and approval by the City Council pursuant to the lease agreement. A copy of the Planning and Development Department's staff report is attached along with an aerial depicting the Museum's lease area.

In the City's lease agreement with "Alliance for the Arts" (now know as the "Vero Beach Museum of Art, Inc.") dated June 2, 1981, Paragraph 3, "Alterations," states in pertinent part that "Alliance shall not make any structural alterations, changes, additions or improvements to the leased premises without the prior express written consent of the City." Subsequent to the Planning and Zoning Board's action, the staff has determined that the lease agreement between the Museum and City should be amended due to the proposed reconfiguration of the driveway/service road on the west side of the leased property.

In Section 2 of the Second Amendment to the lease agreement signed by the parties in February 1992, the Vero Beach Museum of Art grants to the City an easement over the then proposed and now existing driveway/service road for the purpose of ingress and egress to the parking area on

the north side of the leased property. Section 3 requires the City to maintain the existing service road.

Section 4 of the 1992 amended agreement states that if a building permit is issued for the expansion of the existing building or construction of a new building across or onto the easement, the easement is automatically terminated. The proposed construction in Site Plan Application #SP10-000007 will extend across or onto the existing easement, thereby automatically terminating the easement pursuant to that section.

As this easement was intended to provide a public ingress and egress to public parking areas adjacent to the leased property, the staff recommends that if the City Council consents to the proposed museum expansion, it withhold its formal consent until an amendment to the contract lease agreement is executed between the City and Museum. The new amendment would provide for a new public ingress and egress easement over and across the reconfigured service road and require that the reconfigured service road be maintained by the Museum.

Recommendation

The staff recommends that the City Council take action to indicate its tentative consent for the project as approved by the Planning and Zoning Board conditioned upon the City Council's approval of an amendment to the lease agreement regarding provisions for a new public access easement and maintenance of the service road. If the City Council gives its tentative consent, the City Council shall direct the City Attorney to prepare an amendment to the lease agreement signed by an authorized representative of the Museum for consideration by the City Council.

TJM/tf
Attachments

DEPARTMENTAL CORRESPONDENCE

TO: Chairman Ryan and Members of the Planning and Zoning Board
THROUGH Tim McGarry, Planning and Development Director
FROM: Hank Flores, Current Planning Manager
DATE: February 10, 2011
SUBJECT: Site Plan Application #SP10-000007 – Vero Beach Museum of Art – Storage Addition – Planning and Zoning Board meeting of February 17, 2011

Location: 3001 Riverside Park Drive
Parcel/Tax ID #'s: Part of 31 32 40 00000 0020 00001.1
Owner: City of Vero Beach
Lessee/Applicant: Vero Beach Museum of Art
Proposed Use: Expansion of an existing civic and cultural activity.

The site is designated "P (Park)" in the Comprehensive Land Use Plan and the zoning classification is "P-2". Civic and cultural activities, such as but not limited to museums, community theaters, libraries, auditoriums, band shells, and similar uses are allowed as permitted uses in the P-2 Zoning District.

Surrounding Zoning:	Surrounding Land Use:
North: P-2 (Park)	North: P (Park)
East: P-2 (Park)	East: P (Park)
South: P-2 (Park)	South: P (Park)
West: P-2 (Park)	West: P (Park)

Planning and Development Department Review

The subject property is located at 3001 Riverside Drive. The applicant has proposed the removal of 1,022 square feet of space and the construction of 10,870 in two stories for a total addition of 21,740 square feet on the west side of the existing building for art storage, offices, and mechanical equipment and a separate 375 square foot mechanical room located on the southeast corner of the existing building.

The Vero Beach Museum of Art is located on City property on a leased parcel in Riverside Park. The Riverside Theater and Riverside Park Recreational area are also located in the park. When originally approved, the project was required 33 parking spaces on site with the joint use of approximately 277 paved spaces in the park and additional stabilized grass spaces for overflow

parking. The museum and theatre have different hours of operation and parking is adequate to meet the needs of all of the facilities at the park.

The increase in square footage to the respective buildings is not expected to generate additional traffic. The purpose of the additional space is for the safe storage of art for exhibits and mechanical equipment. The project is served with refuse and removal services through the City of Vero Beach Solid Waste Division and utility services through the City's Utilities and Water and Sewer Departments. There are no stated provisions in the Code of Ordinances for Floor Area Ratio (FAR) in the P-2 Zoning District. However, the underlying Future Land Use designation of Park allows for an FAR of between 0.10 and 0.40. The project has an FAR of 0.21, which is in the middle of the range.

There are no parking areas located within 25 feet of any residentially zoned property nor within 25 feet of any street line. There are no structures, except benches, tables, sitting areas, fountains, fences, or walls located within 25 feet of any street line. No building or roofed portion of any structure is located within 25 feet of any property line. The museum was developed and continues to be maintained with landscaping, paths, and walkways areas.

The Architectural Review Commission (ARC) reviewed the project on January 27, 2010, and recommended approval of the design project. A copy of the minutes of the ARC meeting is attached.

Concurrency Management. The Indian River County Public Works Department reviewed the project for transportation impacts and determined that the project meets transportation concurrency requirements.

Findings.

Staff has reviewed the proposed project, the comments of pertinent city and county departments, and determined that it meets the technical requirements of Section 64.10 of the Code of Ordinances, subject to meeting the conditions listed below.

Recommendation

Staff recommends approval of the site plan, subject to the following conditions:

- A. Public Works Department – Engineering Division has reviewed the proposed project and recommends approval, subject to the following conditions:
 1. During construction and after final grading, NO surface water runoff may be directed to adjacent properties, and ALL surface water runoff must be routed to approved drainage facilities or be retained on site. ALL runoff from the site, both during and after construction, must be free of pollutants, including sediment, prior to discharge;

2. The applicant shall also provide the Department of Public Works with a copy of the notice of commencement and shall be subject to random inspections for compliance with Section 73.33.

B. Water and Sewer Department has reviewed the proposed project and recommends approval, subject to the following conditions:

1. Please state on the plans the datum upon which elevations are based.
2. M.H. SS-4 should be designated as a new manhole. The connection to existing manhole SS-3 must be core bored and a Kor-N-Seal boot adapter installed.
3. A profile of the new sewer line and the service shall be shown on the drawings.
4. The grades shown on the existing sewer structure chart (Sh 5) should match the grades shown on the drawings. The existing invert grade at M.H. SS-3 must be verified.
5. Verify the adequacy of the new fire line flow and pressure.
6. Applicant shall provide a CD of the plans.

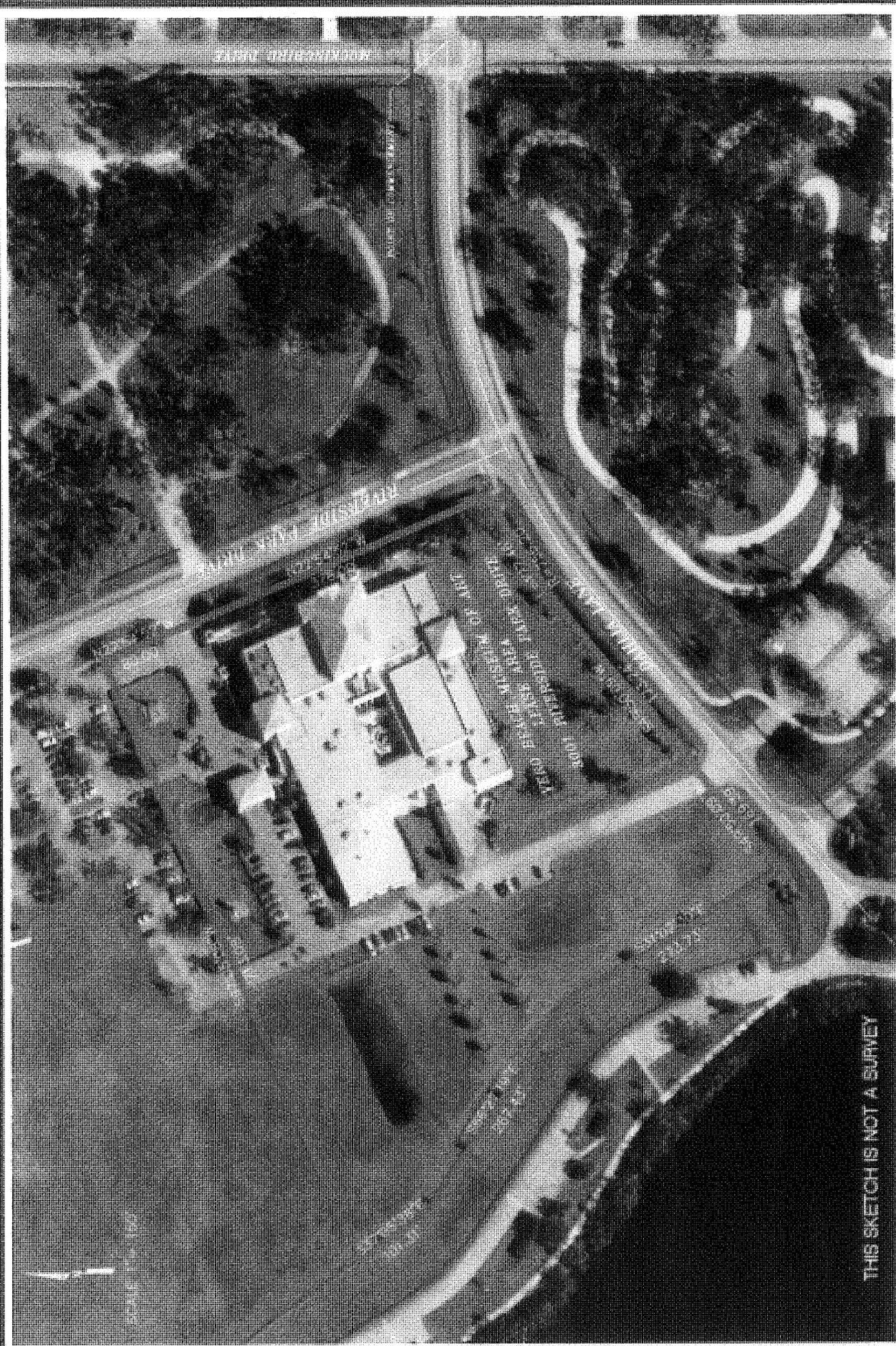
C. T & D - Electric System Design Division has reviewed the proposed project and recommends approval, subject to the following condition:

The developer shall provide an easement for a new primary.

hf

Vero Beach Museum of Art Addition

DEVELOPMENT GUIDELINES					
DEV. SPECS./CODE SECTION NO.	REQ'D/ ALLOWED	PROPOSED	EXISTING	CONFORMS YES/NO	REVISED
Building height (ft)	35	35		Yes	
Setbacks (ft)					
Front yard (North)	25	115.8		Yes	
Side yard (East)	25	40.2		Yes	
Side yard (West)	25	108.1		Yes	
Side yard (South)	25	100.0		Yes	
Flood Zone	AE-7				
Finished Floor Elevation (ft)	7	8.62		Yes	



THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH		AERIAL VIEW		REV. NO.	AUTHORIZED BY
DEPARTMENT OF PUBLIC WORKS		LEASED PARCELS		DATE	
SURVEY DIVISION		DATE	DRAWN BY	CHKD BY	DESCRIPTION
		07/2007	DG	MKE	

SKETCH OF PROPERTY DESCRIPTION
 LEASE AREA
 VERO BEACH MUSEUM OF ART



7-B)

City Council Agenda Item Meeting of March 1, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager

*MK Falls
2/21*

DATE: February 21, 2011

SUBJECT: Request for Public Service Commission Extension – Docket No. 090524-EM; Complaint of Faherty and Heran regarding City of Vero Beach – Data Request

REQUESTED BY: Interim City Manager Monte K. Falls, P.E.; Acting City Attorney Wayne R. Coment, and Acting Electric Utilities Director John Lee

The following is requested as it relates to the above-referenced agenda item:

Request Council review and approval based on the attached supporting documentation.

Request Council review and possible action.

No action required. (Information only)

City of Vero Beach

1053 - 20th PLACE - P.O. BOX 1389
VERO BEACH, FLORIDA - 32961-1389
Telephone: (772) 978-4730 • Fax: (772) 978-4733

OFFICE OF THE
CITY ATTORNEY

February 21, 2011

Martha C. Brown, Esq.
Senior Attorney
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

**Re: Docket No. 090524-EM; Complaint of Faherty and Heran regarding
City of Vero Beach — Data Request**

Dear Ms. Brown:

Pursuant to your telephone discussion with Mr. John Lee, the City's acting electric utilities director, the City of Vero Beach respectfully requests an extension of ten (10) working days to make its response to the February 10, 2011 data request in the above-referenced matter. If the extension is granted, the City will file an original and five copies of the requested information by Thursday, March 17, 2011.

The City of Vero Beach City Council was advised of the request for information at its meeting on Tuesday, February 15th in conjunction with obtaining direction regarding retention of legal counsel in this matter. At that time it was noted that four (4) of the data requests were related to the Cost of Service study filed September 18, 2009 in support of requested tariff changes. The City staff suggested that the data requested should come from the City's consulting firm that prepared the Cost of Service study. To allow for the consulting firm to have time to receive, analyze and answer the questions, it was suggested that the City Attorney's office request an extension. In the interim, City staff is accumulating the requested data and once the information is provided by the consulting firm, the City will be able to forward a complete response.

Please let us know if you have any questions regarding this request. Thank you for your assistance.

Yours truly,



Wayne R. Coment
Acting City Attorney

cc: Stephen J. Faherty and Glenn Fraser Heran
Monte Falls, Interim City Manager ✓
John Lee, Acting Electric Utilities Director

7-C)



City Council Agenda Item
Meeting of March 1, 2011

TO: Mayor Jay Kramer
Vice Mayor Pilar Turner
Councilmember Brian Heady
Councilmember Craig Fletcher
Councilmember Tracy Carroll

FROM: Monte K. Falls, P.E. - Interim City Manager *M. Falls 2/21/11*

DATE: February 21, 2011

SUBJECT: South Beach Speed Limit Reduction

REQUESTED BY: William B. Messersmith, P.E. – Assistant City Engineer

The following is requested as it relates to the above-referenced agenda item:

- Request Council review and approval based on the attached supporting documentation.
- Request Council review and possible action.
- No action required. (Information only)



DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, Interim City Manager
DEPT: City Manager

FROM: William B. Messersmith, PE, Assistant City Engineer
DEPT: Public Works

DATE: February 16, 2011

RE: **South Beach Speed Limit Reduction**

WBM
2/16/11

Recommendation:

- Place this item on the City Council's Agenda for March 1, 2011;
- Reduce the speed limit in the South Beach area from 30 mph to 25 mph.

Funding:

Cost for implementation is estimated at less than \$800 - eight (8) signs at approximately \$100 per sign to post new speed limit.

Background:

The speed limit in the South Beach neighborhood is currently 30 mph. This is the posted speed limit on East Causeway Boulevard, Ocean Drive, Sandpiper Lane, Coquina Lane and Seagull Drive, and is the default (un-posted) speed limit on the remainder of the neighborhood streets – Ocean Place, Jasmine Lane, Pirate Cove Lane, Turtle Cove Lane and Coral Avenue - (see attached map).

Since 2007, in response to neighborhood concerns about traffic and pedestrian safety, we have conducted several speed and volume studies in the subject area. Those studies show that the 85% percentile speed varies from 25 mph to 33 mph and that average speeds are between 19 and 28 mph. A copy of the summary pages from each of those studies is attached for your reference.

In May 2010 we conducted a poll of the neighborhood property owners and residents. The results of the poll (attached) show a majority (70%) of the respondents (92 in favor out of 132 total respondents) are in favor of the speed limit reduction from 30 to 25 mph.

Currently, Florida Statutes, Chapter 316.183 establishes the maximum residential speed limit in municipalities at 30 mph unless otherwise posted, but gives the local jurisdiction the authority to reduce that speed limit to 25 or 20 mph if "an investigation determines that such a limit is reasonable." The Public Works Department has conducted an investigation of local speed limits and presents the following information:

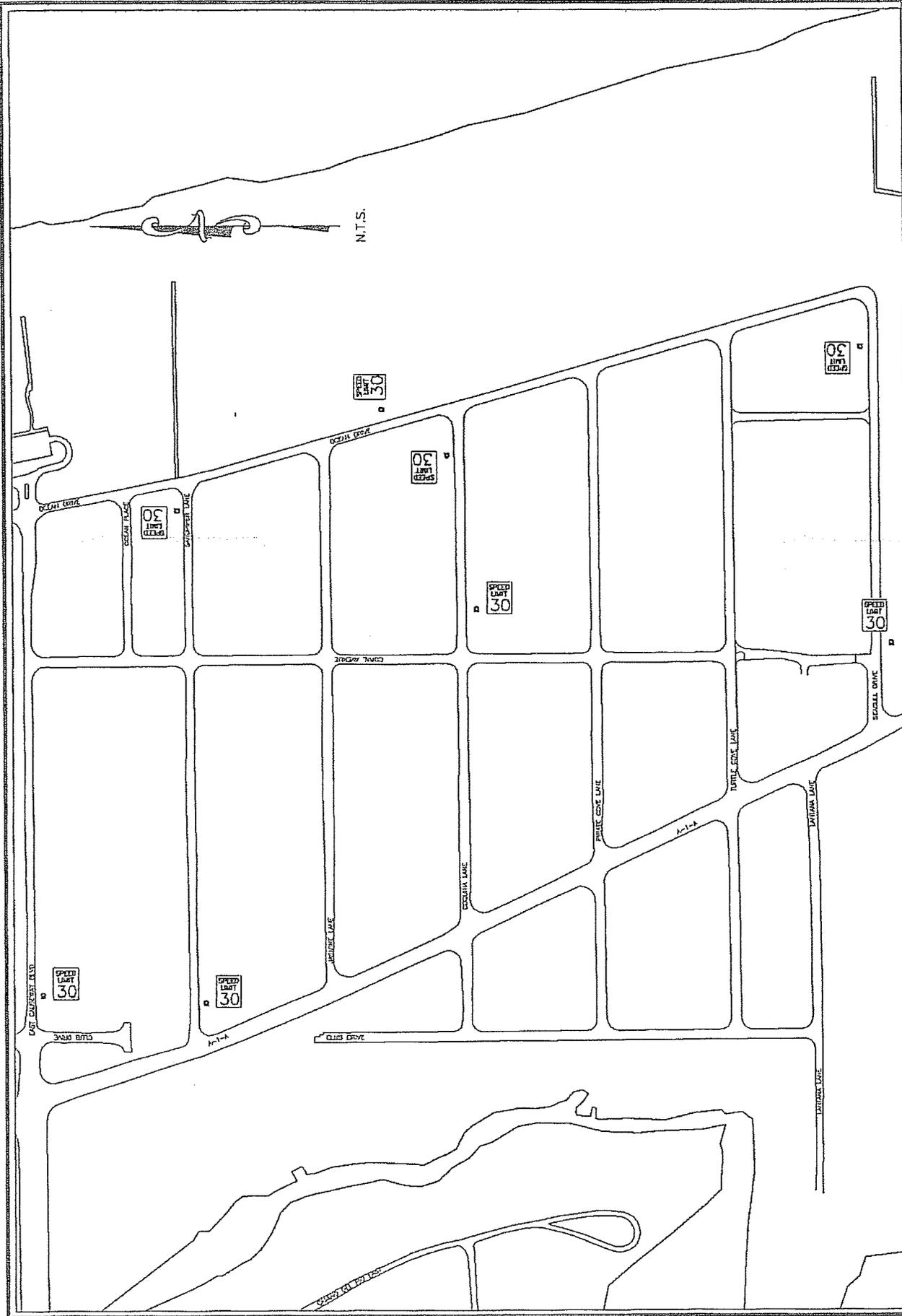
- This neighborhood has a high volume of pedestrian traffic;
- Speed plays a major role in the pedestrian fatality rate;
- At 20 mph 5% of vehicular/pedestrian crashes result in fatalities;
- At 30 mph 50% of vehicular/pedestrian crashes result in fatalities;
- At 40 mph 80% of vehicular/pedestrian crashes result in fatalities;
- Florida's fatality rate of 3 pedestrians per 100,000 population is twice the national average;
- The proposed request is consistent with the Vision Plan;
- Ticketable offenses are generally considered those where the measured speed is at least 5 mph over the posted speed limit.

Based on this information we recommend that the speed limit be reduced from 30 mph to 25 mph as shown on the attached map.

If you have any questions please contact us at 978-4870.

Attachments

WBM/jb



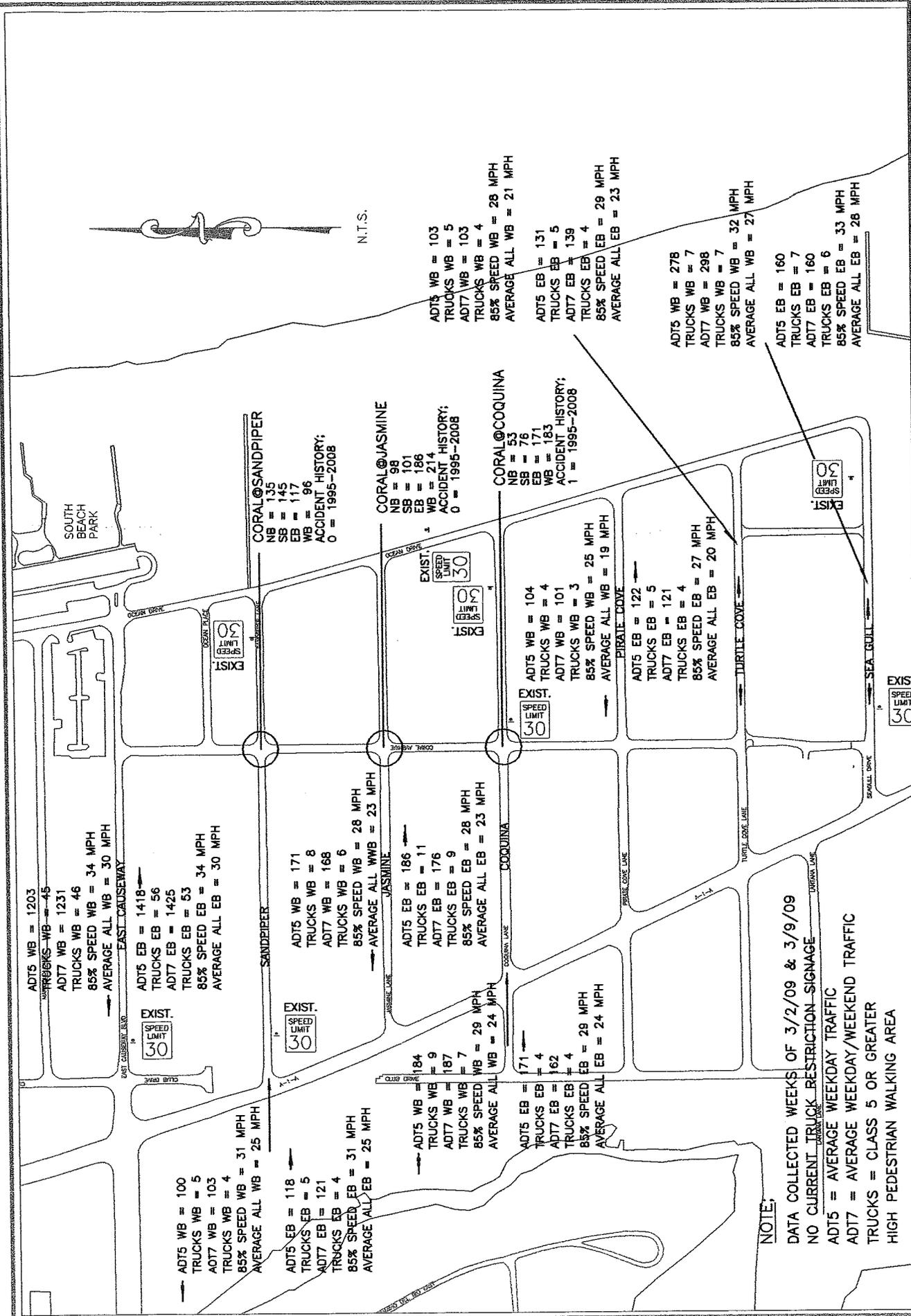
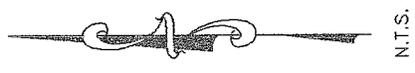
N.T.S.

DRAWN BY: D.I.L. DATE: 8/30/2007
 DESIGN BY: D.I.L.
 ACAD: SOUTHBEACHSIGNAGE2007
 PAGE 1 OF 1

EXIST. SPEED / TRUCK SIGNAGE
 EAST CAUSEWAY TO SEA GULL

CITY OF VERO BEACH
 DEPARTMENT OF PUBLIC WORKS
 AND ENGINEERING
 TRAFFIC ENGINEERING SECTION





NOTE:
 DATA COLLECTED WEEKS OF 3/2/09 & 3/9/09
 NO CURRENT TRUCK RESTRICTION SIGNAGE
 ADT5 = AVERAGE WEEKDAY TRAFFIC
 ADT7 = AVERAGE WEEKDAY/WEEKEND TRAFFIC
 TRUCKS = CLASS 5 OR GREATER
 HIGH PEDESTRIAN WALKING AREA

CITY OF VERO BEACH
 DEPARTMENT OF PUBLIC WORKS
 AND ENGINEERING
 TRAFFIC ENGINEERING SECTION



AXLE CLASSIFICATION/SPEED/ VOLUME STUDIES
 EAST CAUSEWAY TO SEA GULL

DRAWN BY: D.L. DATE: 3/27/09
 DESIGN BY: D.L.
 ACAD: SOUTHBEACHAREA2009
 PAGE 1 OF 1



N.T.S.

WB-85% = 27 MPH
WB-AVERAGE ALL = 21 MPH
EB-85% = 29 MPH
EB-AVERAGE ALL = 23 MPH

SOUTH BEACH PARK

ADT5-WB=822
(TRUCKS)= 74
ADT7-WB=929
(TRUCKS)= 66

ADT5-EB=853
(TRUCKS)= 44
ADT7-EB=990
(TRUCKS)= 39

WB-85% = 25 MPH
WB-AVERAGE ALL = 20 MPH
EB-85% = 28 MPH
EB-AVERAGE ALL = 23 MPH

ADT5-WB=180
(TRUCKS)= 6
ADT7-WB=155
(TRUCKS)= 5

ADT5-EB=121
(TRUCKS)= 5
ADT7-EB=120
(TRUCKS)= 3

ADT5-WB= 57
(TRUCKS)= 4
ADT7-WB= 52
(TRUCKS)= 3

ADT5-EB= 68
(TRUCKS)= 4
ADT7-EB= 67
(TRUCKS)= 3

ADT5-WB=109
(TRUCKS)= 6
ADT7-WB=102
(TRUCKS)= 4

ADT5-EB=101
(TRUCKS)= 4
ADT7-EB= 96
(TRUCKS)= 3

ADT5-WB=108
(TRUCKS)= 7
ADT7-WB=109
(TRUCKS)= 7

ADT5-EB= 92
(TRUCKS)= 6
ADT7-EB= 94
(TRUCKS)= 8

ADT5-WB= 50
(TRUCKS)= 7
ADT7-WB= 47
(TRUCKS)= 5

ADT5-EB= 87
(TRUCKS)= 8
ADT7-EB= 86
(TRUCKS)= 6

ADT5-WB=155
(TRUCKS)= 11
ADT7-WB=172
(TRUCKS)= 11

ADT5-EB= 89
(TRUCKS)= 11
ADT7-EB= 95
(TRUCKS)= 10

DATA COLLECTED WEEK OF 7/30/07
NO CURRENT TRUCK RESTRICTION SIGNAGE
ADT5 = AVERAGE WEEKDAY TRAFFIC
ADT7 = AVERAGE WEEK/WEEKEND TRAFFIC
TRUCKS = CLASS 5 OR GREATER

DRAWN BY: D.L. DATE: 8/23/2007
DESIGN BY: D.L. ACAD: SOUTHBEACHAXLE2007
PAGE 1 OF 1

AXLE CLASSIFICATION / VOLUME EAST CAUSEWAY TO SEA GULL

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
AND ENGINEERING
TRAFFIC ENGINEERING SECTION



SPEED
LIMIT
30

EXIST.

10

N.T.S.

SANDPIPER LANE

EXIST.

SPEED
LIMIT
30

ADT5 EB = 95
TRUCKS (CLASS 8 & UP) EB = 1
TRUCKS (CLASS 5 & UP) EB = 3
ADT5 WB = 100
TRUCKS (CLASS 8 & UP) WB = 1
TRUCKS (CLASS 5 & UP) WB = 4

ADT5 EB = 100
85% SPEED EB = 31 mph
AVERAGE ALL EB = 24 mph
ADT5 WB = 87
85% SPEED WB = 31 mph
AVERAGE ALL WB = 23 mph

A-1-A

JASMINE LANE

CLUB DRIVE

CORAL AVENUE

NOTE:

AXLE CLASSIFICATION STUDY COLLECTED WEEK OF 2/12/07
SPEED STUDY COLLECTED WEEK OF 2/19/07

DRAWN BY: D.L.	DATE: 2/26/07
DESIGN BY: D.L.	
ACAD: SANDPIPER2007	
PAGE 1 OF 1	

REQUESTED SPEED / AXLE STUDY
SANDPIPER LANE - EAST OF SRA1A

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
AND ENGINEERING
TRAFFIC ENGINEERING SECTION



South Beach Speed Limit Reduction Poll

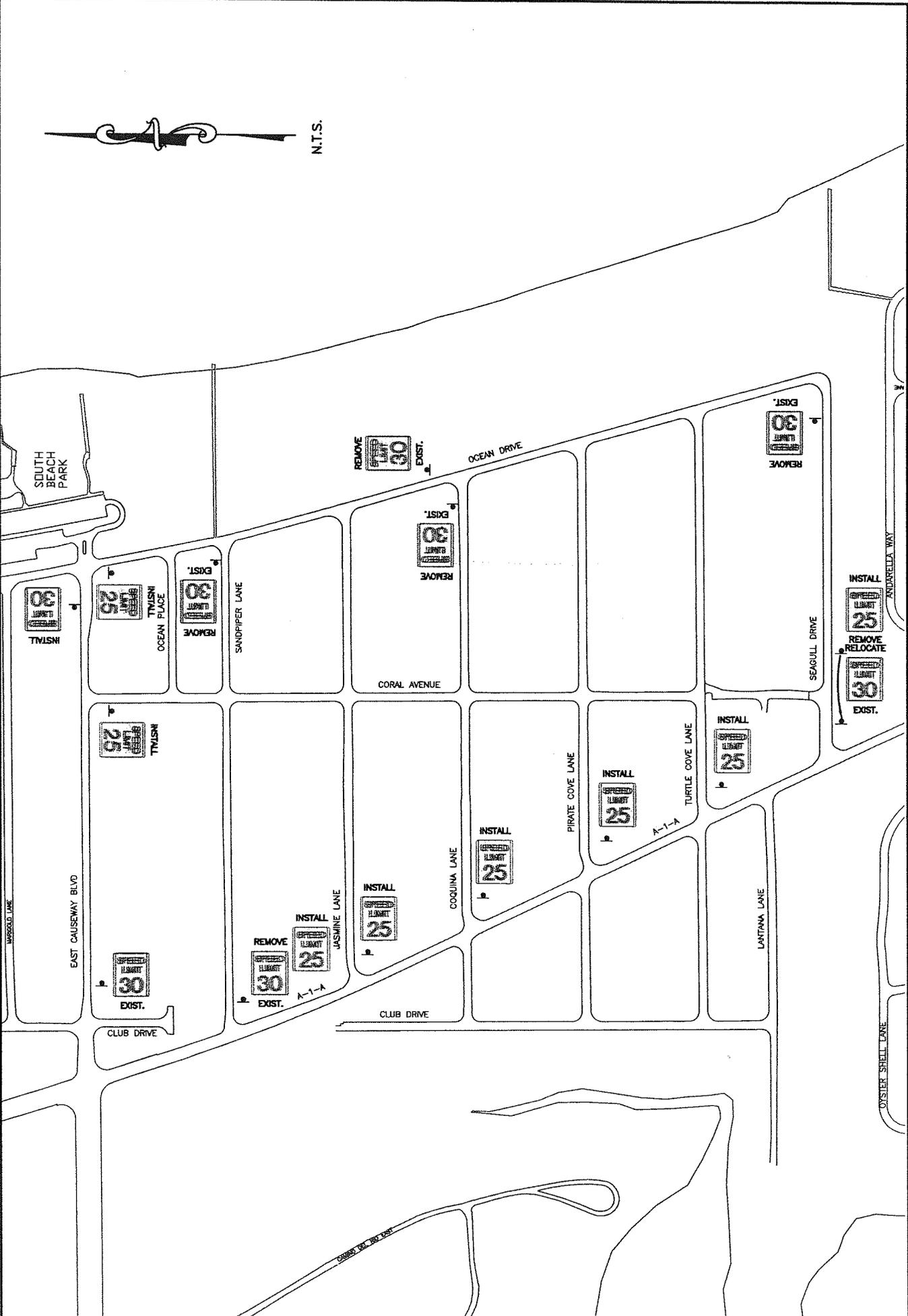
Conducted May 2010

Poll Results	In Favor*	Opposed*	Total Respondents	Undeliverable/ No Response	Total Polled
		92 70%	40 30%	132 21%	490 79%

* Percentages based on respondents



N.T.S.



DRAWN BY: D.L.	DATE:
DESIGN BY: D.L.	6/4/09
ACAD: SOUTHBEACH25SPD2009	
PAGE 1 OF 1	

REVISE "SPEED LIMIT" SIGNAGE
 SOUTH BEACH AREA
 EAST CAUSEWAY TO SEA GULL

CITY OF VERO BEACH
 DEPARTMENT OF PUBLIC WORKS
 AND ENGINEERING
 TRAFFIC ENGINEERING SECTION



QA-1)

Addendum to the City Council Meeting Agenda

Author: Pilar Turner
Priority ____ of ____

Council Meeting Date: March 1, 2011

Title:

Filling personnel vacancies in Finance Dept.

Summary:

Finance Director and Asst. Finance Manager positions to be filled.

Public need or issue addressed:

Provide City the financial resources to operate efficiently.

Relevant City Charter, code references, legal:

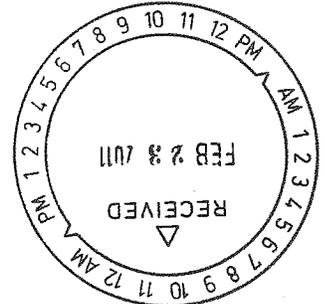
Dates of past decisions by Council relevant to the issue:

At Council meeting of Feb. 15 established this as high priority.

Statement of the proposed solution to the public need or issue:

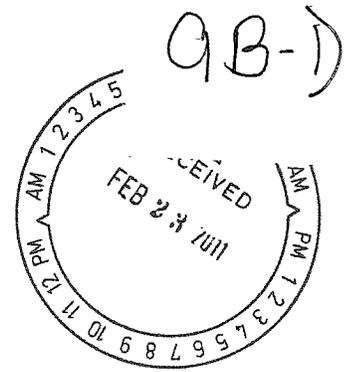
Hire qualified staff to fill these positions

Additional attached documentation :





Addendum to the City Council Meeting Agenda



Author: Pilar Turner

Council Meeting Date: March 1, 2011

Priority ____ of ____

Title:

City Personnel Policies

Summary:

The current personnel policies were last updated in October 2002 on the network. Several following revisions are not thoroughly disseminated.

Public need or issue addressed:

Revision of sick time payout, vacation time accrual, overtime policy, rehire of retirees, and performance appraisals need to be addressed.

Relevant City Charter, code references, legal:

Dates of past decisions by Council relevant to the issue:

October 1, 2002

Statement of the proposed solution to the public need or issue:

A Resolution must be prepared to modify personnel policies. Attached suggestions are put forth to Council for their input. I will meet with Human Resources Director, Robert Anderson, City Manager, Monte Falls, and Assistant City Attorney, Peggy Lyons to propose appropriate language for a Resolution to be brought forward to the Council March 15.

Additional attached documentation includes:

See Personnel Policy on-line

Proposed changes

To: Mayor and Council Members

From: Pilar Turner

Date: Feb. 22, 2011

Re: Personnel Policy Revisions

The following are proposed revisions to the policies:

Vacation

Use it or lose it. A three year period from date of resolution will be given to utilize accumulated vacation before forfeiture. A maximum of five days vacation may be carried forward to the next year with the written approval of the City Manager.

Sick Leave

Review payout policy to reduce long term liability

Retirement

A retired city employee may not work more than 60 days for the city while receiving a city pension.

Overtime

Delete provision which considers holidays, vacation, medical leave, paid court leave, and bereavement leave to be time worked for determining overtime pay.

Performance Appraisals

Annual performance appraisals shall be performed for all employees. At a minimum, the supervisor will provide in writing the following:

Three things the employee successfully accomplished this year

Three areas needing improvement

And an overall performance ranking of 1-5, (5 being the best). The supervisor must place at least 10% of their employees in each rating group.

A meeting is to be held between the employee and supervisor to discuss the appraisal. Upon completion the employee may add a comment. The document will be signed and dated by both parties and returned to Human Resources for filing.



9B-3)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 2.22.2011 **Priority** ____ **of** ____

Title: Sick Pay Benefits

Summary: We must pay for benefits in the year earned not pass expenses to future taxpayers.

Public need or issue addressed: Fiscal responsibility

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None



9B-4)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 2.22.2011 **Priority** ____ **of** ____

Title: Vacation Benefits

Summary: We must pay for benefits in the year earned not pass expenses to future taxpayers.

Public need or issue addressed: Fiscal responsibility

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

MEMORANDUM

TO: Mayor Jay Kramer and
City Councilmembers

FROM: Tammy K. Vock, MMC *Tammy*
City Clerk

DATE: February 23, 2011

SUBJECT: Summer Council Meetings

It has been customary for Council to cancel their first meeting in July which will be July 5th and their first meeting in August which will be August 2nd. By cancelling these meetings it gives Council and staff a chance to plan their vacations. Please let me know if you are in agreement with doing that this year.

Also, we have scheduled the week of July 18 – 22, 2011 for budget hearings. Please put this date in your calendar.

I appreciate your help in this matter.

/tv

WORKSHOP
C)

Author: Jay Kramer

Council Meeting Date: Feb. 15, 2011

Priority: 1

Title: Identifying Priorities of the Council

Summary:

As a Council, elected by our citizens, it is imperative that we work as a team to guide and direct city staff in constructive ways. Just as any team must work together to pull/push in the same direction, it is important that we agree on which direction we are to go. In other words, what are our top priorities?

Public need or issue addressed:

Relevant City Charter, code references, legal:

Dates of past decisions by Council relevant to the issue:

Don't know if any previous Councils has had the realization of the importance of setting priorities. That needs to be determined. If we are the first, it will be a good precedent to have set.

Statement of the proposed solution to the public need or issue:

It is requested that each council member identify their top three specific priorities for the coming year. A workshop to discuss these priorities and come to consensus of a specific number of priorities to direct staff for action.

Additional attached documentation includes: