

**CITY OF VERO BEACH, FLORIDA
DECEMBER 2, 2014 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

The invocation was given by Bishop Charles Hauber of the Church of Jesus Christ of Latter Day Saints followed by the Pledge of Allegiance to the flag.

1. CALL TO ORDER

A. Roll Call

Mayor Richard Winger, present; Vice Mayor Jay Kramer, present; Councilmember Pilar Turner, present; Councilmember Amelia Graves, present and Councilmember Randolph Old, present. **Also Present:** James O'Connor, City Manager; Wayne Coment, City Attorney and Tammy Vock, City Clerk

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Ms. Graves suggested that item 2C-2) be moved up and heard before item 2C-1).

Mr. Kramer made a motion to adopt the agenda with this amendment. Mrs. Turner seconded the motion and it passed unanimously.

B. Proclamations

1. Recognize Sergeant Phil Huddy for being chosen the 2014 Treasure Coast Crisis Intervention Team Officer of the Year

The City Council recognized Sergeant Phil Huddy for being chosen the 2014 Treasure Coast Crisis Intervention Team Officer of the Year.

C. Public Comment

1. Attorney Schef Wright to give an update on utility litigation

Please Note: This item was heard second under Public Comment.

Mr. Schef Wright, Attorney, reported that on November 25, 2014 the Public Service Commission (PSC) met and on their agenda was to take up Indian River County's position on their Declaratory Statement. At that meeting, the County reconsidered what they were going to do with the petition and communicated to the PSC staff that they wanted to submit four (4) somewhat different questions to the PSC for its consideration instead of the 14 questions that they had submitted in their original Declaratory Statement. Mr. Wright spoke to an attorney present for the meeting who said that this

really cannot be done because that is amending the petition. He said the County will need to start over with a new 90-day clock and under the Statute it will have to be re-noticed. The County asked that the item be deferred, which was documented in a letter received later that day. He was then told by the outside attorney hired by the County to represent them in this matter, that the County would be filing a revised petition with a couple of questions on Monday, December 1, 2014. Mr. Wright said as of this morning a new petition for Declaratory Statement has not been filed by the County. He reported that the next PSC meeting will be on February 3, 2015 and then the scheduled meeting after that one will be on March 3, 2015. He said if the revised petition from the County is filed today then the PSC would have to vote on it at their February 3, 2015 meeting in order to get their order out by 90-days (requirement by Statute). If the County waits a few more days then it might push it past the March 3, 2015 meeting date. He expects whatever questions that the County asks in this Declaratory Statement they will be similar to what they asked in the past and the City will respond accordingly. His hope is that it will not require significant additional research.

Mayor Winger asked if the County was required to re-file the petition. Mr. Wright answered no, it is strictly their option.

Mr. Wright moved on to the Indian River Shores (IRS) litigation. He said the lawsuit remains in abatement by order of the court. The different entities have gone through the first two phases of the Conflict Resolution process. Now they are headed towards the mediation, which is to be held on December 17, 2014. He said there has been a lot of discussion between the attorneys as to whether or not the mediation should be held in the Sunshine. The majority view was that it would be held in the Sunshine. So the meeting will be open to the public and there will not be private breakout sessions with the mediator, who is Mr. Carlos Alvarez. Mr. Wright was happy for this mediation meeting to be completely in the Sunshine. He expressed that the City does not have anything to hide.

Mayor Winger asked who would be attending the mediation meeting from each of the three (3) entities.

Mr. Wright said from IRS it would be Attorney Bruce May, Town Manager, Robbie Stabe, and Mayor Brian Barefoot. From Indian River County it will be County Attorney Dylan Reingold, Attorney Floyd Self, County Administrator Joe Baird and an Elected Official (not named yet). From the City of Vero Beach the participants will be Attorney Schef Wright, City Attorney Wayne Coment, City Manager Jim O'Connor and an Elected Official, if they choose to participate.

Mayor Winger told Council that they need to make a decision on who the Elected Official from the City will be attending the mediation meeting.

Mrs. Turner thought that Mayor Winger should attend, however she said it is an open meeting and all members of the Council can attend.

It was the consensus of Council that Mayor Winger would be the Elected Official attending the mediation meeting.

Mr. Wayne Coment, City Attorney, commented that with an Elected Official attending the mediation meeting he will make sure that it is properly noticed. He personally felt by having the mediation open to the public it will hamper the mediation process and he did not know how well the mediator will be able to do his job with the meeting being open to the public.

Mr. Jim O'Connor, City Manager, recommended that the mediation meeting not be advertised as a Council meeting, but advertised as a public meeting. He hoped everyone understood in this part of the process what they say can and will be used in court if necessary as they move into litigation. He cautioned everyone to be careful making comments that are being recorded.

Mr. Wright continued talking about the lawsuit and said if they are able to achieve a mediator resolution on December 17th that would be great, however if the process goes to impasse then at some point something will happen and IRS will probably reinstitute the lawsuit. He said they (IRS) may file an amended complaint, or simply reactivate the complaint they have now.

Mr. O'Connor commented that the City will be putting out an RFP for a litigator next week and searching for someone that specializes in this type of litigation.

Mr. Wright noted that there will be a Legislative Delegation meeting on Friday and the City has submitted a request to talk about any issues related to the utility situation.

Mr. Wright referred to his memo dated December 1, 2014 (please see attached), that summarizes the current status of the ongoing OUC possible changes to the City's 2008 Power Purchase Agreement. Following discussion of OUC's previously suggested discussion points at both the City Council and the Utilities Commission meeting, he met with OUC again on November 19th to discuss those concerns and how they might be addressed in the revised Power Purchase Agreement (PPA) terms. The revised terms would include: 1) a shorter PPA term, through 2023 instead of through 2029; 2) no unilateral option for OUC or the City to terminate the PPA earlier than 2023; 3) no St. Lucie option; 4) an opportunity for the City to recall or reclaim its FGT gas transportation contracts if needed to fuel new gas-fired capacity built by the City by December 31, 2024, to serve the City's native load; and 5) capacity prices for the Base Capacity purchased by the City that are less than under the 2008 PPA, but greater than in the October 20 terms. The key differences between the October 20th discussion points, which were presented and discussed at the October 21st Council and Utilities Commission meetings, the November 25th discussion points, and the 2008 OUC-COV B PPA are summarized in his memo.

Mrs. Turner asked in the event that the City is unsuccessful in their litigation with IRS, how many mega watts would they be losing with IRS that would be involved with this take or pay.

Mr. Wright answered probably between 12 – 15 mega watts. He has discussed this with the attorney that represents OUC and there will be an adjustment clause in the contract allowing them to adjust whatever they need to in the event something would cause the amount that they purchase to be less. He said this would have no financial impact or be an additional cost to the City. He said that OUC understands the reality of their situation and they are willing to work with the City.

Mr. Wright continued going through his memo of December 1, 2014 and stated that there will be risks in whatever decision that Council makes. His recommendation would be that they analyze the different scenarios and make the best informed decision that they can make.

Mrs. Turner said the next step would be for the City to see how they can go about getting some of these analyses done.

Mr. O'Connor stated that staff will proceed under that direction and plan on making a presentation to Council in January or February.

Mr. Wright discussed the gas contracts and explained that if the City has the contracts they are paying for the capacity at the contract rate. That contract is good to deliver gas to the Power Plant and if there are not constraints in the contract the gas can be redirected to other delivery points. If they release the gas and sell it to someone else, the maximum price in which they can release it is at 82 or 71 cents.

Mr. O'Connor noted that this revised proposal was presented to the Utilities Commission at their meeting yesterday.

Mr. Ken Daige, 1846 21st Avenue, commented on an email that he sent to Indian River County on November 20th asking for some public records and received a response back from them saying that they did not have any public records associated with his request. He expressed that the All Aboard Florida (AAF) railroad issue is still moving forward and there are still a number of concerns from residents in this community. He has informed people that have called him with their concerns that the High Speed Rail Commission has sunsetted, but hoped that all of the information regarding the project could be left on the website. He has gone through the Draft Environmental Impact Study (DEIS) and noted that Vero Beach has been left out of the study. In moving forward there is still quite a bit of information coming down the pike and he would like to continue working on behalf of the City Council in going forward. There will be other meetings concerning the DEIS and he could attend those meetings on the City's behalf. He said that he was not looking to get paid to do this.

Mr. Kramer asked Mr. Daige if what he was saying is that he would be gathering information and bringing it back to the Council. Mr. Daige answered yes. Council had no problems with Mr. Daige doing this.

Mr. Daige requested permission to be able to still work with staff on this matter. Council agreed with allowing that to occur and that the information on this project would remain on the City's website.

Mr. Joseph Guffanti commented that Mr. Ken Daige is one of the few former Councilmembers that stayed involved with the City. He (Mr. Guffanti) said that he had some problems when the City Attorney said that he would have liked the mediation hearings to be held in private. He said that is exactly why they have these issues before them today, because a lot of things have taken place behind closed doors. He felt that this new deal with OUC is a front to the public and the public is not aware of it. If Council goes ahead with this and extends the contract with OUC or FMPA they are going to put the City of Vero Beach in jeopardy because if Indian River County and Indian River Shores prevail, the City of Vero Beach is going to be in tremendous financial trouble. He said by extending this contract it will go on forever and the public does not have any idea of what is going on. He told Council that they don't have the ability to analyze the proposal before them and they won't go to someone who does understand it to give them some guidance.

2. Mrs. Helene Casteltine, Indian River County Chamber of Commerce Economic Development Director, to give an update on the Countywide Economic Development Positioning Analysis

This item was moved up on the agenda and heard as item 2C-1).

Mrs. Helene Casteltine, Indian River County Chamber of Commerce Economic Development Director, gave an update on where they were on the positioning analysis. She said they have hired a consulting firm to take a look at where they are as far as business recruitment. There were 150 local random interviews done by the consultant and the 97 page report is available for review on either Indian River County's website or the Chamber of Commerce's website. She felt they were about two thirds of the way done in having the whole report completed. She said all the comments made can be found on the website, including what the stakeholders comments are. She invited the Council to the next Community Leaders Summit, which will be held on Thursday, January 8, 2015 at 8:30 a.m., at the Sebastian City Hall, Council Chambers. A draft of the final report will be presented to Council hopefully in March and then they will determine what changes need to be made in this community based on the recommendations in the report.

3. CONSENT AGENDA

- 1. Regular City Council Minutes – November 18, 2014**
- 2. Special Call City Council Minutes – October 20, 2014**

3. **Organizational Minutes – November 17, 2014**
4. **Water and Wastewater Laboratory Services – Annual Service Contract – Bid No. 270-11/JV**
5. **Renewal of Bid 290-11/PJW – Emergency Services Contract 1567-C**
6. **Renewal of Emergency Services Contract #1568-C with Turbine Diagnostics**

Mrs. Turner pulled item 3-3) off of the agenda and said that she had some questions on items 3-4), 3-5) and 3-6). On item 3-4) this is the item concerning the lab service. She knows that now they are doing all of their wastewater testing at an outside lab. She asked if they have consolidated to have the testing done at one place or are they still using two different labs. Mr. O'Connor explained that one lab is a backup in case it is needed. Mrs. Turner was satisfied with that answer. She moved on to items 3-5) and 3-6) and noted that both of these items have to do with similar services and in the future she would like to see some verification that these rates were at market or competitive. She said when renewing these contracts they need to show some effort that they have verified that they meet the comparative rates.

Mrs. Turner gave the Clerk some corrections to make to item 3-3) and asked once those corrections have been made that the minutes be put back on the agenda for approval.

Mrs. Turner made a motion to adopt items 3-1), 3-2), 3-4), 3-5), and 3-6). Mr. Kramer seconded the motion and it passed unanimously.

4. PUBLIC HEARINGS

A) ORDINANCES

B) RESOLUTIONS

1. **A Resolution of the City Council of the City of Vero Beach, Florida, Directing the City's Staff to Develop a Detailed Process to Hold a Referendum of the City's Named Retail Electric Customers Regarding the Establishment of a Utility Authority to Operate the Business of the City Electric Utility; Providing for an Effective Date. – Requested by Schef Wright, Attorney**

Mayor Winger read Resolution by title only.

Mr. Wright reported that this Resolution is providing for the conduct of a referendum election of all of the City's retail electric customers, with each named retail electric customer having one vote. The Resolution would direct staff to proceed to develop a detailed, specific proposal for the suggested referendum, which would then be adopted pursuant to an Ordinance that would be presented to the Council in early 2015. If Council approves that Ordinance, the referendum would be held concurrently with the

next regularly scheduled General Election following the effective date of the Ordinance. He would recommend adopting this Resolution and moving forward in establishing a Utility Authority to operate the business of the City's electric system. He then gave the background why this is necessary (memo on file in the Clerk's office).

Mrs. Turner stated that this was far more complicated than it needs to be. She said the issue with Indian River County and IRS is that they wanted a Representative Independent Utility Authority. She said this can be accomplished that by this overly complicated referendum or Council could just pass an Ordinance establishing an Independent Utility Authority. This is the gist of what Indian River County and Indian River Shores really want. She said the City's Utility Commission currently has no one sitting on it who lives in the County and has City utilities. She asked the Council if they were willing to go with a Representative Utility Authority and if they are then they need to move forward in drafting an Ordinance. This would be showing good faith that the City is moving forward.

Ms. Graves commented that if they pass an Ordinance then another Council down the road could come and undue it.

Mayor Winger recalled that there was discussion yesterday at the Utilities Commission about why Mr. Wright was proposing this and he said that it was because it is an element of the lawsuit.

Mr. Wright agreed that this Resolution is addressing the claims in the lawsuit. He said if IRS only wanted a Utility Authority then they could have left this item out of their complaint. He said if the County only cared about that then they could have left the referendum declaratory request out of their petition before PSC.

Mrs. Turner reiterated that they needed to get down to the real issue: the wants and desires of IRS and the County, which is to have an Independent Utility Authority.

Mr. Wright did not disagree with Mrs. Turner and said that the complaint from IRS and the County did not match what she is saying. The complaint made by IRS and the County says that they want the court to order the City to hold the referendum.

Mayor Winger commented that the City is not committing to a referendum, but they are committing to a promise to hold a referendum in good faith. This would come back to Council at a further date if there is a legal need for it.

Mr. Wright said that they may get lucky and IRS will see what they are doing and say they will amend the referendum requirement out of their complaint.

Mrs. Turner stated that by having this referendum the City is saying that they are opposing a Representative Utility Authority and the only way they will do this is if the court requires them to do it and they have the results of this referendum.

Mayor Winger did not think that was what they were saying. He said they are trying to satisfy two elements in the lawsuit by passing these two Resolutions. He did understand that they didn't have to pass both Resolutions at the same time.

Mrs. Turner suggested waiting on passing this Resolution until they know if the IRS lawsuit will be amended after the mediation takes place. They are expending funds right now that she does not believe is a solution.

Mayor Winger recalled when they held the meeting with all of the Elected Officials attending from the City, IRS, and the County, and the City said they would consider doing this. The City also said subject to Council approval, they did not have a problem having a Utility Authority. He said at the December 17th mediation meeting if IRS removes this clause from their lawsuit then they will not need to proceed with doing this.

Mr. Wright stated that staff would recommend that the Council passes the Resolution. He said they don't have to spend any money on the referendum process until they see what IRS is going to do.

Mrs. Turner made a motion to table the Resolution until they have more information. The motion died for lack of a second.

Mr. Mark Mucher commented that it seems to him that this is a big waste of time and money. He agrees with the comments made by Mrs. Turner. He said what IRS is really interested in having is FPL rates and to sell the utilities to FPL. He said why the City is spending all this money up to this point is beyond him. He suggested that someone second Mrs. Turner's motion to table this request.

Mr. Herb Whittall, Chairman of the Utilities Commission, noted that this item was discussed at the Utilities Commission meeting and the Utilities Commission agreed that the Resolution needs to be worked out. He said the referendum that the people are going to be voting on needs to be written well and published before the Election. He doesn't see any reason in delaying this. They need to start working on it now because they have until November to get it done.

Mr. Wright agreed with not spending any more money on the referendum until they see what IRS does over the next few weeks. He said in the Resolution it does direct staff to come back to Council by their first meeting in March 2015, and he would ask for some relief from that date.

Mr. Kramer understood that it was the IRS lawsuit that was the driver of this expenditure and this action.

Mr. Wright stated that it was more than that. He said their customers have said that they want a referendum and a Utility Authority.

Mr. Kramer noted that when Mr. Wright was first explaining this he mentioned something about the Charter. He said if they do any modifications of the Charter then it will just be for people who reside in the City of Vero Beach.

Mr. Wright said that was correct. He said there are different options in how a Utility Authority could be set up. He said they could do it just by Ordinance, by a Charter amendment, or it could be done by an Interlocal Agreement with the County and IRS.

Mr. Mucher took exception with Mr. Wright when he said that the customers want a referendum and a Utility Authority. He argued that the customers have never said that they want a referendum and they have not said they want a Utility Authority. He said as involved as he is on this issue, he does not know how having a Utility Authority would help the City and how it would reduce electric rates. He did not feel that it was something that they had to deal with today. He agreed with not spending any more money on this, and was also upset with all the money that they have already spent.

Mayor Winger closed the public hearing at 10:39 a.m., with no one else wishing to be heard.

Mr. Kramer understood that they were just passing the Resolution and not directing staff to do any work.

Mr. O'Connor explained that Council was authorizing staff to do the work that needs to be done if it is necessary. He understands from what he is hearing from Council is that they will stand down on the referendum issue. The City still in good faith needs to talk about a Utility Authority and look at options for the Council to consider. He said if the element of the referendum goes away then it will not need to be done. But the City has hired a litigator who will be fighting that element as long as it remains in the lawsuit, but staff will not do anything until the lawsuit begins.

Mr. Coment suggested amending the Resolution in Sections 2, 3, and 4, where it states "directs" staff and replace it with "authorizes" staff. Also, by adoption of this Resolution it is something that can be offered at mediation in resolving the dispute, which is one of the reasons for bringing it forward.

Ms. Graves recalled that this Council has said that they need to bring something to mediation and this will allow them to do that. The mediation is not a joke and it should not be treated as such. She made a motion to adopt the Resolution with the amended changes. Mr. Kramer seconded the motion.

Mrs. Turner asked as they move forward with this, will they have a budget established. She noted that so far they have expended over \$40,000 a month in legal expenses.

Mr. O'Connor explained that there is a line item in the utility budget for legal services.

Mrs. Turner felt if they move forward with these expenses that there needs to be an estimate presented to Council as well.

The Clerk polled the Council on the motion and it passed 4-1 with Mr. Old voting yes, Ms. Graves yes, Mrs. Turner no, Mr. Kramer yes, and Mayor Winger yes.

2. A Resolution of the City Council of the City of Vero Beach, Florida, Directing the City's Staff to Develop a Proposed Ordinance, in Collaboration with City Electric Customers, Including Indian River County and the Town of Indian River Shores, for the Establishment of a Utility Authority to Operate the Business of the City Electric Utility; Providing for an Effective Date. – Requested by Schef Wright, Attorney

Mayor Winger read the Resolution by title only. He opened and closed the public hearing at 10:44 a.m., with no one wishing to be heard.

Mrs. Turner asked if they are going to look at setting up a Utility Authority, is it going to be a true independent Utility Authority or are they still going to require that there be a certain transfer to the City government included in the operation of the Utility Authority.

Mayor Winger commented that there will be numerous policy decisions that will have to be worked out and felt that it would be good to have representation of all their utility customers.

Mrs. Turner asked the Mayor if he would be willing to have a Utility Authority that may add or decrease the amount of transfer that the City of Vero Beach receives from the electric utility.

Mayor Winger believed that there has to be in some form or another, a return to the owners of the utility an earning on the capital investment of approximately \$120 million dollars, but how that would be done he does not know. He does not believe that entities, regardless of who they are owned by, should be asked to operate either in the red or with no return on capital.

Mr. Kramer said if the Utility Authority wants to get rid of the transfer to the General Fund then they should buy it. They could become an Independent Utility Authority and buy the utilities and own it. He said the City of Vero Beach would get paid for the utilities, the Utility Authority would own it, and they can do whatever they like with the returns.

Mayor Winger felt this is the kind of dialogue they will have to go through in forming a Utility Authority.

Mrs. Turner asked Ms. Graves if she felt that the City deserves a guaranteed return.

Ms. Graves stated that they will need to look at how all this works out. She said if the utilities are still the City's asset and the City is running it then where would the return go. However, if the Utility Authority does purchase the utilities then it will no longer be theirs to get any returns. She said this matter is so complicated and there is a lot that will need to be worked out.

Mr. Old felt strongly that the City does deserve a return.

Mrs. Turner expressed that the electric utility is really owned by the ratepayers. The ratepayers are the ones who paid for the capital, made the investments, are paying the debt, etc. Mr. Old repeated that the City deserves a return.

Mr. Coment suggested making an amendment in Section 2 of the Resolution, where it says "directs" City staff and replace it with "authorizes" City staff (same as in the previous Resolution). He explained Mr. Wright would like to be able to present this Resolution at the mediation meeting.

Mr. Kramer made a motion to approve the Resolution as amended by the City Attorney. Ms. Graves seconded the motion and it passed 4-1 with Mr. Old voting yes, Ms. Graves yes, Mrs. Turner no, Mr. Kramer yes, and Mayor Winger yes.

At this time, Council took a short break and the meeting reconvened at 11:00 a.m.

**5. ORDINANCES AND RESOLUTIONS FOR FIRST READING BY TITLE
(FUTURE PUBLIC HEARING REQUIRED)**

- A) An Ordinance of the City of Vero Beach, Florida, Amending Section 2-301, Subsection 2-302(C), and Section 2-303 of the Code of the City of Vero Beach, Florida, relating to Code Enforcement Board Hearings; Hearing Notices; and Interpretation of Code Provisions; Providing for Conflict and Severability; Providing for Codification; Providing for an Effective Date. – Requested by City Attorney (future public hearing January 6, 2015)**

Mayor Winger read the Ordinance by title only.

Mr. Coment reported that this proposed Ordinance would adopt amendments to Section 2-301, Subsection 2-302(c), and Section 2-303 of the Code of Ordinances. The provisions deal with Code Enforcement Board hearings and notice procedures, as well as the Board's authority when the interpretation or application of a code provision is contested in a case. The proposed amendments provide clarification of certain procedures related to assessment of code enforcement costs incurred by the City, notice requirements regarding such process, and matters related to code enforcement hearing records. In addition, the proposed amendments provide clarification of the Code Enforcement Board's authority related to determination of contested cases. The amendments are intended to clarify that a violator desiring to contest the interpretation or application of any code provision alleged to be violated is required to appeal such

interpretation or application to the appropriate administrative authority of the City rather than to the Board. The Board would be bound by such administrative interpretation and apply such interpretation to the evidence presented at the hearing on the alleged violation. Such amendment addresses the potential conflict between the Board's authority in determining contested code enforcement cases and the authority of the City's other administrative officials and boards charged with determining the interpretation and application of code provisions.

Mayor Winger referred to page 11 of 13 (4), where it states that "The Board should be bound by the interpretations and decisions of any duly authorized administrative official or city board concerning the code provisions within their respective jurisdictions or authority, and the final interpretations and decisions of the city council, as the case may be." He is concerned with the duly authorized authority, which he believes is the Planning and Development Director.

Mr. Coment explained it is different authorities throughout the Code. He said matters having to do with drainage pertain to the City Engineer just as matters having to do with the Building Code will pertain to the Building Official, and then there are appeal processes for those determinations. He said appeals of the Planning and Development Director's decision would go to the Planning and Zoning Board, Building Official appeals would go to the Board of Building Appeals, etc. He said at the end of this Section, he will add a definition determining the authorization of the City authority, which will make it clear.

Mayor Winger and Mrs. Turner both felt that clarification was needed.

Mr. Coment agreed that was the problem that the Appellate Court struggled with. He said that if you don't read the Ordinance in total someone might not understand that they were not referring to the Code Enforcement Board.

Mayor Winger asked if there should be another WHEREAS added explaining what the function of the Planning and Development Director is. Mr. Coment did not think it was necessary.

Mr. Dan Lamson, Director of the Indian River Neighborhood Association, read a prepared statement and asked Council to pass the Ordinance and enforce it.

Mr. Ken Daige encouraged Council to pass the Ordinance. He said that his neighborhood needs the help that this Ordinance provides and as much "teeth" that can be put into it is very important.

Mayor Winger closed the public hearing at 11:06 a.m., with no one else wishing to be heard.

Mrs. Turner referred to page 6 of 13, (c) dealing with the hearing on non-compliance. She read where it stated that "the case may be presented to the board even if the violation

has been corrected and the costs have been paid prior to the board hearing, and the notice of hearing shall so state.” She said if this was put in for someone who wants to pay their fine and still appeal it.

Mr. Coment explained that the Code Enforcement Officers asked for this clarification. He said if a person doesn’t pay by the due date the City is entitled to the enforcement costs and the Code Enforcement Officers want to clarify that the case could still be taken to the Code Enforcement Board to impose enforcement costs.

Mr. Kramer was concerned about putting language in this Ordinance that could be interpreted as they are amending or changing the current Ordinance that is on the books.

Mr. Coment expressed this Ordinance was strictly dealing with code enforcement and not zoning. Mr. Kramer said his point is that he does not want to see language in the Ordinance that could be interpreted as the City changing the zoning Ordinance giving them the right to do this. Mr. Coment explained that the next Ordinance on the agenda that they will be discussing is the zoning Ordinance.

Mrs. Turner referred to page 8 of 13, (j) *Hearing record*. She read where it states that the violator should be responsible for insuring a verbatim record of the hearing is made, at the violator’s expense, by a Florida certified court reporter should the violator intend to appeal any adverse decision of the board.” She felt that was imposing a lot on someone.

Mr. Coment explained that is what is in State law. He said if someone wants a record in order to appeal then they are required to provide a certified court reporter. He explained that it doesn’t mean that someone could not still appeal their case. It would just be their responsibility to provide the record if they choose to do so.

Mayor Winger made a motion to pass the Ordinance with a specific change in it that it be made very clear who is the authority in each instance so the word “Board” cannot be ambiguously read and that the public hearing be held on January 6, 2015. Ms. Graves seconded the motion and it passed 5-0, with Mr. Old voting yes, Ms. Graves yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

B) An Ordinance of the City of Vero Beach, Florida, Amending Chapter 60, General Provisions, and Appendix, Definitions, of Part III, Land Development Regulations, in the Code of the City of Vero Beach, in Order to Provide Clarification and Updating of Certain Text and Definitions; Providing for Conflict and Severability; Providing for Codification; Providing for an Effective Date. – Requested by Planning and Development Director (future public hearing January 6, 2015)

Mayor Winger read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, reported that this Ordinance is to clarify and update the City’s Land Development Regulations to improve their

administration and enforcement. The Ordinance will be reviewed by the Planning and Zoning Board at their December 18, 2014 meeting. The Ordinance addresses one of the areas of recent dispute regarding intent, interpretation, and application of regulations related to guest house and transient quarters. The amended language is crafted to ensure harmony with interpretation and application and historically and consistently following by the City Planning and Code Enforcement staff. It is consistent with definitions and provisions provided in State laws regarding similar uses. The Ordinance does not establish new regulations and only codifies the City's historical administration of short term rentals. He said this is a balancing act so they are not changing regulations, but trying to follow what their official opinion was that he rendered a couple of years ago on this issue. Specifically the Ordinance provides definitions, such as *Transient (adjective)* Temporary; lasting for a limited time, *Transient (noun)* A guest in transient occupancy and *Transient occupancy*: Any occupancy for which it is the intention of the parties that the guests' occupancy will be temporary. Also the definition of *Guest hours and transient quarters* has been revised to include the word "and." He also looked at the definitions of single-family residential structures and duplexes in multi-family residential structures and they have been revised to clarify that it includes the use of the term and not just the structure. He said there have been some changes to some of the definitions in order to update the language and revise the administration of the zoning map and the amendments. He noted a mistake that he has been made aware of is on page 3, 60.06 (b) the last sentence should read "Notwithstanding the preceding sentence, nothing shall preclude the Planning Director from first *consulting* the Planning and Zoning Board prior to making such determination."

Mr. Kramer felt that his concerns have been echoed by several people and that is he wants to make sure that there is not language in the Ordinance that could be misinterpreted that they are rewriting the laws that are on the books now that gives them the grandfathering ability.

Mr. McGarry stated that he closely followed an opinion letter that he wrote a couple of years ago concerning this matter, which outlines how the Code has been interpreted and applied in the City.

Mayor Winger suggested using some other word than "amend" or "amendment" in the Ordinance.

Mr. McGarry explained that they are amending the Ordinance. Mayor Winger felt that they were clarifying the Ordinance.

Mr. Coment added that the amendments will be to the key section of the definition of guest house and transient quarters, which is what equates to vacation rentals that is in the Statute. He mentioned that the feedback he received when this case went to court was that they (the court) struggled with how they define this. He said a lot of language was taken right out of the Florida Statutes having to do with short term rentals. He said there may be some further tweaking before this Ordinance comes back to Council for their public hearing in January. Staff feels they are on pretty good ground right now and are

just adding some definitions. There are existing zoning districts that allow guest quarters and transient quarters. Staff is just trying to clarify and interpret the terms.

Mayor Winger referred to page 6 of 8, where they give the definition of *Transient (adj.)* as being temporary, lasting for a limited time and *Transient (noun)* a guest in transient occupancy. He asked why they don't refer to the Florida Code.

Mr. Coment explained they really did not need to include the transient adjective, but they wanted to make it easy for the courts if this is ever challenged again.

Mr. McGarry commented that he attended the court hearing when short term rentals was heard and he did not think the definition of transient was the problem.

Mayor Winger asked if their outside attorney would be looking at this Ordinance before it goes to the Planning and Zoning Board. Mr. McGarry answered yes.

Mayor Winger opened and closed the public hearing at 11:21 a.m., with no one wishing to be heard.

Mrs. Turner asked Mr. McGarry if he believed that with these revisions they will be able to enforce short term rentals.

Mr. McGarry answered yes and said that he believed they could enforce the Code before.

Mrs. Turner did not want to start enforcing this if it is going to open the City up for a lawsuit.

Mr. Coment stated that staff has given this Ordinance their best shot and if need be it would be giving the courts something they can sink their teeth into.

Mr. Kramer made a motion to move this Ordinance to a public hearing to be held on January 6, 2015. Mrs. Turner seconded the motion and it passed 5-0 with Mr. Old voting yes, Ms. Graves yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

Mayor Winger reported that Mr. Coment will be speaking at the Legislative Delegation hearing on Friday asking them to reconsider the short term rental Bill. Mr. Coment added that he concentrated on the letter that he sent the Legislative Delegation saying that the cities/counties want to continue regulating these types of uses and they believe that they don't belong in single-family residential neighborhoods.

6. CITY CLERK'S MATTERS

None

7. CITY MANAGER'S MATTERS

Mr. O'Connor reported that the Ad Hoc Parking Committee (various businesses involved) recently met and discussed the issues and concerns of the parking situation on Ocean Drive. They have suggested changing the required parking enforcement from two (2) hours to (3) hours and to start enforcing the parking requirement on Saturdays. He said that should begin in the next few weeks. He commented that there have been some new signs installed and he gave the location of where the signs are now located. He expressed that there has been a lot of input from local business and shop owners on the parking situation.

Mrs. Turner asked if they have come up with any solutions to the employee parking situation, especially on the weekends.

Mr. O'Connor commented that this has not been very successful. He said that Mulligans was having their employees park at Riverside Park, but he did not know if that was still happening. He knew that Waldos/Driftwood Inn were looking at purchasing a van to transfer their employees to and from Riverside Park. The owner of the parking garage across from Humiston Park has been contacted about using the garage for employee parking. They have been told by the parking garage owner that there is a possibility that they could use the top floor for parking, but there would need to be a parking attendant. Mr. O'Connor has made it clear that the City would not be able to pay for the parking attendant.

Mayor Winger asked for the status of the Post Office lease.

Mr. O'Connor explained that the Post Office is still interested in having a lease with the City for the building that they are currently in. He said that the Airport Director is looking at coming up with a lease similar to the ones that the City have with FAA. An appraisal for the property is needed, which the Post Office will pay for. The cost for the appraisal is going to be \$2,200 and once the City receives this money from the Post Office they will proceed with getting the appraisal done. He has made it clear the City is not interested in being a landlord and would expect a return of investment on the property.

Mrs. Turner noted that she was looking at their FMPA bills for October and under the Stanton II project they were billed \$269 dollars per mega watt hour. She asked Mr. O'Connor if he was aware of this.

Mr. O'Connor commented that under those bills the City has the right to review and check those numbers for accuracy. He said there have been mistakes made in the past, but typically corrections are done within a thirty-day time period. He will look into this and report back to the Council.

Mr. Kramer commented that the reason for the high cost could be because of maintenance being done on one of the generators. He said when they are performing maintenance work it means that we still have to pay the cost, but don't get any power, which means the cost per mega watt hour is very high.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

1) Consideration of workshops to introduce the Stormwater Utility to the public and the need to preserve, maintain, and expand this function to limit flooding and improve the quality of street run-off into the Lagoon. – Requested by Mayor Richard Winger

Mayor Winger expressed that he brought this item up today because he listened to what Mr. Kramer and Ms. Graves would like to see and that is workshops held for the public regarding the Stormwater Utility (matter discussed at the November 18, 2014 City Council meeting). He suggested having two public meetings, one on the mainland and one on the barrier island.

Mrs. Turner felt that it could be of value to hold these meetings, but felt it was a little premature. She understands there is a consultant preparing a study for the Stormwater Utility, although she does not know what the budget is for the consultant. She said before having these public meetings there are still a lot of questions that need to be answered. Such as what is Stormwater Utility going to look at, how much money needs to be raised, will employees be transferred, etc.

Mr. Monte Falls, Public Works Director, reported that since the last City Council meeting, he has been developing a schedule as to when they will have a consultant on board. He would like the consultant to be present when these public meetings are held. He said if the RFP for the consultant is issued the first of the year then they could probably have something to Council by their first meeting in April. This would give staff a chance to take the matter to the Utilities Commission for their input. He said that he would be bringing to Council what the fees for this service are going to look like.

Mr. Old commended the Mayor in putting this together. He said it was a good idea.

Ms. Graves concurred with having these meetings for the public. She said it would be beneficial in showing them the project and benefits of having a Stormwater Utility.

B. New Business

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Richard Winger's Matters

1. Correspondence

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

Mayor Winger read a Resolution passed by the Treasure Coast League of Cities concerning the Lagoon and a petition they are asking be signed. He will bring it before them at their next meeting.

Mayor Winger requested permission from the Council to send Mrs. Patricia Christensen, Executive Director of the Treasure Coast League of Cities, their correspondence on the short term rentals that they will be discussing before the Legislative Delegation on Friday.

B. Vice Mayor Jay Kramer's Matters

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

Mr. Kramer reminded Council that the annual Christmas Parade will be on Saturday, December 6th on Ocean Drive. He then wished everyone a Happy Holiday.

C. Councilmember Pilar Turner's Matters

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

Mrs. Turner reported that she attended the Treasure Coast Regional Planning Council meeting and they went through their comments on the All Aboard Florida Draft Environmental Impact Statement (DEIS). She will provide copies to Council and to Mr. Daige. She reminded everyone it was not too late to get their comments in concerning the DEIS. She said the deadline is tomorrow, December 3rd. She expressed how important it was to have as many people from the community expressing their concerns.

Mrs. Turner reminded the public that on Saturday the Osceola Park Heritage Marker will be dedicated and then on Saturday evening there will be the Christmas Parade.

D. Councilmember Amelia Graves' Matters

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

Ms. Graves was excited about the Osceola Park dedication and the walking tour that will be given by Mrs. Anna Brady on Saturday. She reported on the Royal Palm Pointe Holiday Event. It will be on Friday, December 5th starting at 5:30 p.m. and the Boat Parade will take place at 6:00 p.m.

Ms. Graves reported that she attended a reception hosting a new group called the "Pathfinders." They are a young group of high school students getting into leadership roles and working on community projects.

E. Councilmember Randolph Old's Matters

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

Mr. Old received a copy of the most recent legal expenses that have occurred over the last couple of months. He felt that the legal fees were low and reasonable.

Mrs. Turner wished everyone a Happy Holiday season.

11. ADJOURNMENT

Today's meeting adjourned at 11:45 a.m.

/tv