

CITY OF VERO BEACH, FLORIDA
JULY 21, 2015 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

The invocation was given by Reverend Dan Holloway, Unity Spiritual Church, 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 Randy Old, excused absence. **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

Mrs. Tammy Vock, City Clerk, requested that discussion of the STEP System at 800 Bahia Mar, be added on to the agenda as item 7-B) under City Manager's Matters.

Mrs. Turner asked that item 9B-1) Quasi-Judicial Hearings, be moved up on the agenda and heard before item 5-D).

Mr. Kramer made a motion to adopt the agenda as amended. Ms. Graves seconded the motion and it passed unanimously.

B. Proclamations

1. Proclamation celebrating the 80th Anniversary of the signing of the Social Security Act

Ms. Graves read and presented the Proclamation.

2. Treasure Coast Waterway Cleanup Week

Mr. Kramer read and presented the Proclamation.

3. Miss Tracy Ackroyd, President of the Florida Association of City Clerks, to present Tammy Vock, City Clerk, with the Robert N. Clark Award

Miss Tracy Ackroyd, President of the Florida Association of City Clerks, presented the City Clerk with the Robert N. Clark Award.

4. Chief Currey to introduce the Canine Dogs

Police Chief Dave Currey introduced two (2) new Vero Beach Police canine dogs.

C. Public Comment

1) Mr. Phil Reid/Vero Beach Dog Park, to discuss parking spaces at the Dog Park.

Mr. Phil Reid was at today's meeting to ask Council for an extension in providing their additional required parking spaces for the Dog Park. He said he met with staff and discussed where the appropriate place to put the additional parking spaces would be and it was determined that the cost would be much higher than what they anticipated. He said it will cost about \$50,000 to do the project, which at this time they do not have. He requested additional time from the Council in order to allow his organization to do some fundraising to come up with this money.

Mr. Jim O'Connor, City Manager, stated that the City has no problem granting the extension. He said the proposed parking will go on the East side of the property. He suggested setting a March 2016 deadline in order to have the project completed. Council concurred with granting the extension of time.

2) Mr. Steve Graul, Wounded Warriors, would like permission to sell alcohol at their event to be held at Riverside Park on September 26, 2015.

Mr. Steve Graul announced that this would be the first annual Wounded Warriors Bacon & Brew Fest. He said they will feature different bacon items and sampling of different beers. He requested permission for the Council to be able to serve alcohol at the event.

Mrs. Turner asked if the proceeds from this event will assist the local community.

Mr. Graul said that this was a local agency that helps local Veterans.

Mrs. Turner suggested when advertising for the event that the public knows that it is to help our local community.

It was the consensus of Council to grant approval for alcohol to be sold at the event.

3) County Commissioner Tim Zorc to speak on City of Vero Beach Electric Matters.

Mr. Tim Zorc, County Commissioner, was at today's meeting to talk about the Request for Proposal (RFP) that was out for the bulk supply that the City has. He read a portion of the Scope of Services included in the RFP. He said that each quarter he meets with a number of local businesses in the area and one of the businesses that he met with recently was Piper. During that meeting, the facility engineers were looking at a proposal to build

their own generator facility at Piper to power their own needs and no longer be on demand for the Vero Beach system. He questioned if a utility customer like Piper was to go away would the guaranteed 20 mega watts be too much if a potential customer like Piper was no longer using Vero Beach for their electricity. He said that Piper is considering this because they don't see a future closure in selling the Vero Beach Electric System and are not sure of what savings might occur regarding the RFP. He said the representatives from Piper have told him with the current rate structure they would get all their money back within two (2) years. He said unfortunately Piper is not the only business looking at doing this. There are a number of customers who have an annual utility bill of \$200,000 or more that are looking at purchasing their own generating equipment.

Mr. O'Connor commented that the 20 mega watt firm capacity would only give the City 70 mega watts firm capacity and the rest would be driven by demand. Also, the City has made provisions that if they should lose some of their load by decisions that the City does not make that any type of power contract would conform to those types of activities. He said even people who build their own generations will still at times rely on the utility company serving the area. The City is also looking at a solar field as a possibility of going in at the Airport.

Mrs. Turner commented that she was shocked to read the letter that Orlando Utility Corporation (OUC) was objecting to their RFP. She said Mr. Schef Wright, Outside Counsel, had given them all the impression that OUC was working with them and were their friends. She asked as a result of the letter do they anticipate that anyone will submit a response to the RFP.

Mr. O'Connor anticipated that someone would submit a response. He knows of one supplier who had indicated that they are backing out of submitting an agreement. He said everyone is your friend until you start talking about \$50 million dollars (referring to OUC).

Mr. Tony Young, President of the Veterans Council, invited everyone to attend the 52nd Anniversary of the Korean War Armistice at Veterans Memorial Island Sanctuary on Saturday, July 25, 2015 at 9:00 a.m.

Ms. Laura Moss, Utilities Commission member, commented that she was at a local restaurant recently and the owner of the restaurant told her that his utility bill for the month was \$4,000 and he was planning to transfer to gas. She said it was not only the bigger industries like Piper looking at doing this. She expressed that they needed to bring the utility matter to a close.

Mr. Herb Whittall commented that the residents of the City pay taxes to the County and get so many more services from the City then they do from the County. He understood the need to raise taxes in the City. He realizes when money is tight one of the first things to cut is maintenance. He said the problem with doing that is sooner or later it needs to be done and can be costly if it continues to be put off. He mentioned that last Thursday

there was a lot of rain and his street flooded. They were told by the City a couple of months ago that the drains were going to be cleaned on Park Avenue. He noticed that the drains on the south side of the street had been cleaned, but the drains on the north side of the street had not been cleaned. He understood the reason for that was because the money was not there to do it. He expressed that the drains are plugged and need to be cleaned. He said hopefully when they get the Stormwater Utility in place that the baffle boxes that are not working can be replaced. Mr. Whittall then asked if the City was working with the County in having their employees help enforce the fertilizer Ordinance. Mr. O'Connor told him that the agreement has been signed. He also said that the seawalls are to be fixed in Vero Isles as part of a capital item to be completed before October 1st and the drains are scheduled to be cleaned out before the end of this year.

Mr. Monte Falls, Public Works Director, added that the outfall project is scheduled to be done next year. He agreed with Mr. Whittall that the City did clean the drains on the one side of the street and said that he would check the status on when the drains on the other side of the street were scheduled to be cleaned. He mentioned that with all the development that has taken place in the Miracle Mile area it has caused some drainage problems. He said the baffle boxes are a Florida Department of Transportation (FDOT) maintenance responsibility and contracted out so they only get replaced on a complaint process.

Mayor Winger clarified for the public that next year's budget is a process. He said the process involves members of the City Council bringing back ideas, which includes how the City can become more efficient. He said discussion of the budget will go before the Finance Commission and they will work with the preliminary budget numbers with the idea of improving them to make the City more efficient and less reliant on taxes. The budget and the increase in taxes will not be adopted until the two (2) required public hearings are heard in September. He said during the budget hearings the City Council looked at a number of projects and approving various items, which included taking \$450,000 out of the general budget and putting it in the capital budget because of all the deferred maintenance. He thinks they will end up in a different spot than the millage cap that was set at their budget hearings. He said this is a process where all of their citizens should tell the Council what they want and what areas the City could become more efficient.

Mr. Whittall reiterated that the taxes in the City are very low and the residents receive so much more from the City than they do from the County.

Mrs. Turner clarified for the public that the Council started off with a budget that included a 38% increase. She said following three (3) days of budget hearings that is where they ended up. She said this budget does not include any stormwater or baffle box projects nor reducing the OPEB liability that the City faces.

Mr. Peter Gorry, Chairman of the Finance Commission, stated that there will be a Finance Commission meeting held on August 10, 2015 at 2:00 p.m. and he encouraged the public to attend. The Finance Commission will be looking at the fiscal assets there

are in the City, realizing that the Old Diesel Plant is an asset that is totally underutilized, as well as the Dodgertown golf course. If the deal with Florida Power and Light (FPL) is not concluded by January 1st then they will need to look at the old Post Office property on 17th Street. He said there are a number of these fiscal assets located in the City that will be reviewed. Another issue the Finance Commission has talked about is consolidating some facilities that the City has. He said as far as the OPEB liability goes it was the recommendation of the Finance Commission that a trust be established realizing that there is still a shortfall in the pension that needs to be addressed. He has reviewed the City's reserves. He said there is \$9.4 million dollars in the reserves for the General Fund. This equates to 46% of the annual four and a half months and what is recommended by Florida Government Finance Officers Association (FGFOA) is only two (2) months. Mrs. Turner reminded Mr. Gorry that in this area there is always the threat of hurricanes. Mr. Gorry agreed that 50% of the reserves would be for a disaster fund and then other 50% for other things. All he was saying was that this needed to be reviewed. He wondered in some of the City departments if they were offering a high enough salary to attract the talent that they need. He said the average age of City employees is 50 years and questioned when the present executive team are getting ready to retire who is being trained behind them to come in. He then asked who were the customers of the City of Vero Beach. He said they are the taxpayers, residents of Vero Beach, users of their water and sewer system, as well as electric customers, part time residents of the City, and all the tourists that come to Vero Beach.

Mr. Cliff McBird stated that he moved to Vero Beach from Port St. Lucie in June. He was attending today's meeting to speak on his high electric bill. He said there are a lot of people retired facing the same issues as he does. He is a writer and will offer his services to Vero News in representing them to produce a series of articles about the City's utilities. He would like Council's support in getting information out about the threat they have received from OUC. He commented that his last electric bill was \$325.00 and for a 1,000 square foot house that is too much.

Mr. Herb Whittall explained to Mr. McBird that the electric is only a portion of his bill. The bill also includes water and sewer. He said that his last utility bill was \$400.00, but that included water and sewer and only \$200.00 of that bill was for electricity.

Mr. McBird gave the address of where his property is located and said that the \$325.00 was only for electricity.

Mr. Peter Gorry mentioned that there are 28,000 resident customers in their electric system. He said of that 19,300 use 30% of power and 18% of the customers use 25% of power. He gave some averages for the number of kilowatt hours used and said that is a profile of how skewed the power is.

Mr. Mark Mucher commented that this recent discussion brings up a problem that they have been talking about for a while. He asked when they go with the new billing system that is going to cost \$700,000 to implement, could they put a line item in the utility bill

for electric, water, sewer, and garbage so residents know what they are being charged for each of these services.

3. CONSENT AGENDA

- 1. Regular City Council Minutes – June 16, 2015**
- 2. Special Call Minutes – June 17, 2015**
- 3. Special Call Minutes – July 2, 2015**
- 4. COVB Bid #0081-14-Emergency Response Services Contract**
- 5. License Agreement #2015-LA-0246 – Scott & Dawn Johnson – Dock & Boatlift Constructed on City-Owned Submerged Lands – 1945 Robalo Drive**
- 6. License for Use of Real Property – City of Vero Beach Marina Bus Shelter (Indian River County)**
- 7. Fiber Optic Consortium Interlocal Agreement – Appendix “A”**
- 8. License Agreement #2015-LA-0248 – One Royal Palm Pointe, LLC – Dock & Boardwalk Construction on City-Owned Submerged Lands – 1 Royal Palm Pointe**
- 9. License Agreement between the City of Vero Beach and Vero Beach Airshow, Inc., for Temporary Use of Airport Property for the 2016 Air Show (June 25-26, 2016)**
- 10. Replacement Generator for City Hall – Bid No. 100-15/JO**
- 11. Request for Mayor’s Letter of Support for Airline Service**
- 12. Contraband Forfeiture Fund Donations**
- 13. Renewal of Emergency Power Plant Boiler & Furnace Repair & Mechanical Maintenance Contract 1564-C**
- 14. Recommendation of Award – Carbon Dioxide Annual Supply Contract – Bid No. 150-15/CSS**
- 15. Recommendation of Award – Spent Lime Removal and Disposal Annual Service Contract – Bid No. 130-15/CSS**

Mr. Kramer removed item 3-7) from the consent agenda.

Mayor Winger removed item 3-11) from the consent agenda.

Mrs. Turner made a motion to adopt the remaining items on the consent agenda. Mr. Kramer seconded the motion and it passed unanimously.

Mr. Kramer explained that he pulled item 3-7) off of the consent agenda because he had some concerns where it talked about change of ownership, but had no description of what the change of ownership was.

Mr. Wayne Coment, City Attorney, explained that meant the City would buy a section of fiber from the School Board at the established value.

Mr. Kramer made a motion to approve the fiber optic consortium interlocal agreement – appendix “A”. Mrs. Turner seconded the motion and it passed unanimously.

Mayor Winger pulled item 3-11) off of the consent agenda, which is the request for Mayor’s letter of support for an airline service. He has been told by a citizen that a word needs to be changed in the second paragraph of the letter. He would be glad to sign the letter on behalf of the City Council.

Mr. Kramer made a motion to approve the request for the Mayor’s letter of support for airline service. Mrs. Turner seconded the motion and it passed unanimously.

Mr. O’Connor mentioned that he also signed a similar letter.

4. PUBLIC HEARINGS

A) ORDINANCES

(Legislative)

- 1) An Ordinance of the City of Vero Beach, Florida, relating to Code Enforcement; amending certain sections and subsections in Article VII, Code Enforcement, of Chapter 2, Administration, of the Code of the City of Vero Beach to clarify and make more efficient the City’s Code Enforcement Process; Providing for Conflict and Severability; Providing for Transition and Codification; Providing for an Effective Date. – Requested by the City Attorney**

Mayor Winger read the Ordinance by title only.

Mr. Coment reported that in addition to the amendments proposed at the first reading when this Ordinance was first heard, the Ordinance has been updated with certain other amendments for consistency and clarification and certain portions of the documents formatting have been updated.

Mayor Winger opened and closed the public hearing at 10:42 a.m., with no one wishing to be heard.

Mrs. Turner asked with the increased litigation being filed, are they on firm legal standings with their Ordinance this time.

Mr. Coment explained that this Ordinance is just for procedures and has no effect on short-term rentals.

Mayor Winger referred to page 15 and noted that Superiority of liens has been stricken. He asked Mr. Coment to tell them why.

Mr. Coment explained that the Supreme Court of the State of Florida rendered an opinion striking such a provision in the City of Palm Bay Code as being in conflict with State

law, which governs seniority of encumbrances. Other case law holds that municipal liens, such as code enforcement liens are purely governmental in nature and cannot be assigned or sold to others for collection. The assignment process has not been used in the past by the City.

Mr. Kramer made a motion to approve the Ordinance. Mayor Winger seconded the motion and it passed 3-1 with Ms. Graves voting yes, Mrs. Turner no, Mr. Kramer yes, and Mayor Winger yes.

(Legislative)

- 2) **An Ordinance of the City of Vero Beach, Florida, abandoning that portion of Catalina Street bounded on the West by a line established between a point on the North right-of-way line of Catalina Street lying 22.2 feet East of the Southwest corner of Lot 22, Block 34 and a point on the South right-of-way line of Catalina Street lying 30 feet East of the Northwest corner of Lot 51, Block 22, Royal Park, Plat No. 7 as recorded in Plat Book 1, Page 36, of the Public Records of Indian River County, Florida; and bounded on the East by the West line of the partial replat of Plat No. 7 of Royal Park as recorded in Plat Book 14, Page 72, of the Public Records of Indian River County, Florida; retaining a Utility Easement; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Public Work’s Director**

Mayor Winger read the Ordinance by title only.

Mr. O’Connor reported that the City received an application for abandonment of the eastern end of Catalina Street. He said this portion of the right-of-way is currently unopened and not used as a public street. The vacant lots adjacent to this right-of-way have been re-subdivided and this abandonment of right-of-way request is the final step prior to the sale and development of these lots.

Mayor Winger opened and closed the public hearing at 10:46 a.m., with no one wishing to be heard.

Mrs. Turner made a motion to approve the Ordinance. Mr. Kramer seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

B) RESOLUTIONS

(Legislative)

- 1) **A Resolution of the City of Vero Beach, Florida, repealing and replacing Resolution 2010-11, and amending The Veterans Memorial Island Sanctuary authorized uses and Memorials to consolidate, clarify, and update the uses and rules under which the Veterans Memorial Island Sanctuary is governed and maintained; Providing for Conflict and Severability; Providing for an**

Effective Date. – Requested by the Veterans Memorial Island Sanctuary Committee

Mayor Winger read the Resolution by title only.

Mr. O'Connor reported that there have been some administrative changes made to the Resolution concerning the uses allowed on Memorial Island.

Mayor Winger opened and closed the public hearing at 10:47 a.m., with no one wishing to be heard.

Mr. Tony Young, Chairman of the Veterans Memorial Island Sanctuary Committee, reported to Council that several months ago the Committee started reviewing the rules and procedures taking place on the Island and felt some changes were needed to their Resolution. He thanked all of the staff members who worked with the Committee in achieving this. He briefly went over some of the changes that were made. He said these changes were brought before the Indian River County Veterans Council who unanimously approved them.

Mrs. Turner thanked Mr. Young and the Commission for helping to preserve Memorial Island.

Mr. Kramer also thanked them. He said by initiating some of these new requirements and making some amendments to the Resolution it has avoided issues that could have occurred down the road.

Mayor Winger closed the public hearing at 10:51 a.m., with no one else wishing to be heard.

Mrs. Turner made a motion to approve the Resolution. Mr. Kramer seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

(Legislative)

- 2) **A Resolution of the City of Vero Beach, changing the name of the Municipal Airport from “Vero Beach Municipal Airport” to “Vero Beach Regional Airport;” Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Airport Director**

Mayor Winger read the Resolution by title only.

Mr. Eric Menger, Airport Director, stated that during public meetings in preparation of their latest Airport Master Plan update, a name change was discussed, with the purpose being to broaden the scope and branding potential of their public Airport. He said the Airport Commission recently considered changing the name of the Airport to Vero Beach Regional Airport, which seems to fit the nature and purpose of the existing public

Airport. He said a potential airline service that is not familiar with the Vero Beach Airport will recognize the term “Regional” as an Airport that serves a larger market than the population of the City of Vero Beach. The next step, if Council approves this request, is to take it to the FAA for their approval.

Mrs. Barbara Drndak, Chairman of the Airport Commission, pointed out that St. Lucie County has changed the name of their Airport to include “International” because they have a customs service. The advantage that the City of Vero Beach has over St. Lucie is that they are a self-supporting Airport. She appreciated Council’s support in changing the name.

Mayor Winger opened and closed the public hearing at 10:58 a.m., with no one wishing to be heard.

Mr. Kramer made a motion to approve the Resolution. Ms. Graves seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

At this time, Council took a short break and the meeting reconvened at 11:10 a.m.

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

(Legislative)

- A) An Ordinance of the City of Vero Beach, Florida, relating to Restaurants dealing with or in Alcoholic Beverages and located within 500 feet of a School facility; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning and Development Director**

Mayor Winger read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, reported that this Ordinance would amend Section 60.16(b)(2) to eliminate the restrictions on the sale and consumption of alcoholic beverages in restaurants located within 500 feet of a school. He said the Planning and Zoning Board recommended approval of the Ordinance.

Mayor Winger questioned why this is needed. He asked if there was a specific property owner asking for this and could they deal with just that one piece of property. He felt it was important to protect their children. He understands without the amendment a barrier to the successful development of the “Cultural Arts Village” could occur, and he was totally in favor of the “Cultural Arts Village.”

Mrs. Turner noted that there is a 7-11 located near the school that sells alcohol.

Mr. O’Connor brought up BURPS, which was a restaurant located in the area whose business was hurt because they were not allowed to sell beer at lunchtime. He said the

Sailfish Brewery wants to have their new business in this area, but they need to be able to sell beer all day long.

Mr. McGarry added that the whole southern part of this district is affected by this restriction. He said the County has similar regulations. He made it clear they were not talking about bars. The restaurants would derive at least 51 percent of their total gross revenue from the sale of food.

Mayor Winger opened the public hearing at 11:18 a.m.

Mr. Mark Mucher commented that the Mayor's objection was based on his youth and things were different then.

The public hearing closed at 11:19 a.m.

Mrs. Turner made a motion to set the public hearing for this Ordinance on August 18, 2015. Mr. Kramer seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

(Legislative)

- B) A Resolution of the City Council of Vero Beach, Florida, Approving the Transmittal to the State of Florida Department of Economic Opportunity of a proposed Ordinance amending the Future Land Use Map of the Vero Beach Comprehensive Plan; Providing for Conflict and Severability; Providing for an Effective Date.**
- C) An Ordinance of the City of Vero Beach, Florida, Requested by Promised Land Anglican Church to amend the Comprehensive Plan Future Land Use Map by changing the Future Land Use designation from Government/Institutional/Public Use to Residential Low, for the property located at 665 20th Street, containing 15 acres more or less; Providing for an Effective Date. – Requested by the Planning and Development Director**

Mayor Winger read both titles for the Resolution and the Ordinance and they were discussed together.

Mr. McGarry reported that Promised Land Anglican Church, Inc. is requesting a change in the Future Land Use Map designation of its property located at 665 20th Street. The property consists of 15 acres and the current zoning does not allow churches.

Mayor Winger commented on what a beautiful piece of property this was. He asked what the intended use for the property is. Mr. McGarry said that it is for a church.

Mayor Winger opened and closed the public hearing at 11:24 a.m., with no one wishing to be heard.

Mr. Kramer made a motion to set the public hearing for the Resolution to be heard on August 15, 2015. Ms. Graves seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

Mr. Kramer made a motion to set the public hearing for the Ordinance to be heard on August 15, 2015. Mrs. Turner seconded the motion and it passed 4-0 with Ms. Graves voting yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

9B-1) Quasi-Judicial Hearings

Mrs. Turner stated that following their quasi-judicial hearing of June 2, 2015 and June 16, 2015, it became apparent that Council needed to review procedures regarding these types of hearings. Applicants are entitled to a public hearing under the Code. Procedures to establish a hearing date must be clear. Requirement for only competent substantial evidence to be considered when adjudicating these matters must be understood by Council to avoid lawsuits. She reiterated according to their Code, applicants are entitled to have a public hearing. Looking at their Land Development Code Regulations Section 65.22 (2) it reads: *If the application is for a text or map amendment to the comprehensive plan or a text amendment to the land development regulations sponsored by a person other than the city, the city council shall, without public input or council discussion of the facts or merits of the application, approve the application to be scheduled of either a transmittal or adoption public hearing(s).* She recalled on June 2, 2015, when they did not set a hearing date it was in violation of their Code. There is also a requirement for only competent substantial evidence to be considered when adjudicating these matters. She stated this must be understood by Council in order to avoid lawsuits. When they reviewed the materials prepared by the City Attorney's office for quasi-judicial hearings it states that officials must go into the hearing with an open mind and base their decisions on competent substantial evidence. If there is any ex parte communications, the public official should declare the ex parte communication on the record at the hearing to give the other side a chance to respond. This disclosure does not remove the presumption of prejudice arising from ex parte communications, but alleviates the appearance of impropriety.

Mrs. Turner discussed competent substantial evidence as outlined in the quasi-judicial review procedures provided to them by the City Attorney. It reads: *Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact as issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. The evidence relied on to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "substantial" evidence should also be "competent."* Mrs. Turner went on to discuss what is considered competent substantial evidence at quasi-judicial land use hearings. She said it could be testimony from professional planning staff or professional expert comments. As far as non-professional public comment it reads: *Lay testimony may or may not be considered competent substantial evidence.*

Mere statements of public support or opposition, by themselves, clearly would not constitute such evidence.

Mrs. Turner discussed due process and how it relates to the decisions that they make. The procedures state that *due process of law means the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal or other body with the power to decide the case.* Mrs. Turner continued by going over what actions by the City Council could cause the decision to be overturned. She was disappointed that the City Attorney during these instances on June 2nd and June 16th did not provide adequate counsel to the City Council to avoid these situations. She called on the Council to remedy the procedure by which hearings are set so it will adequately follow their Code.

Mayor Winger did not understand Mrs. Turner's objection.

Mr. Kramer recalled the way the County handles this is by notice and they don't put it to a vote.

Mr. Coment explained that with Ordinances and Resolutions on the agenda for first reading they are not required to open them up as a public hearing. He said they are on the agenda to be scheduled for a public hearing.

Mayor Winger read in the quasi-judicial review procedures where it states that fact based testimony from lay persons, which does not require such technical or scientific expertise to establish could constitute competent substantial evidence, although the case law decisions are not consistent on this issue. His point is he has difficulty not allowing public comment.

Mr. Coment explained that would be another issue as to what is competent substantial evidence at the public hearing. He said what they are talking about now is first readings that don't require that a hearing be held at that time. With quasi-judicial hearings, Council does not consider things at the first reading. The way the County handles this is that they follow the Statute that says the title is read and a hearing date is set. He said there is no discussion on the Ordinance. He explained that this is how they handle all of their Ordinances and Resolutions that require a public hearing. Council could also do it this way for all of their Ordinances or just for the quasi-judicial Ordinances. The Clerk or Attorney could read the title and announce the public hearing date or they could proceed on how they handle this now with the understanding if it is quasi-judicial there is no debate and the Ordinance has to be moved forward to a public hearing.

Ms. Graves noted that one of the issues they ran into at the last quasi-judicial hearing is that the public did not know when they were allowed to speak. She agreed that maybe it would help the Council and the public as well if they develop a system where they just have notices to set the public hearing under quasi-judicial hearings and no discussion takes place.

Mr. Coment recalled that it has only been over the last couple of years where they have opened up Ordinances and Resolutions listed under first reading for public comment, which is not required or necessary.

Mayor Winger agreed with Ms. Graves' comments and said that is how they should be handling their meetings.

Ms. Graves said that they could use the words "setting a future public hearing" so that the public understands the action that is being taken and at what meeting they will have an opportunity to speak at.

Mrs. Turner agreed by doing this it will help clarify things. She still felt it was appalling that this Council would refuse an applicant his right to a public hearing.

Mr. Kramer expressed that if a vote is taken you always have the freedom to vote no.

Mr. Coment added that when setting a public hearing for the Ordinance to be heard the Council can always speak up and say no to a certain date if it doesn't work for them and set the public hearing for another meeting date. He said the main thing that must be done per Statute is the title must be read.

Mr. Mark Mucher commented that he sat on the Planning and Zoning Board for 19 years and they heard a lot of quasi-judicial hearings. His experience was always to come to these hearings with an open mind. He said at a quasi-judicial hearing, you are only dealing with what is presented at the hearing and only by qualified people giving competent substantial evidence.

Mrs. Turner commented that Council needs to be very cautious of what the definition of competent substantial evidence is and asked their City Attorney to also be more diligent in advising Council on these matters.

(Quasi-Judicial Hearing)

- D) An Ordinance of the City of Vero Beach, Florida, amending the Comprehensive Plan Future Land Use Map by Changing the Future Land Use Designation of Annexed Land from Indian River County designation C/I, Commercial/Industrial to City of Vero Beach designation C, Commercial, for the properties located at 1660 & 1690 US Highway 1, in Dr. Richard E. Bullington's Subdivision, containing 1.32 acres more or less; Providing for an Effective Date.**
- E) An Ordinance of the City of Vero Beach, Florida, amending the Official Zoning Map by changing the Zoning District Designation of annexed land from Indian River County designation CG, General Commercial to City of Vero Beach Designation C-1, Highway Oriented Commercial, for the properties located at 1660 & 1690 US Highway 1, in Dr. Richard E.**

Bullington's Subdivision, containing 1.32 acres more or less; Providing for an Effective Date. – Requested by the Planning and Development Director

Mayor Winger read the titles of both of the Ordinances. The public hearings for both Ordinances will be heard on August 18, 2015.

(Legislative)

- F) An Ordinance of the City Council of the City of Vero Beach, Florida, Dedicating City-Owned Parcel "Tract A," Poinsettia Park Subdivision, as public road right-of-way; Providing for an Effective Date. – Requested by the City Attorney**

Mayor Winger read the Ordinance by title only.

Mr. Coment explained that this Ordinance is a companion with the documents they will discuss concerning the Dodgertown golf course (item 7-A).

Mr. Falls explained that by passing this Ordinance it would dedicate a City owned parcel as public right-of-way.

Mayor Winger opened and closed the public hearing at 11:43 a.m., with no one wishing to be heard.

The public hearing on this Ordinance will be heard on August 18, 2015.

6. CITY CLERK'S MATTERS

- A) Appointment to the Historic Preservation Commission**

Mrs. Vock reported that there is a full member position open on the Historic Preservation Commission and they have received an application from Mr. George Childers who would like to serve on the Commission.

Mr. Kramer made a motion to appoint Mr. George Childers to the Historic Preservation Commission. Ms. Graves seconded the motion and it passed unanimously.

Mrs. Vock brought up that there has been a request from a citizen to announce at every Council meeting if there have been any changes in Board/Commission appointments. This would include individual Councilmembers making their appointments/replacements to the Finance Commission, Planning and Zoning Board, and the Utilities Commission. There was also a request that the names of their Board/Commission members be displayed on the website. Council had no problems with moving forward and implementing these requests.

7. CITY MANAGER'S MATTERS

A) Interlocal Agreement – Indian River County – City-Owned Dodgertown Restriction Release

Mr. O'Connor reported that the County Commission has approved the restriction release for the Dodgertown golf course. He recommended that the City Council also approve the agreements.

Mr. O'Connor added that there would be no private businesses benefiting from doing this.

Mayor Winger opened and closed the public hearing at 11:49 a.m., with no one wishing to be heard.

Mr. O'Connor explained that the restrictions placed on the property to limit development of the property included: 1) municipal owned public golf course, 2) green space, 3) park like setting, or 4) any combination of the foregoing uses.

Mayor Winger made a motion to approve the Dodgertown restriction release. Mr. Kramer seconded the motion and it passed unanimously.

**7-B) Add on Item –
STEP System at 800 Bahia Mar, Bethel Creek Area**

Mr. O'Connor added this item on the agenda and explained it is a multi-family dwelling where there have been septic tank issues. The property owner would like to be able to finance the improvements over a 10-year period, but the necessary lien Resolution is not in affect yet. He said that staff would like to proceed and install the STEP system, especially since there could be some health issues involved.

Mr. Coment stated that there were no legal issues in moving forward and having the work done at this time.

There were no objections from Council in moving forward with this project.

Ms. Graves brought up the letter that they received from the County asking for the City to support the one-cent sales tax (letter on file in the Clerk's office).

Mr. O'Connor suggested that Council pass a Resolution or send a letter supporting this.

Mrs. Turner stated that she was opposed to the concept. She said that this is an additional \$1.2 million dollars in sales tax that is paid by the residents of Vero Beach.

Mr. Kramer had no problem with supporting this request because some of the tax money comes from people visiting their community or using some of their facilities.

Ms. Graves requested that a letter be done.

Mrs. Turner expressed her disappointment in the first phase of the Optimization Study. She found nothing in the Study that would help lower the electric rates for their customers. She asked when Phase II is expected to be completed.

Mr. O'Connor explained that staff expedited Phase 1 because there was so much discussion about getting rid of the Power Plant and they needed to see an overview of what it would look like if that was done. He recalled the experiences that Ft. Pierce had with their Plant and what challenges they still have.

Mrs. Turner was under the impression that the Study was being done to help find ways to lower their rates.

Mr. O'Connor said that they needed someone to look at efficiencies.

8. CITY ATTORNEY'S MATTERS

A) Request for Closed Attorney-Client Session Relating to B-B Redevelopment vs. COVB (Circuit Court Case No. 312013CA001482)

Mr. Coment requested that a closed attorney-client session relating to B-B Redevelopment versus the City of Vero Beach be held.

Council set the closed attorney-client session for August 18, 2015 at 8:30 a.m.

9. CITY COUNCIL MATTERS

A. Old Business

None

B. New Business

1. Quasi-Judicial Hearings – Requested by Councilmember Pilar Turner

This item was discussed earlier in the meeting.

2. Call for Stormwater Utility Referendum – Requested by Councilmember Pilar Turner

Mrs. Turner commented that Council is preparing the FY15/16 budget based on a Stormwater Utility being established. This budget review began with a 30% tax increase excluding stormwater related projects. A Stormwater Utility will be another layer of government generating tax revenues in a less transparent manner than property taxes. It will raise taxes for all residents, businesses, and non-profits alike. Although promoted as "saving the Lagoon," more than half the projects are repair/replacement of existing

infrastructure. Vero Beach is less than 1% of the Indian River Lagoon Watershed. The City has exceeded the DEP requirements for reducing nitrogen and phosphorous pollutants into the Lagoon. She said if they are going to create another taxing entity that the citizens deserve a voice in establishing this revenue source. She spoke with the Supervisor of Elections and in the event they move forward with a referendum they could have the Ordinance prepared for their August 18th meeting and the public hearing heard on September 1st and it still would be able to make the ballot for the November election.

Ms. Graves liked the idea of having a referendum to legitimize the process. However, she wanted to make sure that the public knew what they were voting on. The public needs to know what the rate of the stormwater utility will be.

Mrs. Turner felt that the rate of the stormwater utility was irrelevant because once established the rate will change. She said the amount of the fee is really not the question.

Ms. Graves reiterated that they need to first have all the details before having a referendum. She recalled some other referendum items that have been put on the ballot that have not ended well because the needed information was not included.

Mrs. Turner commented that the proposed budget excludes all stormwater projects.

Mrs. Graves explained that they were still looking at the budget as a process and it has not been finalized yet.

Mayor Winger asked Mrs. Turner if she was suggesting raising the tax increase rate that they discussed at budget hearings so they can include some of these stormwater projects.

Mrs. Turner stated that she has never suggested raising the tax rate. She said Council spent three (3) days in budget hearings where they started with a 30% increase and there was not one project that this Council did not like. There are no stormwater projects and there is no OPEB funding included in this budget. She said if they are going to go forward with this budget to the public in September then they will either need to modify it to put the stormwater projects back in it or if they are basing the budget on a stormwater utility then the public needs to have their voice heard.

Mayor Winger commented that the Council was asked to come up with ways to improve the budget. He hoped they would find ways to make the budget more efficient. He said the Council is elected to make decisions and he is not generally in favor of government by referendum. He did not think having a referendum item put on the ballot without all of the details included was a good idea.

Mr. Kramer found it amazing that people were attacking activity based fees or activity based taxing. He said if you use a service then you have to pay for the service. In looking at this there are ways in determining if something is a tax or a fee. One way is displacement and does the stormwater utility displace general taxes, which he believes that it does. He felt by having a stormwater utility it is completely transparent and he

explained the billing mechanism. He said the people that use the service the most will pay the most. He said if someone does not use the service then they would not have to pay for it, which makes it optional. He feels the whole process is fair and transparent and he is in favor of having a stormwater utility.

Mrs. Turner told Mr. Kramer that he might be in favor of the stormwater utility, but the question is should there be a referendum to let the citizens decide whether they want it or not.

Mr. Kramer explained the citizens would be able to decide every month whether they want to pay or not.

Mr. Mark Mucher stated that he was confused about the comments just made by Mr. Kramer when he says this is optional. He did not think any of these things have been established.

Mr. Kramer agreed that the Ordinance has not been established. They are arguing about something that has not been written yet.

Ms. Graves explained the only action that this Council has taken in regards to the stormwater utility is to have a study done.

Mr. Mucher commented that this year there were some stormwater projects in the budget, which he heard people say they were not doing enough on this issue and now this year there are no stormwater projects in the budget.

Mayor Winger was not willing to put an additional \$400,000 to \$500,000 load on the taxpayers.

Ms. Graves asked Mrs. Turner if she would bring this back once they have all the details. She did not want to see the idea of having a referendum go away. She felt once they had the study completed then they will have an idea of what the impacts will be.

Mrs. Turner asked Ms. Graves in the event that they don't have a stormwater utility was she comfortable with the budget the way it is proposed.

Ms. Graves answered no. She said that the budget still needs some work.

Mr. Kramer stated when looking at the budget that every Councilmember has contributed to the tax increase.

Mr. Peter Gorry commented that tax increases only apply to those who have property. He said 40% of the area of the City is not taxable. He agreed that until you know all of the details on the stormwater utility it is very difficult to have an opinion.

Mrs. Turner referred to Mr. Gorry's comment of 40% of the area not being taxed. She said 20% includes the Airport and government buildings.

Mr. Gorry was not arguing the point. He was just saying it is more activity based then tax based.

Mrs. Turner commented that with a stormwater utility is another tax that will be showing up on their utility bills at a time when their residential rates are 30% above FPL's and their industrial and commercial rates are 40% above FPL rates. The City has been unsuccessful in lowering those rates for their customers and now they want to impose another tax.

Mayor Winger said whatever it is whether it be a user fee or a tax it is inaccurate to say that it is going to show up in someone's bill. He said there are many ways that the funds could be raised.

3. FMPA Taylor Swap Liability – Requested by Councilmember Pilar Turner

Mrs. Turner stated that FMPA has estimated a share of the Taylor Swap liability assigned to Vero Beach to be around \$3-\$4 million. FMPA has recently liquidated their position in these swaps. Based on research performed by the law firm of Edwards Wildman, she does not believe Vero has any obligation for these losses. FMPA has made it clear in their letter to FPUA that it treats swaps and swap termination costs as part of the "debt portion" of withdrawal costs. This is significant because the ARP withdrawal liability of debt service is determined by load ratio share. The City of Vero Beach's load was zero on the date of their Withdrawal Notice and remains zero. The Public Service Commission (PSC) findings by FMPA for the proposed Taylor Plant did not include Vero Beach. She said that Council should direct their legal staff to contest any charges. Their job is to protect their electric ratepayers from any unjust increased costs.

Mr. Kramer asked if the City has been billed. Mr. O'Connor answered no. Mr. Kramer said that if they do get billed then he would not be opposed to discussing it and fighting it.

Ms. Graves asked if Mr. Schef Wright, Attorney, was aware of these issues. Mr. O'Connor knew that Mr. Wright has talked to Mr. Fred Bryant, FMPA Attorney, about them.

Mrs. Turner requested that Council be updated on these issues.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

- A. Mayor Richard Winger's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

Mayor Winger reported on the Florida League of Cities Environmental Committee meeting that he recently attended.

B. Vice Mayor Jay Kramer's Matters

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

None

C. Councilmember Pilar Turner's Matters

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

Mrs. Turner attended the Treasure Coast Regional Planning Council meeting and one of the items discussed was impediments of the implementation of the Indian River Lagoon Basin Management Action Plans. She said throughout the conversation it became clear that what their Legislatures really need is technical information. She brought up All Aboard Florida and said our City should soon be receiving complete crossing design drawings. Treasure Coast Regional Planning Council is supporting municipalities require All Aboard Florida to pay for safety improvements.

Mrs. Turner announced that Flight Safety has signed an agreement to purchase new aircraft from Piper to improve their training. She also asked everyone to mark on their calendars that July 31 – August 2 the Vero Beach Pirate Festival will be held at Riverside Park and on August 8th the Sheriff's Department will be having a bowling event to raise money for United Way.

D. Councilmember Amelia Graves' Matters

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

Ms. Graves reported on the Beach & Shores Committee meeting that she attended. She said they will be putting forth a request for a Feasibility Study for Sector 5 and they will want some support from the City in the form of a letter for match funding. Also, she said that Ms. Kendra Cope, County Sea Turtle Coordinator, would be attending their August 18th meeting to talk to them about sea turtles.

E. Councilmember Randolph Old's Matters

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

None

11. ADJOURNMENT

Today's meeting adjourned at 12:26 p.m.

/tv