

CITY OF VERO BEACH, FLORIDA
APRIL 2, 2013 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

Mayor Craig Fletcher, present; Vice Mayor Tracy Carroll, present; Councilmember Pilar Turner, present; Councilmember Jay Kramer; present and Councilmember Richard Winger, present **Also Present:** Monte Falls, Public Work's Director; Wayne Coment, City Attorney and Tammy Vock, City Clerk

B. Invocation

Pastor Jack Diehl of Our Savior Lutheran Church gave the invocation.

C. Pledge of Allegiance

Mayor Fletcher led the audience and the Council in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mr. Kramer made a motion to adopt the agenda as presented. Mrs. Turner seconded the motion and it passed unanimously.

B. Proclamations

- 1. Child Abuse Prevention Month – April 2013**
- 2. Child Abuse Prevention Month/Children's Home Society of Florida**
- 3. General Aviation Appreciation Month – April 2013**
- 4. Indian River Genealogical Society Day – April 9, 2013**
- 5. Read & Feed Summer Program – April 2013**
- 6. National Telecommunicators' Week – April 14-20, 2013**

Mayor Fletcher read and presented the proclamations.

C. Public Comment

Mr. Brian Heady had a short video that he played for the Council, which showed available parking spaces in the downtown area. He also stated that he sent a letter to the Attorney General along with the book that he wrote and asked the Attorney General to

look into the OUC contract. The response from the Attorney General was that they do not respond to individual complaints.

Mr. Joseph Guffanti commented that he walked his dog near the beach the other day and while there he was approached by someone looking for a parking space. He said that in season there is a parking problem between Ocean Drive and Conn Way.

Mr. Guffanti referred to an article that appeared in the Press Journal on March 23rd. The article was about a letter being sent to the Florida Department of Law Enforcement (FDLE) to investigate the OUC contract. At the last Council meeting, he understood from the conversation that took place that the Mayor and the City Council directed the City Attorney to call on the FDLE to ask them to initiate an investigation into the OUC contract. He was pretty sure that was an accurate statement.

Mr. Wayne Coment, City Attorney, stated that the Council by consensus wanted the Mayor to sign a letter to FDLE asking them to look into the OUC contract. He was instructed to work with the Mayor in drafting a letter.

Mr. Guffanti read excerpts from the March 23, 2013 article. It was his understanding that the Council was calling for an investigation. He wanted to know who put the City Attorney and the City Manager in charge of conducting an investigation. He also wanted to know what is in their portfolio (City Attorney and City Manager) of expertise that would allow them to do that. He said that in this situation he would think that it would require someone with advanced degrees in finance to go over this contract and someone with the power to depose someone. He didn't think either of these individuals had this power and it was out of their range or responsibility. He said how this got into place is totally unbelievable and unacceptable. The reporter who wrote the article was Mr. Ed Bierschenk. Mr. Guffanti asked Mr. Bierschenk if what this article said was true and was there any rebuttal to this and Mr. Bierschenk indicated that the article is true and there has been no rebuttal. Mr. Guffanti continued reading parts of the article and wanted to know who put the City Manager in charge of the investigation. He said that the City Manager has nothing to do with this (referring to the discussion that took place at the last City Council meeting). He was sorry that Mr. O'Connor was not at today's meeting to answer these questions and explain how he got involved in this matter. He noted that there is a problem and he did not know how Council can accept this. He thought that they (Council) must have read the article, but doubts that they have gone to the City Manager and asked him where he is coming from and who put him in charge. The Council asked for an investigation and did not ask the City Manager or City Attorney to get involved other than to draft a letter.

Mr. Guffanti brought up that at their last meeting under the Public Comment section of the meeting there were two people who came up that were from a consulting firm talking about the twin pairs. He said that they talked under Public Comment and they were not regular members of the public. They had business with the City, which is not part of the Public Comment section. He called the City Clerk and asked her why she put them on the agenda in this section and she told him that the City Manager instructed her to put this

item in that section of the agenda. Mr. Guffanti did not think that it was proper to put that discussion under Public Comment. He told the Council that most people go along with their rules and regulations and it is about time that they instruct their City Manager to get with the program. These are some serious issues that Council needs to address.

Mrs. Carroll thanked Mr. Guffanti for bringing this to her attention (FDLE investigation). She said that she has been out of town and did not read the article. She will be talking to staff about it.

Mr. Guffanti asked how the Mayor determined what the sentiment was of this Council concerning sending a letter to FDLE. He said that the Mayor indicated that there was a 3-2 consensus from Council that this should go forth. He did not see any impression on any Councilmember's face showing if they wished to approve or disapprove moving in that direction. He suggested having the City Clerk poll the Council and have them indicate if they approve of this or not. He wanted an explanation and also wanted to see what the vote is and which Councilmembers were opposed to conducting an investigation.

Mr. Charlie Wilson, 2001 9th Avenue, was grateful for this City Council and the voters who passed the recent referendum. He was also grateful for the food outreach program and what a wonderful organization it is and that he plans to make a contribution to the organization. He continued by saying that he was also taken back concerning Mr. Bierschenk's article about the letter being drafted for the investigation. He was here today to inquire about the status of the letter. He thought it was made clear that in order to avoid any kinds of conflict of interest that staff was circumvented completely and they were going to go directly to FDLE. It was a bit of a shock when he read the article and they were talking about determining if the law had been broken. He said that they already know that the law has been broken and that the public records law was not followed. Since Council agreed to write this letter they are now finding out new information (referring to recent articles that appeared in 32963). In the past they have been told that no one knew about the \$20 million dollar penalty and now at least one of the former Councilmembers is saying that she knew about it, but just didn't tell anyone about it for three years. He said that the act of moving forward with this letter and finding out if anything wrong was done or not is something that the public has a right to know. Also, the other reason it is important to do this is because of the possibility of recovery. He said they agree that OUC is harmless, so one of his questions would be what the status of the FDLE letter is. He would appreciate if they would go forward with sending out the letter. He asked does the City Attorney have insurance (errors or omissions insurance or malpractice insurance). He said that it is the job of the City Attorney to sign off on every contract or document produced by the City to attest to the legality of the document. The document (OUC contract) was attested as to its legal form by Mr. Charles Vitunac (former City Attorney). He again asked if the City carries malpractice insurance on the City Attorney or does the City Attorney have his own malpractice insurance and does it cover errors and omissions insurance.

Mr. Coment answered the question by saying that what the City has is the typical errors and omissions insurance for its officials (City Council and Charter Officers). He said that there is no malpractice insurance required.

Mrs. Carroll asked Mr. Coment to make sure that he was correct on this and knows exactly what insurance the City has, what it states, and who it covers in the City.

Mr. Coment explained that malpractice insurance is not required because as employees of the City the Florida Statutes provides that any negligence is not recoverable against the individual.

Mr. Wilson did not know if it was required or not, but they need to check and see if they have it. He questioned if there was a possibility of a recovery on behalf of the City if an error was made by an official. He said that there is a \$20 million dollar penalty that is now coming to the forefront and when they are talking about cutting back in the future the City would have to do an awful less in cutting back if they didn't have a \$20 million dollar penalty.

Mr. Coment explained that in their agreement with OUC the City is not obligated to pay any type of penalty to OUC. He said that OUC negotiated a sum of \$20 million dollars to allow the City out of the OUC agreement. He also said that OUC has agreed to \$20 million dollars, but claim that their damages are more.

Mr. Wilson understood the distinction and said that the bottom line is not only do they have a \$20 million dollar penalty, but they found out that they are in a \$58 million dollar negative deal. It is costing the City over \$50 million dollars to get out of a deal that they got into. He then asked why the City failed to withdraw from the All Requirements Project in 2009.

At this time, Council took a five-minute break and the meeting reconvened at 10:45 a.m.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – March 19, 2013**
- 2. License Agreement #2013-LA-0208 – Louis B., Jr. and Donna Vocelle – Dock and Boatlift – 15 Dolphin Drive**
- 3. Hurricane Sandy Dune Restoration – Bid No. 010-13/JO – Final Payment and Project Acceptance – City of Vero Beach Public Works Project No. 2012-35**
- 4. Final Payment Request to Jacquin & Sons to Construct an Operations Facility and Hangars (Bid No. 330-11-CSS)**
- 5. Sidewalk Easement Rosewood Elementary School**
- 6. Request from the Tree and Beautification Commission to expend funds from their account to purchase Tree Seedlings for a Fourth Grade Arbor Day Program**

Mrs. Turner made a motion to adopt the consent agenda. Mrs. Carroll seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

A) An Ordinance of the City of Vero Beach, Florida, amending the City of Vero Beach Land Development Regulations, Chapter 77, Architectural Review; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning and Development Department

Mayor Fletcher read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, commented that based on the reception he received on this draft Ordinance he would like some direction from the City Council as to whether or not they want to provide regulatory powers to the Architectural Review Commission (ARC) or not. It is the staff's belief that if they go with only advisory powers then they will be falling into the same trap as before. It will be a waste of time and frustrate a lot of people in the process. He said that if Council does not support giving the ARC those powers then staff would recommend moving forward with withdrawing the Ordinance and directing staff to come back with a comprehensive Ordinance to repeal the provisions in their Code dealing with the ARC. He mentioned that Mr. Richard Bialosky, Chairman of the ARC, was at today's meeting and has asked to be able to say a few words.

Mr. Richard Bialosky stated that he is an Architect and has been the Chairman of the ARC since its inception. He wanted to make two arguments in favor of the Commission having some regulatory strength. He said that the first one is based on the experience of the previous ARC, because the current ARC has not reviewed anything since its inception, they are still drafting Ordinances. The ARC saved Humiston Park from losing its configuration that it ended up with. He mentioned another project that never took place was a good size office building on a major thoroughfare that would have been very visible. The ARC was unanimous in that the office complex was poorly designed and had it been built he was sure there would have been some backlash saying that architectural review is needed in this community. The former ARC gave some recommendations for that project and the applicant told them that he was not required to do the things that the ARC recommended. End of story. He said that was very frustrating to the ARC. They felt that they were a free advice Commission and he personally felt that the most quality of life cities do have architectural review boards. He thought that it was a net plus for their industry to have an ARC and urged Council to give some thought to this.

Mrs. Turner knew what kind of experience that the members had on the previous ARC and that it had to be quite frustrating that they were not able to make mandatory decisions. She said in moving to a mandatory board there are many things in this Ordinance that say it is going to take away the capriciousness. She said that she kind of

felt that they were putting the cart before the horse. She wants to make sure that they have clear design standards and that there is no conflict and that the public does not feel like they are at the whim of some Committee. She wants the applicant coming to the ARC to feel that they are being given good guidance. She also wanted to know what they were adding in the fee structure as far as costs go.

Mr. Bialosky commented that creating design guidelines is costly. He said that the ARC could “steal” some ideas from other cities. He said that sometimes the way to remove the capriciousness is the way that the Committee is managed. He said that writing guidelines will be time consuming because there is no urban designer on staff and someone would probably have to be hired to do this and it will be an expense. He did not know the answer to all of the questions, but noted that this community does not have a tradition of good architecture.

Mayor Fletcher stated that he originally had questions about approving this Ordinance because of the conditions to approve or deny and he felt that this was another hurdle in getting something done by slowing the process. However, he studied the Ordinance again and does see where there is an appeal process that goes to the City Council. He said as long as the contractors have an avenue of appeal he will support the Ordinance.

Mr. McGarry clarified that at this time Council was only giving power for the ARC to review the overlay district projects. They still will have to do the design criteria, which will be a more lengthy process.

Mrs. Carroll commented that she agreed with the Chairman of this Commission that the capability of the Commission’s review of single family homes would be too much work for them. This would be offering to a lot of people free architectural advice without the capability of them having the direct responsibility for that. She was a proponent of the restructuring of the ARC, as well as going forward with some more “teeth” in their responsibilities. However, as she brought up in their last meeting, she had some concerns and she did some research with the Florida State Codes for the fact that non-architects are now denied the possibility of submitting design materials. She made it clear that Mr. McGarry’s degree was not in architecture or engineering. Mr. McGarry said that was correct and that his degree was in planning. Mrs. Carroll noted that Mr. Falls was a civil engineer, Mrs. Turner is a civil engineer, she is married to a civil structure engineer and Mayor Fletcher is also an engineer. She pulled up the Florida State Statutes, Chapter 471 and it states “Notwithstanding the provisions of this chapter or of any other law, no licensed engineer whose principal practice is civil or structural engineering, or employee or subordinate under the responsible supervisions or control of the engineer, is precluded from performing architectural services which are purely incidental to her or his engineering practice, nor is any licensed architect, or employee or subordinate under the responsible supervision or control of the architect, precluded from performing engineering services which are purely incidental to her or his architectural practice”. She asked this question before and Mr. McGarry said there were no concerns or questions about this. In the past licensed structural engineers were able to submit design plans as they are allowed everywhere in the State of Florida. On page 12 of 16 of the proposed

Ordinance it states that only an architect may prepare design materials. Then (2) states that an architect or engineer may prepare design materials for structures not intended for human occupation and she felt that there was no reason to have that paragraph in the Ordinance. Also, (3) where it states “Any design professional may prepare site plans or landscaping plans”, is not according to Florida State Statutes because the plans must be prepared by a landscape architect or designee as designated per Florida Statutes 481.301. Mrs. Carroll was concerned that some of the Florida State Statutes were not referenced as they are throughout their Code in this particular document.

Mr. McGarry wished that Mrs. Carroll had brought this up to him before the meeting. Mrs. Carroll recalled at the last meeting she did say that she thought that there were some issues. Mr. McGarry said that what he would like to do is take a look at the Florida Statutes. He said if there are conflicts then they will need to be addressed. He suggested that they continue this hearing (until the next City Council meeting) and come back with revisions.

Mrs. Turner commented that under the conceptual section it states that they will establish clear language detailing the review process. She said for her another “key” that needs to be included is specific time frames for action applications. She felt that it was important for the public to know if they go forward with this Ordinance that they will be giving a commitment that action will take place in an expedient manner and that their applications will not be sitting for weeks. Also the design and permit application could be done simultaneously.

Mr. Winger fully supported giving the ARC authority as outlined in the Ordinance. He had the same concerns that the Mayor had. He pointed out that management is getting things done through others and in this particular case he would feel very comfortable to have architects look at designs. He concurs with the statement made by Mr. Bialosky that this is not a town known for fine architecture.

Mr. Kramer made a motion to table the Ordinance and continue the public hearing at the April 16, 2013 City Council meeting. Mrs. Carroll seconded the motion and it passed unanimously.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Supplemental Joint Participation Agreement with the State of Florida, Department of Transportation: Construct Operations Facility, Hangars, and Airport Security Improvements (FDOT #420768-1-94-01). – Requested by the Airport**

Mayor Fletcher read the Resolution by title only.

Mr. Eric Menger, Airport Director, reported that Council approved item 2D-4) on today’s agenda, which is for the contractor who will construct the operations facility and hangars

(companion item to this Resolution). He recalled that on June 19, 2012, a Supplemental Joint Participation Agreement (SJPA) was accepted by Council, which converted \$500,000 of the surplus funds from this SJPA for the security fence project. He said even with using the \$500,000 for the fence, there remains about \$20,000 of FDOT funds that were unencumbered and would have to be returned to the State. However, in order to purchase additional fencing needed on the site, and to add signage to the new operations facility, staff requested that FDOT further modify the SJPA to accommodate the Airport's needs. The SJPA modified the funding from the State in order to convert the \$20,000 of State grant funds for additional work on the security fence improvement portion of the project, and to add signage at the new operations facility. He recommended that Council approve the Resolution and acceptance of the SJPA.

Mrs. Carroll asked where would the additional fencing would be going in.

Mr. Menger explained that it would be at the Piper property line.

Mrs. Carroll commented on the wildlife management fencing. Mr. Menger expressed how important it was to keep wildlife off of the airfield.

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

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

A) An Ordinance of the City of Vero Beach, Florida, Amending Chapter 70, Subdivisions, of the City of Vero Beach Land Development Regulations; Providing for Comprehensive Revisions to Subdivision Regulations; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning and Development Department

Mayor Fletcher read the Ordinance by title only.

Mrs. Carroll asked if this Ordinance has been approved by the Planning and Zoning Board.

Mr. McGarry stated that the Planning and Zoning Board held a public hearing on the Ordinance on March 21, 2013, and unanimously recommended transmittal of the Ordinance to the City Council for approval.

Mr. McGarry gave an overview of the Ordinance. He said that some of the strengths of the Ordinance are that it would improve the clarity of the text of the subdivision regulations and makes the text and format consistent with other chapters of the Land Development Regulations to avoid administrative and legal issues resulting from conflicting language. It streamlines the subdivision approval process to eliminate

unnecessary delays and costs for both applicants and administrative staff. In Section 70.04(c) Categories of Approval the paragraph has been revised to authorize the Planning Director to approve all re-subdivisions and the subdivision of lands for nonresidential purposes. The current regulations limit the Planning Director's authority to three or fewer lots and only in residential districts and require the Planning and Zoning Board to approve subdivision of lands for nonresidential purposes. In Section 70.04(d) Platted-over Subdivisions staff proposes to borrow a concept used by Indian River County and basically the process involves the concurrent submittal of a site plan and subdivision application for review and approval. The approved site plan will govern the specific setbacks, lot size, dimensional, storm drainage, and open space requirements for improvements to each individual lot in the project. In Section 70.13(m) Subdivision Improvement Agreements, based on the experience gained with the Old Oak Lane Subdivision, staff proposed that where subdivision improvements are to be completed after final plat approval, a formal subdivision agreement in addition to a performance security be required. The agreement would require approval by both the City Engineer and the Planning Director. It would be required to waive the requirement for completion of all required subdivision improvements prior to final plat approval by the City Council. In Section 70.22 Exemptions from Certain City Standard Specifications, the current regulations require that subdivision improvements meet the City's standard specifications. Mr. McGarry would recommend that the Ordinance be approved by the City Council and that a public hearing is scheduled for April 16, 2013.

Mayor Fletcher asked about squaring the setbacks when they subdivide property along a common wall. Mr. McGarry explained that it would be done through the platting process.

Mrs. Carroll referred to page 37, #2 in the Ordinance, which she read. She said so in other words an individual who has one house, but owns two lots and builds a house in the middle of the lots, will now be considered as one lot. Mr. McGarry explained that this is being done to make sure that the average lot sizes are similar. He said that this was put in to keep the character of the neighborhood. Without these kinds of constraints someone could change the character of the area. The intent is to keep an established neighborhood looking similar. He noted that this criteria has been in place for the last three or four years and there have been no issues with it. Mrs. Carroll was concerned that an individual could not build on his platted lot unless it is three hundred feet from his house and there are similar size lots.

Mrs. Carroll referred to page 39, #8, where it states "The North American Vertical Datum or the National Geodetic Vertical Datum shall be used as the reference for elevations." She thought that National Geodetic Vertical Datum had been taken out because of new flood maps.

Mr. McGarry said that it could be used, but he agreed with changing that.

Mrs. Carroll said that on page 49 (e) it states "A surety bond or other guarantee pursuant to section 70.13 for required improvements to be completed after final plat recordation."

She said that Mr. McGarry has taken out surety bonds so this needs to be removed. Mr. McGarry agreed. Mrs. Carroll mentioned that it also needs to be removed on page 34 where it talks about surety bonds. Then on page 29, #6 where it is stated that the plans should be submitted in an auto cad format, Mrs. Carroll suggested saying an acceptable electronic format because who knows if in five or ten years from now if auto cad will be used. Both Mr. McGarry and Mr. Falls agreed with changing the wording to an acceptable electronic format. Mrs. Carroll went to page 4 where it gave the definition of engineer. She said that the word civil needs to be taken out and the sentence should read “A professional licensed by the State of Florida to practice engineering as defined by Florida State Statue 471.”

Mrs. Turner made a motion to move the Ordinance for a public hearing on April 16, 2013 as amended by Mrs. Carroll. Mr. Winger seconded the motion and it passed 4-1 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll no, and Mayor Fletcher yes.

B) An Ordinance of the City of Vero Beach, Florida, amending Section 2-77 of the Code of the City of Vero Beach relating to Administrative Staff Approval of Documents; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the City Attorney

Mayor Fletcher read the Ordinance by title only.

Mr. Coment explained that the proposed amendments in the Ordinance were developed to clarify the City’s internal review and approval processes already in use for Ordinances, Resolutions, contracts, and other documents to be submitted to Council for consideration. In addition, the amendments provide important clarification that such review and approvals are strictly for the benefit and convenience of the City and are not to be interpreted to waive or diminish any potential claims or defenses of the City in regards to any such documents. He said that the City has gone for a long time without this and he feels it would be good practice to put it in the Code.

Mr. Kramer made a motion to approve the Ordinance and set the public hearing for April 16, 2013. Mr. Winger seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

C) A Resolution of the City Council of the City of Vero Beach, Florida, repealing Resolution 12-29 and Adopting a Revised Fee Schedule for Development Review Applications and Related Services; and Providing for an Effective Date. – Requested by Planning and Development Department

Mayor Fletcher read the Resolution by title only.

Mr. McGarry explained that if they adopt the Ordinance dealing with subdivision regulations then they will have to have a new fee schedule. This Resolution repeals the existing fee schedule and replaces it with a new fee schedule. He requested that this

Resolution be heard on April 16th as a public hearing. He said overall that he has tried to keep the fee schedule the same, but has added the schedule of costs for subdivision applications.

Mrs. Turner asked how these costs compare to what the County charges.

Mr. McGarry felt that the costs were pretty well in-line with what the County charges. He felt that they were getting a good cost recovery on these things for the average case.

Mr. Winger made a motion to set the public hearing for the Resolution on April 16, 2013. Mr. Kramer seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

6. CITY CLERK'S MATTERS

Mrs. Carroll noted that earlier in the meeting there was an individual from the public playing a video (DVD), which could have been deemed as a commercial. The video was about ten minutes long. She asked the Mayor if he had been aware that the individual was bringing in a video to show Council and the Mayor said no. She asked Mrs. Vock if she was aware that this video was going to be played. Mrs. Vock stated that she did not know until about five minutes before today's meeting started. Mrs. Carroll wondered if they were setting a precedent that anyone from the public can feel that they can come to the City Council meeting and play a video on any issue that they would like to. She noted that in the past when this has happened that individuals have been placed on the agenda with specific time periods to make their video presentation. She is worried if they allow the public to have the capability of addressing the Council on specific items whether a commercial for their private company or private business is it considered Public Comment. She questioned whether the Council wanted to make a determination either now or in the future as to what is appropriate for Public Comment.

Mrs. Turner felt that this would be a good topic for discussion. She said that other cities handle public comments in different ways. She said that the City of Vero Beach has been very lenient with their public comment section. She said that some cities require that anyone speaking under public comment must address an item that is on the agenda. She said that maybe they need to look more at their three minute rule. She felt that if someone cannot make their comments in three minutes then they have lost their audience anyway. She told Mrs. Vock that this would be a policy that Council would need to establish and probably needed to be put on another meeting for discussion.

Mayor Fletcher stated that if the Council wants to reinstate the three minute rule then they can do so by taking a vote and overrule him.

Mr. Winger preferred to have the Mayor run the meeting and let him make the decision.

7. CITY MANAGER'S MATTERS

A) 18th Street Stormwater Treatment Facility – FDEP 319(h) Grant Contract – Recommendation for Acceptance

Mr. Monte Falls, Public Work’s Director, reported that they are requesting that Council approve and execute the grant contract with the Florida Department of Environmental Protection (FDEP) for \$80,000 for the 18th Street Stormwater Treatment Facility. They would also need to authorize staff to proceed with bidding the construction project and to proceed with the purchase of a Category 5 Type II Baffle Box under their existing annual supply contract with Ecosense International, Inc., in the amount of \$53,000.

Mr. Winger was in full support of this. However, he was curious as to how many Baffle Boxes they have protected.

Mr. Falls said that he would bring back a map to Council that shows that. He reported that this is the last of the large outfalls that they have.

Mrs. Carroll was surprised by the map in the backup material that it is a huge area. She said that Vero Isles and the Power Plant were the most polluted areas in Vero Beach. She then asked about the Tulip Lane Baffle Box.

Mr. Falls would let Council know which ones still need to be done.

Mr. Winger made a motion to authorize the City Manager to enter into a contract. Mrs. Turner seconded the motion and it passed unanimously.

8. CITY ATTORNEY’S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

None

B. New Business

1. Discuss passing an Ordinance Restricting the Sale of Flavored Tobacco and Nicotine Products – Requested by Mayor Craig Fletcher

Mayor Fletcher recalled that Council passed a Resolution for flavored tobacco in trying to stop people from using it. He said that Mr. Hummel, Co-Founder of Quit Doc Research and Education Foundation, talked to him about the possibility of taking this further as outlined in his backup material (attached to the original minutes). He said that the current State law does not preempt local communities from passing local Ordinances defining the rules for the sale and marketing of tobacco in local communities. He asked

the City Attorney to do some research on this to see if this was true and if the State law preempted Council from doing anything at all.

Mr. Coment explained that research shows that the City has the authority to adopt an Ordinance prohibiting the sale of flavored tobacco products not already banned under applicable federal law. The Family Smoking Prevention and Tobacco Control Act became federal law in 2009 and brought the manufacture, distribution, marketing, advertising, and sale of tobacco and tobacco products within the purview of the U.S. Food and Drug Administration (FDA). That legislation bans flavored cigarettes, except for tobacco and menthol flavors, making them illegal for manufacture or sale. The ban includes any tobacco within the broad FSPTCA definition of cigarettes. This includes: cigarettes, rolling papers, filters, loose tobacco for “roll your own” cigarettes, and cigars that would fit the definition of cigarettes. The definition does not include some cigars, pipe tobacco, and “smokeless” tobacco, such as chewing tobacco, snuff, and things like that. Therefore, the only flavored tobacco products that would be under consideration for a proposed sale ban are those not already prohibited by the FSPTCA. Mr. Coment said that there has not been a whole lot of regulation in the State of Florida on this. He said that there have been local jurisdictions in other states who have seen court challenges to local prohibitions on the sale of flavored tobacco products, such as in the City of New York. There has been some limited action in Florida on this subject. In Miami-Dade County, the City of South Miami has adopted a prohibition of the sale of flavored tobacco products, which applies to tobacco retailers city-wide. The Miami-Dade County Board of County Commissioners, with the support of some ten or more other cities located in the County also considered a proposed Ordinance that would take such a flavored tobacco ban County-wide, but they have not adopted anything.

Mayor Fletcher asked the Council if they wanted to carry this forward or leave it alone.

Mrs. Carroll asked Mr. Coment if he had to sum up his recommendation would he feel that it would imperil the City to go forward or does he feel that it would be challenged.

Mr. Coment stated that if Council was to adopt an Ordinance he would want to have it City-wide. There would also need to be a grace period to allow affected retailers reasonable time to address their contract and inventory issues. His fear is less with the manufactures, but more from their local retailers. However, he does not know if there are any problems within the City of Vero Beach and if there is what the extent of it is.

Mrs. Turner agreed that they needed to know more about the scope of the project before they move forward and how many retailers are they talking about.

Mayor Fletcher questioned how this would be enforced.

Mr. Coment spoke to their Police Chief about this and he indicated that whatever the Police Department needs to enforce is what they will try to do.

Mr. Kramer suggested if they are going to go forward with something like this that it might be a good idea to get some solidarity with their other surrounding cities and possibly the County.

Mrs. Carroll stated that she would be happy to bring this up at the next Treasure Coast Council of Local Government's meeting and then report back to the Council.

Mayor Fletcher also suggested working with the County to see if they would adopt a County-wide Ordinance, which would be much more effective.

2. Allocation of Christmas Lighting Funds – Requested by Councilmember Jay Kramer

Mr. Kramer commented that the allocation of Christmas lighting funds came up last year, but the time was not right. He said that last year the Main Street Vero Beach had proposed to take the responsibility of Christmas lighting and decorating in the downtown area, but they were too late because the City contracts were already signed. It is the request of the Associations (Downtown, Miracle Mile and Oceanside) in the different districts that Council direct the City Manager to allow the Associations to request the funding of the traditional lighting to be given to the Associations for them to take the responsibility to light their district themselves. He will resubmit this request at their next meeting since the City Manager is not present for this meeting.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Craig Fletcher's Matters

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

Mayor Fletcher reported that along with the City Manager and City Attorney he toured the St. Lucie Nuclear Power Plant, which had a very high level of security. He also attended the annual City Easter Egg hunt held at Mulligan's Restaurant.

Mayor Fletcher brought up the FDLE letter that was mentioned earlier in the meeting. He said that he talked to both the City Manager and the City Attorney about sending out the letter and asked for their help. At the last Council meeting he thought that he had the consensus of the Council to go forward with this. He told Council that he was going to get with the City Attorney and no one on Council complained about it so he took that as a consensus to move ahead. He went to the City Manager and the City Attorney and they retrieved all of the documents that they could find including the documents from the Grand Jury and they all (Mayor, City Manager and City Attorney) talked about the documents. He concluded that FDLE is a criminal investigative agency and not an agency that would investigate something that was a bad decision. The next thing he pondered was whether or not the Council at the time knew about the \$50 million dollar penalty that was redacted when the contract was signed. One of the things he asked

himself was what effect would this have on their OUC agreement. He said that he views OUC as one of their partners right now. He quickly came to the conclusion that it would be a really bad idea to send this letter. He said just being stupid and making a series of really bad choices is not a crime. He does not want to endanger their current good relationship with OUC by having FDLE start deposing these people. Then after reviewing the documents supplied by the City Attorney and the timeline that Mr. Vitunac put together he does not see personally where a crime has been committed. He reiterated that FDLE is a criminal investigative organization and not to indict someone for stupidity. He has changed his mind about this and noted that Mr. Coment has all of the referenced documents.

Mr. Coment stated that most of what he has is just contract documents and really no definitive report from the State Attorney's office.

Mrs. Carroll understood that the State Attorney only interviewed the former City Manager.

Mr. Coment explained that the State Attorney's office interviewed more than one person, but there was no formal deposition. He made it clear that himself nor the City Manager did any type of investigation. They just put together whatever documents that they could to supply to FDLE.

Mayor Fletcher continued by saying if somebody (Councilmember) wants to pursue this and go to the FDLE then the Council needs to take a formal vote on the process. He said that he is not in favor of doing this.

Mr. Kramer felt that it needed to come back as an agenda item. If there is someone that wants to do it then it needs to be an agenda item, with backup material attached to formulize the request.

Mayor Fletcher agreed that was a realistic approach.

Mr. Winger added that if someone can give evidence to support a crime then it should be an agenda item.

Mayor Fletcher stated that if there is anyone on the Council that wants to pursue this issue then they need to place it on the agenda under Old Business and then a formal vote will be taken at that time.

B. Vice Mayor Tracy Carroll's Matters
1. Correspondence

Mrs. Carroll brought up the letter that they received from the census bureau who recalculated the population of the City and determined that there were three more people than what they originally had projected.

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

Mrs. Carroll reported that she attended the Meals on Wheels Mayor's breakfast. She is working with the group in the downtown area who are looking at the historical downtown business district and looking at creating some parameters and going forward. The district will incorporate not just businesses downtown, but other areas in downtown including the area of City Hall. One of her suggestions is to also look at the small businesses. Mrs. Carroll shared some information that she received showing that sports tourism in the area has increased. She read that there were a large number of lacrosse teams playing at the Sports Village. She reminded everyone that next week the Oceanside Business Association will be having their annual Taste of Vero.

Mrs. Carroll recalled that at their last meeting she was designated as their delegate to attend discussions for the relocation of the bus hub and there has been a meeting set for April 11th at 2:30 p.m. at the County Administration Conference Room.

Mr. Falls noted that with the property that the City offered to Senior Resources in order to relocate the bus hub there has been some interest from someone to purchase that piece of property. He said that staff is working on bringing an agenda item to Council to declare the property surplus. Mayor Fletcher pointed out that the property is still on the table as an "offering."

Mrs. Carroll continued by saying that on April 17th the Chamber of Commerce is having a training program on how to start a small business. On April 18th and 19th she will be representing the City in attending the Mayor's Mean Business forum in Orlando, Florida and Mrs. Helene Casteltine, from the Chamber of Commerce, will also be attending. She reminded the public that the Hibiscus Festival starts on April 13th.

C. Councilmember Pilar Turner's Matters

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

Mrs. Turner attended an FMPA Audit Committee meeting, as well as an FMPA Board meeting and an Executive All Requirements member meeting and an All Requirements workshop. She also attended a fundraiser for Safe Space, and the Indian River Lagoon Seminar that took place at the County Administration Building.

Mrs. Turner reported that the Senior Resource Needs Assessment Committee will be presenting their results on April 15th at the Richardson Center, Dancing under the Stars is tonight starting at 6:30 p.m. at the Royal Palm Pointe fountain, ORCA is sponsoring "I Love my Lagoon Walk," which will be on Saturday, and the Downtown Arts Stroll is this Friday night.

D. Councilmember Jay Kramer's Matters

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

Mr. Kramer attended the Indian River Lagoon Symposium and he thanked Governor Rick Scott for attending the ribbon cutting ceremony supporting a small business.

- E. Councilmember Richard Winger's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

None

11. ADJOURNMENT

Today's meeting adjourned at 12:15 p.m.

/tv