

**CITY OF VERO BEACH, FLORIDA
JANUARY 22, 2013 6:00 P.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:** James O'Connor, City Manager; Wayne Coment, City Attorney and Tammy Vock, City Clerk

B. Invocation

Reverend Diego Flores of the Asbury United Methodist 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. James O'Connor, City Manager, reported that Mr. Winger asked that their Transactional Attorney be present for tonight's meeting. He asked if Mr. Rick Miller, Transactional Attorney, could be heard under Public Coment.

Mrs. Carroll felt that was appropriate because of the cost that they are paying their Transactional Attorney.

Mr. Kramer made a motion to approve Mr. Rick Miller, Transactional Attorney, as the first speaker under Public Comment. Mrs. Carroll seconded the motion and it passed unanimously.

B. Proclamations

1. Recognition of Eagle Scouts

Mayor Fletcher recognized the 2012 Indian River County Eagle Scouts.

C. Public Comment

Mr. Rick Miller, Transactional Attorney, was at tonight's meeting to give a progress report on the current negotiations with Florida Municipal Power Agency (FMPA). The transfer agreements relating to the assignment of FMPA power purchasing agreements to Orlando Utilities Commission (OUC) authorized by the City Council in October have now been executed by all parties. This has cleared the way for negotiations with FMPA. They had a second face to face meeting with FMPA on January 15, 2013 following substantial communication between the Attorneys. The confirmation is that the City's fellow members support the transaction transferring the City's FMPA power purchase agreements to OUC provided that all requirements of the power purchase agreements and the All Requirements Project (ARP) are met. They closed the meeting with an understanding of what the tasks were to accomplish their goal. He went over the issues that were raised at the meeting. The first item was whether all FMPA member participants in the various projects must approve the transactions or changes in the documentation, rather than simply the FMPA Board or Executive Committee. He said that his firm prepared a memo to the file and provided it to the FMPA attorneys prior to their meeting. The purpose of the memo was to present their views that in the FMPA group Board approval would be sufficient versus Board plus one-hundred percent participation approval for each project. He said that there is another provision that allows disposition rather than a sale. There has not been an agreement on that by the FMPA attorneys.

Mr. Winger commented that they also did not agree that their Board could approve either by majority or unanimously at this point the position of the other eighteen members of the various contracts. Mr. Miller told him that was correct. He said that was a hurdle that they will have to get over and it would be tough. He then briefly went over the memo that he mentioned earlier that he presented to FMPA at the meeting that was recently held.

Mr. Winger thought that FMPA had some concerns about selling the customers and abandoning certain assets. He believes that the contracts say that the same party would get the customers who take their power. Mr. Miller said that was correct. He said that there are several provisions and that is one provision.

Mr. Winger commented that FMPA wrote the contract and Mr. Miller is trying to apply 28(a) versus 28(c). Mr. Miller agreed that FMPA wrote the contract and they have the benefit of interpreting it the way that they want to.

Mr. Miller explained that FMPA does not have to interpret the contract the same way that he does. But, in the long run they have a membership that agrees with the City of Vero Beach on whether the process is fair or not.

Mr. Winger asked Mr. Miller when were they going back to talk to FMPA and when does he think that they will have answers. He noted that this project has been going on since August, 2011 and it is costing money. He showed a binder containing the FPL contract and associated documents.

Mr. Miller said that he would address this question later on in the meeting.

Mr. Miller continued by saying that he is working on the amendments to the agreements satisfactory to FMPA (talking about transfer documents approved by OUC). FMPA has comments on them and they will be modified. He said as to the issues, once the sale and disposition takes place, the City will no longer have electric utility revenues to meet any contingent obligations remaining under the power purchase agreements. In the remote chance that OUC would default under its assumed obligations and also if the ARP contract is terminated early, there may be some contingent liability to deal with. If the sale and assignment were to OUC then there would be no issue of continuing liability under the agreements, since the purchase of the utility would be the same.

Mr. Winger felt that the wording could be modified to say, "all obligations to take power and all bond obligations." Mr. Miller agreed with that.

Mr. Winger brought up the credit rating that the City of Vero Beach has and said that they have a very strong credit rating. He said that OUC's credit rating is better.

Mr. Miller brought up how much security does one have to provide to back up OUC and how the rating agencies look at it would. He said if they had to buy insurance for it that would be a possibility or get a letter of credit or have the City use some of their own revenue from franchise fees may be a possible backup security. However, these issues have not been dealt with yet. The other issue under the ARP contract is the closing date. He said that FMPA's General Counsel indicated that in Homestead, Florida it took them longer than a year to get the approvals. However, if they decide to stick with their original date then they might have to put up some security. The reason for this is because in 2016 FMPA will have to calculate the stranded costs and they are based on the City's take of the power, which is zero. He said providing security for this is the issue and FMPA was not able to tell them if there was any liability. He was going to request that this provision be waived. He heard from FMPA's Counsel and they thought it was possible to move to the 2015 date. The other issue as he mentioned earlier is about having to go to all of the Board members and participants.

Mrs. Turner stated that as the City's representative on the FMPA Board of Directors she has had the opportunity to meet many of the representatives from the other cities and she would be glad to appear before each Council if that is required. She will plead the City's case and state their message for wanting to get out of the utility business.

Mr. Miller reiterated that the other members are a participant like Vero Beach is and a reasonable balance would be to allow the members of FMPA to exit their contract if they wished to do so.

Mrs. Turner added that if they stay with FMPA then they are committed for 52 more years.

Mr. Kramer asked if it has come up in discussions to have a buy back provision in the contract. He said if after 20 years things don't work out with FPL then they could buy back their utilities. Mr. Winger said there are no provisions in the power purchase agreement. However, the ARP has a step process of getting out of the contract. The contracts we are talking about tonight are the Stanton I and Stanton II contracts.

Mr. Miller mentioned that tomorrow he will be having conference calls with the tax lawyers for FMPA. Also, they are putting together a memo for the next meeting with FMPA Counsel. The first thing to do would be to amend the transfer agreements that would satisfy the FMPA Counsel, which he doesn't think will take longer than a week. The only issues that there might be is if the amendments that they propose have to be taken up in the transfer agreements, which could extend the process. He said that the tougher issues are in the area of security, which he thinks will take some deliberation.

Mr. Winger mentioned the push to sign this agreement with FPL in February. He asked Mr. Miller if he recommended that they sign the FPL contract before these various issues have been resolved. Mr. Miller stated that his Firm is recommending that the City go forward with approving the document, which is almost complete.

Mr. Winger then asked if it would be wise to have a referendum on March 12th when they don't have a resolution with FMPA.

Mr. Miller commented that this contract deals with the outside date of 2016 so he doesn't think that is much of an issue. There are a number of things that they have to settle in order to get FMPA approval, then the PSC has to approve it. He does not think that it is harmful to enter into the contract.

Mr. Winger commented that he wants to move this process forward. It is time that they have lower power rates and time to achieve a solution. He probably will be asking Mr. Miller or Mr. Igoe to attend future meetings. He thought that it was helpful to the Council and to the public to know what the issues are.

1. Mr. Todd Howder, President, Vero Beach Air Show, Inc., to give an update on the Air Show.

Mr. Todd Howder, President, Vero Beach Air Show, Inc., 1835 20th Street, thanked Council for the opportunity to be at their meeting tonight to give them an update on the Air Show. He said that they have secured United States Golden Nights dedicated acts. They are working diligently in setting up their different Committees. They are getting ready to send out the sponsorship packets, which he showed to Council. They had their first volunteer meeting with the different Exchange Clubs in the area. This event will be a great fundraiser and will help with the economics in this community. They have a second Air Show lined up for May 10-12, 2014 and the United States Blue Angels will be attending. He will continue coming back to Council with periodic updates. He mentioned that March 2nd is Aviation Day and everyone will get a little feel as to what is going to happen at the Air Show in October.

Mrs. Carroll was happy to hear that these shows will occur in October and May because they are usually quiet times of the year in Vero Beach and they could help boost the economy.

2. Mrs. Susan Krol to present a petition to remove a Skate Board Ramp.

Mr. Rick & Mrs. Susan Krol were at tonight's meeting to discuss their new neighbors who moved in at 716 Bougainvillea Lane right behind their house and have built a skateboard ramp (pictures on file in the City Clerk's office). They said that they were not here to take away anyone's rights. After doing some research they found that there are a lot of cities that have rules regarding skateboard ramps. They are proposing that the City come up with some Codes for this type of backyard activity. They felt that it was something that belongs in a Park.

Mr. Wayne Coment, City Attorney, read out of the City Code, the provisions having to do with skateboards and noise regulations.

Mrs. Carroll asked how the Police regulate this.

Mr. Krol said that the Police have come out on two different occasions regarding the skateboard ramp and said that there was nothing they could do.

Police Chief David Curry told the Krols' that he would work with them on this issue. He said that the Statute is very broad that governs this.

Mr. Coment told him it was one of the most constitutional Statutes and is usually upheld in Court.

Mrs. Turner added that there is a lot of liability in having a public skateboard park.

Mr. Coment explained that there are State Statutes that protect the City from liability if they establish a skate park.

Mayor Fletcher suggested that the Krols' meet with the City Attorney and the Police Chief to see what they can do about this situation. He said that the Police Officer who goes out to the property would have to determine if the law has been broken and he needs to witness the event so that he can take whatever action is necessary.

Mrs. Krol mentioned that she has called the Police two times. The first time she called she did not give her name and the second time she did. She said that Captain Roberts came out and witnessed the noise. She said the fact is that a skateboard ramp of that magnitude is very noisy. She said over 90% of her neighbors signed a petition to remove the skateboard ramp (on file in the City Clerk's office). She noted that as soon as the boys using the ramp see the Police patrolling the area they run.

Mayor Fletcher told the Krols' that the City will work with them on this issue. He said that they could not do anything about the skateboard ramp, but could help with the noise issue.

Mr. Winger told the Krols' to try this approach first and if it doesn't work then they could come back to Council.

[Mrs. Phyllis Frey started reading a prepared speech \(please see attached\).](#)

Mayor Fletcher thought that this was turning into a personal attack and that her (Mrs. Frey's) comments should be kept to items on the agenda.

Mrs. Frey handed her letter to the Clerk and asked that it be made part of the record.

Mr. Brian Heady stated that when a citizen comes to the podium during public input it is up to the citizen to give the input that they want. It is not up to the Council to direct the citizen what it is they have to say. He said that the citizen in question (Mrs. Frey) was talking about comments that a Councilmember made. Mr. Heady said that is not a personal attack.

Mayor Fletcher told Mr. Heady that since he is the Mayor he gets to make that decision.

Mr. Heady told the Mayor that he does not. He said that the City Council works for the taxpayers and Council doesn't get to choose what the public has to say.

Mayor Fletcher told Mr. Heady that he has the option to remove him from the Council Chambers if he chooses to do so.

Mr. Heady told Mayor Fletcher to go ahead and remove him if that is what he wants to do. He said it would not be the first time.

Mayor Fletcher continued by saying that he has the option to run the meeting in an orderly manner and he decides if it is not being run that way.

Mr. Coment agreed with Mayor Fletcher that it is his duty as Mayor to run the meeting in an orderly fashion.

Mr. Heady said that when he comes to the podium he will not be told what he can or cannot say. However, his rights could be violated and the Mayor can have a Police Officer remove him from the Council Chambers. Mr. Heady continued by saying at the beginning of the meeting the Transactional Attorney spoke. He asked who invited the attorney to be at the meeting. Mr. Winger said that he requested that the Transactional Attorney be at their meeting. Mr. Heady commented that it is interesting when the Transactional Attorney comes to the meeting because the public gets the opportunity to hear some things and some of it is pretty scary. He asked when was the first time that the Transactional Attorneys sat at the table with FMPA.

Mr. O'Connor said that the first time the Transactional Attorneys sat at the table with FMPA was last week. However, he said that there have been a lot of telephone conversations.

Mrs. Turner explained that conversations with FMPA could not have occurred sooner because they had to wait until there was an agreement with OUC to take over their entitlements.

Mr. Heady told her that was an excellent point. He said that he looks at it in a different way. He said that he thinks FMPA is probably who the City should have been talking to first.

Mr. O'Connor made a correction to a statement that he made earlier. He informed Mr. Heady that a face to face meeting was held with FMPA a year ago and introductions from the different parties were made.

Mr. Heady brought up the referendum item and said that the one question he gets from the public a lot is what are we selling the utilities for and what the City is getting out of it. He will continue to ask Councilmembers who voted yes to approve the agreement with OUC and FPL, what the \$20 million dollars is for. He asked Mrs. Carroll, who voted yes, could she explain to the taxpayers what the \$20 million dollars is for. First he received no answer then he was told that he was not allowed to ask that question. He felt that these were legitimate questions. If there are Councilmembers that vote yes then the taxpayers have a right to know what is in the Councilmember's mind in respect to what that payment is for.

Mrs. Turner told Mr. Heady if he would review the minutes he would see that she did answer his question.

Mr. Heady recalled that he asked Mrs. Carroll and he has a right to ask every Councilmember who voted yes, the same question. Their reasons might be different.

Mayor Fletcher told Mr. Heady that every Councilmember has the option of not responding. He said that if he wants the strategy behind this then the City Manager would be able to help him.

Mr. Heady said that he wants to know from the Councilmembers who voted yes, what they think that the \$20 million dollars pays for. The same question holds to the \$34 million dollars. He said that having this on record might help sometime in the future if someone questions what this payment was for. He mentioned that \$100,000 was spent on a study for parking downtown. He did a study and he would like to present a slide show on parking in the downtown area at their next meeting. Mayor Fletcher requested that the City Clerk put Mr. Heady on the February 5th agenda.

Mr. Michael O’Haire commented that he has been appearing before this Council for over 50 years. He told Council that they have business to conduct and this should not be an open mike production. He asked Council to stick with the agenda before them. He was at this meeting to discuss an item that is under Public Hearings.

Mr. Joseph Guffanti mentioned that there was a tire located on the bridge that was there for over a week and it finally has been removed which he was happy to see. He thanked Mr. Winger for asking the questions he did to the Transactional Attorney. It shows his (Mr. Winger’s) concerns and understanding of what is going on. He mentioned some of the things that remain to be resolved with the FPL contract, which will cost taxpayer’s dollars. He also did not approve of the way that Mayor Fletcher handled Mr. Brian Heady earlier in the meeting.

Mr. Ken Daige asked if he would be allowed to speak under City Clerk’s Matters. Mayor Fletcher told him that he could.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – January 8, 2013**
- 2. License Agreement #2012-LA-0206 – Philip Kulakoski & Suzanne Smith – Dock and Boatlift – 4 Sailfish Road**
- 3. Utility Easement #2011-EG-0118 and Bill of Sale of Utility Facilities – Indian River Medical Center SICU-PACU Expansion**
- 4. Agreement and Consent to Assignment of Commercial Lease Agreement between the City of Vero Beach, Wolfenden Enterprises, Inc., and Thomas N. Soodsma**
- 5. Monthly Capital Projects’ Status Reports**
- 6. New Commercial Lease Agreement between the City of Vero Beach and Dragonfly Boatworks, LLC., for Parcel 32, Airport Commercial Center at the Vero Beach Municipal Airport.**

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

Mrs. Turner asked that in the future that the projected completion date be put on the monthly capital reports.

3. PUBLIC HEARINGS

- A) (Quasi-Judicial) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 62, Nonresidential Districts by creating Article XIII, Ocean Drive/Cardinal Drive Commercial Overlay District; Providing for Development and Building Design Standards; Providing for Development Incentives; Providing for Conditions of Approval and Waivers from use requirements; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the City Council**

Mayor Fletcher read the Ordinance by title only and explained that this was a quasi-judicial hearing.

Mayor Fletcher, Mr. Winger, and Mrs. Carroll all disclosed that they attended the Planning and Zoning Board meeting when this was discussed, but they did not take part in the discussion.

The City Clerk swore en masse anyone wishing to speak on this Ordinance.

Mayor Fletcher asked that any exhibits referred to during the testimony be marked for identification by the City Clerk and kept by her for 30 days until the time for appeal has expired.

Mr. Tim McGarry, Planning and Development Director, reported that this is the second and final public hearing on this Ordinance. He noted that at the first public hearing the City Council approved revisions to allow hotel development on the east side of Ocean Drive with more than 100 feet of linear frontage to construct a maximum of four stories with the Architectural Review Commission's (ARC) approval. The changes have been incorporated into the Ordinance. Also, additional revisions were needed and have been made to 62.508(c) to address four story buildings. The effective date of the Ordinance will be April 1, 2013, which will allow time for enactment of amendments to Chapter 77 (Architectural Review). Mr. McGarry's reports were made part of the record.

Mr. Kramer asked if the overlay district supersedes the current zones.

Mr. McGarry explained that there will be more regulations, but more flexibility for property owners.

Mayor Fletcher commented that it scares him to death that they have a formula for a cookie cutter building.

Mr. McGarry assured him that was not what was intended. He said that is why they have the ARC doing the reviewing based on design. He doesn't see it as a cookie cutter.

Mrs. Turner thanked both Mr. McGarry and the Planning and Zoning Board for bringing this to them. She said that the Planning and Zoning Board held seven different meetings and discussed this. She was pleased to see that it was moving forward.

Mr. Kramer asked if the Ordinance does not pass, is there anything to stop property owners from implementing this on their own.

Mr. McGarry explained under the current Code that it can't be done.

Mayor Fletcher continued with the quasi-judicial hearing and said that in this case the City of Vero Beach is the applicant.

Mr. McGarry told Council that if they did not like this Ordinance that they could “kill” it.

Mayor Fletcher asked for testimony and presentation of evidence by the public with alternating speakers in support of and in opposition to the application and cross examination after each witness, if so elected.

Mrs. Nancy Cook was sworn in and stated that by passing this Ordinance it could have significant risks as far as property and assessed values. She is concerned that if the City regulates three stories (except for hotels, which they have approved four stories) then they have decided that there will be income derived from only three stories. She had some concerns with only allowing the Holiday Inn to have four stories. She said that there may be risks on property values going down in ten years on Ocean Drive and if they limit the income stream from the most viable commercial area they will also reduce the appraised property value. What they are risking here is a lot more than meets the eye. She said making laws out of visions is scary to her. Mrs. Cook felt that if Council was to make this document optional then everybody is a winner. There are only losers if you have too much regulation. She brought up the Vero Beach Spa and Hotel and did not understand what happened to the fifth floor. She said if you regulate property owners to three stories and give the hotels four stories then it is a taking and there will be long term consequences of reduced commercial tax values. She asked Council to consider on their watch they may have the legacy of making a big mistake here and that would not occur if they were to make this optional.

Mr. Michael O’Haire stated that he was a Lawyer whose offices reside on Cardinal Drive in Vero Beach and he owns properties that will be impacted by this Ordinance. He said that as a property owner he is tired of being in limbo. It is hard for him to understand what he can and cannot do on his property. He agrees with the Mayor that there is a cookie cutter implication here. He is attracted by Mrs. Cook’s idea of making it optional, but at the same time he wants to get rid of the uncertainty. He told Council to go ahead and pass the Ordinance as written and then if the Ordinance needs to be tweaked some more then they can do that. He mentioned that he has credentials in land use planning.

[Ms. Ellen Gower read a prepared statement \(please see attached\).](#)

Mrs. Carroll referred to Mrs. Gower’s comments when she suggested that as many floors as can fit into the existing 50 foot height restriction be allowed. She asked if someone could get five floors built under the current Code.

Mr. McGarry said that it would be difficult to do.

Mrs. Turner commented that the Planning and Zoning Board made great efforts to secure as much property rights as they could.

Mr. McGarry expressed that this Ordinance is not set in stone and changes may have to be made. He said that he wants this to work for the community.

Ms. Kay Harper, 845 Acacia Road, commented that she hears people talking about five stories, which will destroy the charm of the community. She doesn't understand what happened to the original Vision Plan.

Mr. McGarry explained that when they changed the Ordinance they did a whole height revision and the residential height limit is 35 feet.

Ms. Arlene Roack, Acacia Road, was concerned about the quality of life and how it will affect the area. She asked if there have been any impact studies done on this.

Mr. McGarry commented that this will affect all the basic infrastructure services that the City has, except for parking and that will be a long term issue.

Ms. Roack said that her concern with parking is that in season most of the parking spaces available are used. She asked if they increase population density, where are people going to park.

Mr. McGarry commented that underground parking is viable and they are looking at joint/public/private parking. Also, if more development occurs then the City can look at forming a parking district.

Mr. Winger felt that the arguments brought up by the different speakers were very compelling.

Mr. Kramer agreed with Mr. Winger's comments. He was curious about what Mrs. Cook brought up and having options. He said that he could not vote in favor of this as it is, but he could if people were given an option.

Mrs. Turner expressed that no Ordinance is perfect. However, she is happy to say that after the Planning and Zoning Board held seven meetings to discuss this that they made it as broad as they could and have given property owners many options.

Mrs. Carroll felt that this was a wonderful piece of Code brought to them. She appreciated Mr. O'Haire's comments that the property & business owners have waited long enough for this. She referred to Mrs. Cook's comments and felt that someone could opt out if they chose to or opt in because of all the additional incentives that are offered.

Mayor Fletcher commented that this Ordinance will change when the first building goes up.

Mrs. Carroll made a motion to approve the Ordinance. Mrs. Turner seconded the motion and it passed 4-1 with Mr. Winger voting yes, Mr. Kramer no, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

B) (Quasi-Judicial) An Ordinance of the City of Vero Beach, Florida, Designating the Ocean Drive/Cardinal Drive Commercial Overlay District by

amending the Official Zoning Map of the City of Vero Beach; Providing for Conflict and Severability; Providing for an Effective Date – Requested by the City Council

Mayor Fletcher read the Ordinance by title only and noted that this was a quasi-judicial hearing. He said that it is solely to change the map in order to coordinate with the overlay district Ordinance that the City Council just passed.

Mr. Tim McGarry, Planning and Development Director, was sworn in. He said that there have not been any changes made to the map since the first time that he showed it to the City Council. The effective date that this Ordinance will take effect will be on April 1, 2013. His reports were made part of the record.

Mrs. Turner made a motion to approve the Ordinance. Mrs. Carroll 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) An Ordinance of the City of Vero Beach, Florida, relating to Code Enforcement Procedures; Amending Article VII, Code Enforcement, of Chapter 2, Administration of the Code of the City of Vero Beach; Providing for Clarification and Establishing Procedures for Processing Requests for Code Enforcement Lien Reductions; Providing for Conflict and Severability; Providing for Transition and Codification; Providing for an Effective Date. – Requested by the City Council

Mayor Fletcher read the Ordinance by title only.

Mr. Coment explained that this Ordinance puts the procedures in place for someone wishing to have a fine reduced that has been imposed by the Code Enforcement Board. He also cleaned some things up in the Ordinance that needed to be changed.

Mrs. Turner thanked Mr. Coment for doing such a good job on this Ordinance and for cleaning it up, which has made it clearer.

Mayor Fletcher opened and closed the public hearing at 8:47 p.m., with no one wishing to be heard.

Mr. Kramer made a motion to approve the Ordinance. 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.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

A) A Resolution of the City Council of the City of Vero Beach, Florida Granting a Non-Exclusive Vending Machine Concession License to All County vending, Inc.; Providing for an Effective Date. – Requested by the Manager of Purchasing

Mayor Fletcher read the Resolution by title only.

Mr. John O'Brien, Manager of Purchasing & Warehouse Operations, reported that All County Vending Inc. has provided vending machine services for the City of Vero Beach since January 2008. The current license agreement expires on January 21, 2013 and he recommends that the City award the Vending Machine Concession License Agreement to All County Vending Inc. for a period of five (years) with an option to renew for an additional five years.

Mrs. Turner wondered if the license fee was common for this type of service.

Mr. O'Brien thought that it was. He said that it really depends on the volume that the machine is being used.

Mr. Kramer made a motion to approve the Resolution. 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.

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

- A) A Resolution of the City of Vero Beach, Florida, Establishing Fees for the Industrial Waste Pretreatment Program; Repealing Resolution No. 1993-13; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Water & Sewer Director**

Mayor Fletcher read the Resolution by title only.

Mr. O'Connor explained that the Industrial Waste Pretreatment Program is being done for the industrial customers that the City has. There are three customers involved and they are the Power Plant, Piper, and the Hospital.

Mrs. Turner made a motion to set the public hearing for this Resolution on February 5, 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.

- B) An Ordinance of the City of Vero Beach, Florida, Repealing Ordinance Number 1546 Relating to Operation of Golf Carts on Certain City Streets and Amending the Code of the City of Vero Beach by Adding Article VI, "Golf Carts," in Chapter 74, "Traffic and Vehicles," Relating to the Operation of Golf Carts in the City of Vero Beach; Providing for Implementation; Providing for Conflict and Severability; Providing for Codification; and Providing for an Effective Date. – Requested by the Police Department**

Mayor Fletcher read the Ordinance by title only.

Mr. O'Connor reported that there has been an Ordinance in place to operate golf cars in this area, but the Ordinance was never codified. This Ordinance is just an updated Ordinance that will be codified and enforceable.

Mrs. Turner noted that there were some additional changes made to the Ordinance to bring it into compliance with some of the State regulations.

Chief Curry told her that was correct.

Mr. Joe Collins, Attorney representing Riomar Country Club, stated that he was in favor of moving this Ordinance forward. He said that there were three items that he would like Council to address. The first issue is that this Ordinance requires all golf carts that are using the City streets to have horns, a rearview mirror and to have reflectors on the front and back of the golf cart. He said that Riomar Country Club has thirty-one golf carts that are used only on the golf course, but they do go across Club Drive from the front nine holes to the back nine holes. He said that it seems a shame to have to add those pieces of equipment for carts that are only used for going back and forth. The second issue has to do with Riomar Drive. He said when they discussed the Ordinance the last time he was at their meeting that Riomar Drive on the west side of A-1-A was included in the Ordinance and now the Ordinance that they have before them tonight does not include it. The rationale for not including it was that it is almost impossible to get on the sidewalk from Riomar Drive west to the cart path crossing. He has found that there are some owners on Riomar Drive who are members of Quail Valley. He asked Council to include Riomar Drive understanding that no one would be allowed to cross A-1-A. The third issue was that the Ordinance in Section 197(e) prohibits the use of a golf cart on the sidewalk. He said that the people living in Riomar on the west side of A-1-A come down Bay Drive to the cart path and go south to the cart crossing and cross A-1-A. He said that if these people could come out of Quail Valley they would use the cart path. He wondered if there could be an exception excluding from the entrance way to Quail Valley to the crossing at A-1-A from the prohibition of using the sidewalk.

Mrs. Carroll mentioned the correspondence that they received from the Florida Department of Transportation (FDOT) saying that they (FDOT) could find no records for permission of the golf cart crossing ever being given to the City.

Mr. Winger commented that Mr. Monte Falls, Public Work's Director, did some research on this and he pointed out to the FDOT that there was a provision for the crossing and when it was shown to FDOT they said as long as nothing has been changed they were disinterested in this matter.

Mrs. Carroll had some concerns with the word "disinterested." She asked if FDOT has given the City approval that they can keep this the way that it was. She was concerned with moving forward because of the liability that could fall on the City.

Mr. Coment explained that in the Ordinance it addresses the use of the bike path only where it is eight feet wide. He said if it is not eight feet wide then the State law does not allow FDOT to approve it.

Mr. Winger brought up the area that Mr. Collins was referring to. He said that there are five golf carts in operation located on the western half of Riomar Drive and there are 72 total golf carts. He said that the walkway has two problems. First of all there are two telephone poles and a tree, which makes it difficult to operate a golf cart. The other issue is that the sidewalk north of Bay Drive is only six feet wide and not the required eight feet wide. The only way five golf carts could get from the western part of A-1-A to the path would be to go through Quail Valley. He would not worry about these five other golf carts as pointed out by Mr. Collins. Council told Mr. Collins that they could not accommodate him with that request.

Mr. Coment added that in Section 74-197(e) they are only referring to City sidewalks. The sidewalks Mr. Collins was referring to are State sidewalks, which the City has no jurisdiction over. The issue about the equipment in the Club's carts, the way that he would look at it is that this is for operation on the designated City streets and just crossing the street on a cart path he would not interpret as being operated on a City street.

Mrs. Turner said that they can make a change to the Ordinance saying that carts owned by Riomar Country Club would not be required to have all of the equipment (horn, reflectors, and a rearview mirror) that would be required by people owning golf carts using City streets in this area.

Chief Curry had no problem with the carts that Riomar County Club owns not being required to have all of the safety equipment.

Mr. Kramer made a motion to approve the Ordinance for a public hearing on February 5, 2013 with the amendment that the additional equipment would not be required for the golf carts owned by Riomar Country Club. Mr. Winger seconded the motion.

Mrs. Carroll expressed that she feels that it is highly inappropriate to allow residents of one street the capability of owning and operating a golf cart on any of these public streets delineated by the map without the same neighbors who own property a block away being able to also do so. She said that allowing only people in one area to be able to do this is wrong. She said that there is another golf course within the City limits and the City is not looking at offering those residents this option. They are just doing this for one specific set of property owners and she feels that is inappropriate.

Mayor Fletcher commented that the Vero Beach Country Club is welcome to make an application, but to him this is something that has been grandfathered in for the Riomar Country Club.

The Clerk polled the Council and the motion passed 4-1 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll no, and Mayor Fletcher yes.

6. CITY CLERK'S MATTERS

A) Mr. Kenneth Weiss to ask Council for a reduction in a Code Enforcement Board lien.

Mr. Kramer made a motion that the lien be reduced from \$13,900 to \$6,300. Mr. Winger seconded the motion and it passed unanimously.

B) New Appointments to City Commission/Boards

Airport Commission

There is an opening for two alternate members on the Airport Commission. Council ranked their first choice and their second choice (ranking sheets on file in the City Clerk's office).

Mr. William Jordan was appointed as Alternate #1 on the Airport Commission and Mrs. Mary Wood was appointed as Alternate #2 on the Airport Commission.

Finance Commission

There are two alternate positions open on the Finance Commission.

Mrs. Turner made a motion to appoint Mr. Daniel Stump as Alternate #1 on the Finance Commission. Mrs. Carroll seconded the motion and it passed unanimously.

Planning and Zoning Board

There are two alternate positions open on the Planning and Zoning Board.

Mayor Fletcher made a motion to appoint Mr. Joseph Burke as Alternate #1 on the Planning and Zoning Board. Mr. Kramer seconded the motion and it passed unanimously.

C) Indian River County wishes to know the City's position on extending 20th Avenue to connect with Aviation Blvd.

Indian River County sent a letter to the City of Vero Beach asking what the City's position was on extending 20th Avenue to connect with Aviation Boulevard (letter on file in the City Clerk's office).

Mayor Fletcher recalled that back when they were talking about building the new County Administration Building it was made clear that 20th Avenue would not be open. He said that it would ruin the neighborhood (McAnsh Park) and he thinks that it is a horrible idea.

Mrs. Carroll felt that discussion of this item has come up because of the decision to move the go-line bus hub.

Mr. O'Connor agreed that it came up about the same time and Commissioner Davis brought it up at a County Commission meeting to bring forward. He said that the right-of-way on the campus of 20th Avenue has been discussed and consequently it was right at the same time.

Mrs. Carroll did not feel it was a coincidence. She noted that she had a discussion with Mr. Joe Baird, County Administrator, last week and he stated that now that the go-line buses would be moving on to the County property that they would need to have better access out of the County property and into downtown, which is why this was brought up. The City's decision to move the go-line bus off of its current location was because of the neighborhoods displeasure with that location and the violation of the zoning Code where it presently resides. Mrs. Carroll expressed that the County trying to get the City to change something that the City does not want to do is forceful. She agreed that the City does not need to do anything with 20th Avenue based on this request.

Mrs. Turner recalled that the City allowed the County to move their bus hub from Pocahontas Park to this temporary area. They have now been operating in this location for almost four years. The City worked with the County to come up with a viable location for the bus hub to be relocated to (off of 17th Street). The City agreed to provide the land and Senior Resources obtained the grant to modify the area, then the City received a letter from the County describing the breakdown of the lease saying the City was unwilling to accept the landscape/maintenance responsibility. She made it clear that the City was offering the land, but landscaping and maintenance was never to be handled by the City. When the City said that they would not provide these services that it would be the County's responsibility that is when this new plan came up to have a new location over by the County Administration Building. She thought that the City worked hard to come up with a viable solution to protect their neighborhoods and they are getting "kicked" for it.

Mr. Winger was also opposed to extending 20th Avenue.

Mrs. Turner asked that the Mayor send a letter to the County saying that the Council is not interested in extending 20th Avenue to connect with Aviation Boulevard. She made this in the form of a motion and it was seconded by Mrs. Carroll.

Mayor Fletcher instructed the City Manager to send a letter to the County Administrator saying the Council rejected this idea.

Mr. Ken Daigne presented the Clerk with some emails having to do with this matter (on file in the City Clerk's office).

The motion passed unanimously.

7. CITY MANAGER'S MATTERS

A) Stock Cable 1000MCM for Sub #9

Mr. O'Connor reported that this was a request for stock cable for Sub #9.

Mr. Randall McCamish, T&D Director, stated that this project would probably start in the next couple of months. He said that it would probably take two months before they receive the cable and another two months to install it.

Mr. Kramer made a motion to award the contract to Electric Supply Tampa. Mrs. Turner seconded the motion and it passed unanimously.

B) Hurricane Sandy Dune Restoration – Bid No. 010-13/JO – COVB PW Project No. 2012-35

Mr. O'Connor reported that to replace up to 7,200 tons of beach quality sand at Conn Beach (2,800 tons at Humiston Beach Park and 310 tons at Sexton Plaza) will cost \$152,795.80. Funding will come from the General Fund Non-Departmental account. They will attempt to absorb this increase in the General Fund Non-Departmental budget through monitoring of other accounts in that department. If this cannot be accomplished then a budget amendment will be necessary with the remainder of funds coming out of the General Fund balance. FEMA has been contacted and they completed a preliminary inspection of the coastline, however no Federal or State funding has been approved to restore the same loss.

Mrs. Carroll asked what happened at the Beach and Shores Committee meeting when this funding request was brought up.

Mr. Winger provided the Council with the minutes from the meeting (on file in the City Clerk's office). The Indian River County Beach and Shores Committee unanimously voted that if funding was available the County Commission should assist with the replacement of the dune sand in the City of Vero Beach. He feels that they received support from the Representative of Indian River Shores who was at the meeting and also the County Finance Director was present at that meeting. He briefly went over the history of the bed tax.

Mrs. Carroll reiterated what happened last year when she and Mr. O'Connor approached the Tourist Development Council asking for some funding for the emergency construction at Conn Beach. She expressed that over 55% of tax dollars come from Hotels located in the City of Vero Beach, but the City has no say on how that money is spent.

Mrs. Turner had some concerns going forward in the event they could not make up the \$130,000 budget shortfall.

Mr. O'Connor reiterated that it was his goal to take the funding out of the one General Fund account. He said that this work has to be done.

Mayor Fletcher asked what the time frame is.

Mr. Falls stated that the City has to have the sand in place by March 1st because of sea turtle nesting season.

Mr. Winger made a motion to move forward and award the contract to Timothy Rose Contracting, Inc. Mr. Kramer seconded the motion. The motion passed 4-1 with Mrs. Turner voting no.

8. CITY ATTORNEY'S MATTERS

A) Council Meeting Agendas/Order of Business

Mr. Coment mentioned that at the last meeting a local citizen contacted him with concerns regarding the order of business for City Council meeting agendas. It was discussed as to whether the Council might consider changing the order of business such that the Council would hold any noticed public hearings before the general public comment section of the agenda and presentations that might lead to lengthy public comment. Such a modification to the agenda was urged in order to enable those persons attending for only the noticed public hearings to expeditiously complete their business before the City Council in a timely manner. The City Clerk provided copies of various other council and commission agendas showing the way they conduct their meetings.

Mayor Fletcher felt strongly that the public needs to be up front on the agenda to be able to talk about anything that is on the agenda.

Mr. Coment explained that Council still allows the public to speak on other items that are on the agenda.

Mayor Fletcher did not see a demand to change their Code.

Mr. Kramer hated to have public hearings before public comment because the public wouldn't be able to speak.

Mr. Coment reminded Council that the public has an opportunity to speak under public hearings.

Council agreed to leave the agenda the way it is.

Mr. Coment recognized Mrs. Peggy Lyon, Assistant City Attorney, for earning the distinction as an AV Preeminent rated attorney by Martindale-Hubbell, based on peer evaluations of her legal ability and ethical standards.

9. CITY COUNCIL MATTERS

A. Old Business

B. New Business

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Craig Fletcher's Matters

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

None

B. Vice Mayor Tracy Carroll's Matters

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

Mrs. Carroll commented that they are still waiting to receive Mr. Kramer's goals. She said that they plan on discussing Councilmembers goals at their February 12th Special Call meeting.

Mr. Kramer said that he was still working on his goals.

Mrs. Carroll mentioned some upcoming events happening in the community.

C. Councilmember Pilar Turner's Matters

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

Mrs. Turner reported that she attended a meeting of the Steering Committee for the Senior Needs Assessment and they are reviewing their preliminary results from the survey and focus groups and preparing their recommendations. She attended the FMPA Board of Directors meeting where the financial audit was approved. She also attended the ribbon cutting for the Lagoon greenway and Bark in the Park was a very successful event.

Mrs. Turner commented that she was concerned today about their Transactional Attorney being requested to attend a Council meeting by the sole request of one Councilmember. She loves to see the public discussion however they are still trying to manage the budget for their Transactional Attorney. She said that it could have been more helpful if Council would have known that Mr. Miller was coming to the meeting so they would have been prepared to ask questions. The item was not on the agenda and they do have the

Transactional Attorneys coming for a Utilities Commission meeting, a Finance Commission meeting, and then again at their City Council Special Call meeting. So there will be plenty of opportunities to ask questions at one of these meetings. She asked the Council if they were going to allow a consultant or their Transactional Attorney to attend a meeting and incur the expenses at the request of one Councilmember.

Mr. Winger stated that the Transactional Attorney works for the City Council and he receives very little information from them. He does not think that the Transactional Attorney has done a good job so he reserves the right to call them forward. He will put it on the agenda under his items if that is what Council wishes. He thought that the comments made by Mr. Miller tonight were valuable to know what his plans are. He felt that the public has received very little information in the years that this has transpired and the seventeen months that the Transactional Attorney has worked for them. He will be kind enough to put it on the agenda where he thinks that it is necessary and give Council sufficient warning so that they can be prepared with questions. He will not consent not to have access to someone that works 20% for him.

Mrs. Turner reiterated that they were not trying to block the exchange of information. She said that Council needs to be fiscally responsible.

Mayor Fletcher agreed with Mrs. Turner and said that he does not think any single person on the Council should be the sole judge if there is a need to have the Transactional Attorney at a meeting. It needs to go through some process.

Mrs. Carroll wondered if the Clerk could send out a memo to all of the Council asking how they felt about having the Transactional Attorney coming to the meeting. Mr. Coment said that could not be done because of the Sunshine Law. He said that the request needs to be brought up at a meeting.

Mrs. Turner suggested talking about this at their Special Call meeting on February 12th.

Mayor Fletcher suggested that if a Councilmember would like to have the Transactional Attorney come to one of their meetings then it needs to be discussed at a Council meeting and the Council could vote on whether the need is really there.

Mr. Winger commented that he has not been provided with enough information in order for him to do his job.

Mayor Fletcher did not think that Mr. Winger had the authority to spend the money to have the Transactional Attorney attend their meeting without the rest of the Council having a say in it.

Mr. Winger mentioned all the money that was spent in having the different attorneys attend the recent meeting that was held with FMPA. He said if they have the money to pay for that meeting then they have the money to understand what the Transactional

Attorney is doing. He looks at this as they (the Council) are trying to cut off their ability to understand what the Transactional Attorney is doing.

Mayor Fletcher told Mr. Winger that if he wants to spend money that he brings it before Council for them to vote on whether or not the money can be spent. One Councilmember does not have the option of spending money whenever they want to.

Mrs. Carroll confirmed with Mr. O'Connor that he knew about the meeting that took place with FMPA.

Mr. Winger stated that he did not know the meeting was taking place, nor did he get the memo from January 10th until he asked Mr. O'Connor for it and he provided it a couple of days later.

Mayor Fletcher wanted to make a clear statement that no single Councilmember has the authority to spend money without the other Councilmembers voting in favor of doing so.

Mr. Kramer mentioned that the Transactional Attorney charges them \$500.00 an hour whether he is standing in front of them or they call him and talk to him over the phone. It is much more beneficial if the Transactional Attorney is available to everyone rather than a private phone call.

Mayor Fletcher agreed with Mr. Kramer's comments. He said that in the future they need to have a policy that when a Councilmember wants the Transactional Attorney to attend one of their meetings that Council will vote on whether or not they feel it is necessary.

Mr. Kramer could not agree with that.

Mr. Winger added that he does not know what information the other Councilmembers have received, but he has had inadequate information without digging for it or getting it some other way. He also did not agree with the Mayor's suggestion.

Council agreed to discuss this further at their Special Call meeting to be held on February 5th.

D. Councilmember Jay Kramer's Matters

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

Mr. Kramer attended the ribbon cutting for the mural that the Vero Beach Arts Club painted. It is located in the Community Center.

E. Councilmember Dick Winger's Matters

- 1. Correspondence**

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

Mr. Winger will be bringing forward at their February 5th meeting some of the comments made by the Finance Commission. The Finance Commission has come up with some locations for the substation and talked about what is underneath the facility (Power Plant). They believe that the liability will be greater than \$500,000. He also believes because of the presentation made by Rocky Joyner that they now have received enough information on what the City will look like in the future if the utilities are sold to FPL.

Mr. O'Connor stated that if a test is done on the site and contamination is found that it has to be cleaned up right away.

11. ADJOURNMENT

Tonight's meeting adjourned at 10:07 p.m.

/tv

VERO BEACH CITY COUNCIL MEETING 1/22/2013

Re: Hearing on Draft Ordinance Creating Ocean/Cardinal Drive Commercial Overlay District...Supplemental Staff Report

Reasons to NOT Adopt

Ellen Gower, a Florida resident living at
5101 N. A1A, #209
Indian River Shores, FL

My husband Dick and I first came to Vero Beach in April, 1998. We drove in via Route 60, and could see there that Vero had the shopping infrastructure that is important if a couple is possibly planning to make a new area their home.

But it was when we reached Ocean Drive that we were astonished and totally charmed by what a beautiful village setting it was. We loved how the commercial nature of its shops and restaurants were softened by the attractive architecture, by being set back from the street's sidewalk with a lovely landscaping strip in between and by not being tall. (It wasn't until later that we learned of Vero's very wise height restriction zoning.) Everything about it was appealing.

Of course, there were a number of other attractive Vero features that in the next two days convinced us to settle here, but the Cardinal/Ocean Drive area has continued to be one of our favorite places in town.

Now we have learned of this Ocean/Cardinal Drive "Overlay" Ordinance. We have read it. Its "Purpose and applicability," spells out that it is designed to encourage the responsible development and redevelopment of the area's commercial properties, in order to (I cite #4.) "Promote the health and well-being of residents by encouraging physical activity and greater social interaction."

Hmmmm? What about the health and well being of the *businesses* on which this Ordinance will be imposed? Not stated at all is what we think should be one of the *primary* purposes for wanting this Ordinance.....to help the Ocean/Cardinal Drive businesses succeed. We wonder...why isn't "helping to promote financially healthy businesses" not at the *top* of this ordinance's list of Goals?

We have nothing whatsoever to do with any of these businesses, but I was a banker for the majority of my working life, and my husband Dick owned and operated a Providence, RI, commercial property business and his family's RI home heating and transportation fuel oil business for 47 years. Over the course of those years, it became very clear to us that best way for a business

to prosper is for it to be unencumbered by as few rules and regulations as possible.

Let us not forget that America's system of private property is our most important guarantee of freedom.....not only for those who *own* property, but also for those who do not. Because, those who do not own property can see that the benefit of hard work is to achieve something of their own, and in doing just that is created a sense of power over their own efforts, and the belief in the unbounded possibility of improving their own lot. The more that individuals are free to work, save and *invest*, the greater is their chance of increasing their income and in turn.....the community's tax base!

So we ask:

- Shouldn't we be following one of the first tenants of a constitutional government's responsibility.....that of protecting the equal and inalienable rights of the individual.....meaning in this case the private property rights of the individual property owners?

- Shouldn't we *care* about our community's economic prosperity?

- If so, shouldn't we be vigilant against diluting anyone's, including property owners', freedoms?

- And if *that* is the case, shouldn't economic prosperity for the area's businesses be one of the primary goals of the Ocean/Cardinal Drive "Overlay" Ordinance?

We would suggest that limiting the property owners' freedom, to determine how best to lay out and rent the *inside* of their buildings,

- 1.limits commercial property owners' potential revenue, which leads to
- 2.reduced revenues, which leads to
- 3.the reduction of those properties' assessed values, which leads to
- 4.reduction of the city's or county's property tax revenue, which leads to
- 5.a higher tax rate being imposed on other property owners (presumably *residential* home owners, who will thereby be punished financially for a mistake they did not commit). And as a result, some of those homeowners will not be able to stay in their homes when their plans do not work out, because they did not, could not anticipate such a large property tax increase.

Doesn't connecting these dots lead us to understand that we should be doing all we can to *help* commercial property owners succeed, rather than putting stumbling blocks in their paths to success?

The Overlay Ordinance wants to impose a no-offices-on-the-first-floor rule. Hmmmm, what could be the rationale for discriminating against one type of retail business, whose customers are called "clients," in favor of

another type of retail business, whose customers are called just that... "customers?" They both like to attract foot traffic, therefore they both elect to locate on the street level.

Such a restriction would remove a revenue option from the property owner, and thereby seems to be confiscatory in nature, in that it denies the property owner (as in ~~E~~minent Domain) the fundamental right to the "peaceful enjoyment of the property's use without interruption or disturbance from the government and others" without compensation. The "right to peaceful enjoyment" in this case is the property owner's desire and ability to rent to whomever he deems appropriate for his goals of business success. And should the entity, that wants to deny that fundamental right, decide to compensate the property owner for such confiscation, the Supreme Court has ruled that such an exchange may be permitted IF the taking is for the public good. Therefore before that exchange could be permitted, the taking entity would have to prove that it is for the public good to *discriminate* against lawyers' offices, realty offices and the like being domiciled on the first floor.

The Ordinance reads, "Retain and promote a pedestrian-oriented, mixed residential-commercial district, characterized by small-scale specialty retail and services, restaurants, and related supporting uses on the ground floor with office, residential and hotel uses above the ground floor." We believe that "small-scale specialty retail and services....and related supporting uses on the ground floor" can certainly be interpreted to include all services that benefit from the Ocean/Cardinal Drive area's foot traffic, i.e. lawyers, realtors and other such businesses. We believe that those service businesses, which *want* to be visible to street traffic, should not be discriminated against. Let's assume that the writers of the Ordinance's words, "pedestrian-oriented" are attempting to make the case that businesses, such as lawyers, realtors, etc., do not attract foot traffic.

It may be true that they perhaps do not attract as much foot traffic as do the retail shops, but isn't forcing them upstairs a denial of their right to foot traffic that will walk in, precisely *because* it has browsed the realtors' or lawyers' signs and windows? And yes, they are not available to foot traffic at night, but neither are many shops that close at night. So far the freedom for individual businesses to remain open in the evening is still up to the individual business owner.

AND we believe that the property owner should not be denied (in this case *without* just compensation) his fundamental right to rent to whatever tenant will pay him the most favorable rent.

Additionally, we believe that this rule would do nothing to advance the *unstated* goal of promoting "the health and well-being of the area's businesses." We therefore respectfully suggest that this regulation be omitted.

We also respectfully suggest that as many floors as can fit into the existing 50 foot height restriction be allowed. Why isn't the property owner, not the government, the better judge of how his building should be configured *inside* to provide him the greatest possible rent revenue (which should be among this Ordinances' goals)?

If he is *allowed* to configure the interior to his liking, the *government* of Vero Beach benefits, because the increased revenue from additional floors ultimately helps the tax base. A stable tax base is the engine that keeps Vero the lovely, little, low-density community that we all love so much. So it becomes clear that keeping the government out of a property's interior space becomes a WIN for the property owner AND for the government. Who does *not* like a win – win solution?

AND the same point made earlier, that denying a property owner's fundamental rights is a confiscation (especially without just compensation), applies also to the owner's right to decide to determine the layout of his building's interior. Therefore for *two* reasons we respectfully suggest that the Ordinance deal only with the exterior of the area's buildings.

So, in regard to this Ordinance, we respectfully suggest there are three options available:

1. that these two changes, just recommended, be made to the Overlay,
2. that the Overlay plan be rejected, or
3. that the Overlay be optional for the area's property owners.

If you Vero Beach's City Council members vote to return property rights regarding the *interior* of their buildings, to the owners, they would then be free to create the highest and best use of their properties, while continuing to be responsible corporate citizens. Businesses that are free from excessive rules and regulations have the best chance of success. That success helps the entire community.

The charming Vero village, which, upon first viewing, struck a very warm chord in Dick and me, has, we understand, evolved over time from individual property owners wanting to create a lovely streetscape that would attract shoppers, diners and overnight visitors. Assuming that is *true*, those owners have proven that they are responsible stewards. We think a case can be made for Vero continuing to let the good business sense of those owners guide their actions in regard to what they do to the interior of their properties. In so doing the winners will be those property owners, the areas' residential property owners, the many residents and visitors, who love to shop and eat in what they know is the heartbeat of Vero, and most importantly the City of Vero Beach.

Please vote to let that happen.

Thank you.

City Council meeting, January 22, 2012

I have follow-up public comment regarding the January 8th meeting as to the agenda item at that meeting which was "Seven 50." We realize it had been a consent agenda item and thankfully it was revisited. We thank you for your carefully considered decision to vote it down.

Groups like "Seven 50" under "Sustainable Communities" will reappear again with other warm and fuzzy-sounding names such as I.C.L.E.I., International Council on Environmental Initiatives, the Wildland Project, The League of Cities, Florida Forever and others, but this time I am sure we will be able to recognize them for what they are and make our careful choices to protect our local community. Thank you.

I also have four corrections to comments made at that Jan. 8th meeting for the Public Record as follows:

Submitted by Phyllis Frey, 275 Date Palm Road, Vero Beach, Fl 32963

During the January 8 city council meeting, one of your council members said, "About five or six weeks ago a woman in this group, who is a friend of mine, she's in this audience today, came to my office and began sharing with me some of this information."

For the public record: If this council member is referring to me, Phyllis Frey, let it be known that I do not know this council member other than through conducting business matters during regularly scheduled meetings at Vero Beach city council. This council member and I are both members of the same Rotary club, and I do not know this person outside the business conducted at that club.

A subsequent comment was made by this same council person. It was, "I do not believe that the United Nations and Rotary and all these organizations are out there in global efforts to take over the planet..."

For the public record: During my research on the United Nations, nothing I have ever said or written, nor that is written in any of the list of books and source materials I have used, nor in the collective works of academics who have researched the subject ahead of me, had printed to my knowledge, nor stated, that the Rotary organization has a conspiracy to take over the planet. The records clearly show that there is nothing implicit or implied on my behalf, or that of the group who spoke out against "Seven 50" that would support this false premise.

The council member continued: "What I do believe, is that there's a lot of people that are working very hard to promote their own agenda."

For the public record: If this council member in that statement was referring to me or any of my colleagues who spoke, allow me to clarify our mission statement which is: "To protect and preserve the private property rights of

Americans in accordance with the U.S. Constitution.” We are a nonpartisan, fact-finding group of citizens concerned about the future of our country, our community, and the protection of our freedoms. We are independent and do not belong to any other organization or group with an agenda. I am not in public office. I am not running for election. I have no monetary gain to be made, and our citizens’ group had no agenda other than to provide the truth. If Jesus had an agenda in revealing the truth, then I stand by Jesus.

Last comment: This council member said quote, “that I was asked to speak on it because I am a very eloquent speaker.” If this council member was referring to me, I did not make that statement. I have proven repeatedly that I am not an eloquent speaker. At the many city council meetings, county commission meetings, civic groups, public forums, home owners associations, other town halls, public luncheons and private homes—wherever I have spoken, including here and now, I read from my notes verbatim. What is factual is that I can write and I can read what I write, and anyone who knows the true content of my character **knows** that I would never lay false claim to being “an eloquent speaker.”

Thank you for allowing me the time to present the facts. I respectfully submit them as a matter of public record.