

**CITY OF VERO BEACH, FLORIDA
TUESDAY, MARCH 19, 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

The invocation was given by Pastor Buddy Tipton of the Central Assembly of God.

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

Mrs. Tammy Vock, City Clerk, removed item 2C-1) off of the agenda "Mr. Dan Brenneman to discuss a new Not For Profit to grow healthy, nutritious vegetables."

Mayor Fletcher asked that under his items that they discuss Quit Doc Research and the Education Foundation.

Mrs. Carroll stated that she would be asking the City Manager to update them on the recent Beach and Shores Committee meeting, the Hurricane Sandy Dune Restoration, the survey sent out to their utility customers and the Vero Beach Art Club's request to build in Riverside Park.

B. Proclamations

- 1. Osceola Park National Register District**
- 2. Humane Society of Vero Beach and Indian River County Week**

Mayor Fletcher read and presented all the above proclamations.

3. Confederate Heritage Month

This proclamation was mailed to the organization.

4. A Day of Congenital Diaphragmatic Hernia Awareness

Mayor Fletcher read and presented the proclamation.

C. Public Comment

- 1. Mr. Dan Brenneman to discuss a new Not For Profit to grow healthy, nutritious vegetables and fruit and donate to a limited number of local food banks, which will then distribute the produce to the needy.**

This item was removed from the agenda.

- 2. Commissioner Tim Zorc would like to ask Council if they would like to appoint someone to work with him regarding the Go-line Bus Hub.**

Mr. Tim Zorc, County Commissioner for District 3, told Council that two weeks ago he was given approval from the County Commission to come to the City Council and talk to them. He wants to form a team to talk about the potential sites for the Go-line bus hub. He would like to have a City Councilmember and a member from City staff be a part of that team. He said that maybe members of the public would also like to be involved. He made it clear that the team will not be discussing the bus drivers strike or the Code Enforcement citation issues.

Mrs. Carroll mentioned that she has been working closely with the former acting City Manager and the current City Manager in place on this issue and has attended many meetings regarding the bus hub. She appreciated Mr. Zorc for stepping forward and coming to the Council meeting to discuss it. If the Mayor and Council would like her to represent the Council on the team she would be glad to do so and continue her role in this matter.

Mrs. Turner thanked Mrs. Carroll for doing this.

Mr. Kramer recalled that he tried to solve this matter twice and was shot down both times. He said if Mrs. Carroll wants to give it a try that she should “go for it.”

Mr. Wayne Coment, City Attorney, expressed that the team would need to meet in the Sunshine.

Mr. Zorc realized that and said that he hoped to have a meeting set up within the next two weeks.

Mr. James O’Connor, City Manager, expressed that the site that the City had offered to Senior Resources to relocate the bus hub to that there is someone interested in purchasing that piece of property, so the City will be declaring the property surplus.

Mr. Zorc reported that on Tuesday, March 26th, he will be hosting an Indian River Lagoon symposium at the County Administration building and invited everyone to attend. He said that more information about the symposium can be found on the Indian River County website. Also, the symposium will be televised on the local government channel.

3. Draft State Road 60 “Twin Pairs” Traffic Calming Feasibility Study

Mr. O’Connor reported that the Indian River County Metropolitan Planning Organization (MPO) and Florida Department of Transportation (FDOT) helped to assist the City of Vero Beach in evaluating viable traffic calming measures in the segment of State road 60 traversing downtown Vero Beach. In 2012, the MPO approved funding of a \$81,768 consultant study to conduct the evaluation. The firm of Kimley-Horn and Associates, which already had an agreement for professional services with that organization, prepared the feasibility study. On March 7, 2013, the Planning and Zoning Board considered the draft study after listening to a presentation and voted 4 to 1 to recommend that Council consider the study.

Mr. Brian Good, Kimley-Horn and Associates, gave a Power Point presentation (attached to the original minutes) on the State Road 60 “Twin Pairs” Traffic Calming Feasibility Study. He said that FDOT has said that they will consider a lane reduction in downtown. He said that there will be minimal impact on the evacuation route. He explained that there will be a formal lane reduction application that will need to be filled out and sent to FDOT if Council wants to proceed.

Mrs. Turner wondered how much more work is needed to get the application filled out.

Mr. Good said at this point they have most of the data that they need in order to proceed. The time frame would be between one and six months, which he thought would be ample enough time to complete this task.

Mrs. Carroll added that there have already been numerous discussions with FDOT on this.

Mr. Tim McGarry, Planning and Development Director, explained that the only viable option if Council approves the study is to wait for seven or more years until FDOT is anticipated to resurface the road. Such a milling and resurfacing project would eliminate the \$680,000 costs for restriping leaving a little more than \$400,000 to complete the project. He didn’t know how much work needs to be done at this time.

Mrs. Turner thanked Kimley-Horn for doing such a great job in answering the questions that they were asked to have answered and presenting the study. She said the study shows that this is feasible and there still will be an evacuation route.

Mr. Walter Geiger commented that he goes downtown a couple of nights a week. He has watched senior citizens who are afraid to cross the road because the traffic is moving so fast. He thinks if downtown was more pedestrian friendly that more people would go to the downtown area. He suggested creating a taxing district downtown and asked Council to approve the study.

Mrs. Carroll noted that the Council has passed an Ordinance creating a Business Improvement District, which will be discussed later on in the meeting.

Mr. Brian Heady said that he has clocked the traffic in this area over the last couple of weeks and the average speed was under 40 mph. He explained that he has worked for government in the past and if you want something then you say it is a safety issue and you get what you want. He noted that the MPO is the same organization who recommended putting in the twin pairs and now they are recommending taking the twin pairs out. A couple of weeks ago he (Mr. Heady) supplied Council with about 150 photos of this area. He said if they are going to decrease the City's income by getting rid of the electric system, they should not be decreasing the City's income by starting this project.

Mrs. Phyllis Frey, 275 Date Palm Road, recalled that a couple of months ago that the Council voted down being a part of the Seven 50. Now, here they are again in the throes of Seven 50 with a plan to reengineer their streets. She attended the MPO meeting when the twin pairs was discussed. She asked some questions at that meeting and has not received the answers. She wondered how far into the future would it take before the business people started showing additional income if this was done. All she has been shown is an \$80,000 drawing with a few more parking spaces. She asked Council to carefully consider the implications of narrowing the twin pairs. She supports local businesses and gave some options for parking and beautification.

Mrs. Susan Meal, 131 Laurel Oak Lane, attended the MPO meeting and was surprised when this item was brought up. She also was surprised to hear this referred to as a tunneling effect and the perception was that cars would go slower. She explained that Route 60 was a major artery to move traffic east to west and it was not intended for pedestrian walking. She didn't know any neighborhoods who would want more traffic down their residential streets, which is what would happen if this plan was to be implemented. She was not in favor of changing the twin pairs and thought that it was an inappropriate use of tax dollars.

Ms. Marsha Lowenger commented that everyone that she has talked to except for downtown people are against this. She suggested that this item be put on the ballot and voted on. She sees a lot of problems with this and the number one problem is funding. She said there is going to be a traffic jam going to the west because of only having two lanes.

Mr. Chris Fields, owner of ABC Printing said that his business has increased 20% this year and he has plenty of parking. He hears a lot of accidents, but so far no one has died.

He said there is at least one accident a month near the location of his business. Also, there are no crosswalks.

Mrs. Barbara Hoffman, Cultural Council, mentioned that in an effort to support economic growth that the City Council recently proclaimed the downtown area as an Art District. She went over some of the businesses located on 14th Avenue. She agreed that there were some parking issues in this area. The issue today is about people and making the Art District a viable place for people to prosper. The City has done due diligence by authorizing this study. She said if the Council approves the feasibility study it is her understanding that funding is not available at this time, but it is important to have a plan moving forward.

Mrs. Vicki Gould, Vice President of Main Street, was speaking tonight as a private citizen. She said that she wants all the areas of the County to be successful. In their downtown there is disregard for pedestrians and bicyclists. The area of town that is thriving is where people want to go. She commented that there were more lanes going through downtown than I-95. She said they need to take a long look at how they want their plan to be in the future. She questioned what town would have benefits by having seven lanes of traffic running through it.

Mrs. Olska Forbes, 2255 Avalon Avenue, was not worried about traffic diverting to the neighborhoods around the twin pairs. She said that there is a benefit to reducing the lanes and adding a few parking spaces. There will be more trust in City government to the merchants by doing this because they want to see the downtown area developed into a more beautified area. The government owns real estate in the downtown area so the downtown could benefit by reconfiguring the twin pairs.

Mr. Mark Satterlee, 605 Royal Palm Boulevard, commented that the twin pairs was a bad idea when it was built in the first place. He rides his bike all over the County but tries to avoid the twin pairs. He provided Council with a letter, which he read into the record (letter attached to the original minutes).

Mr. Terry Torres commented that he has a business in the City and is a supporter of traffic calming on the twin pairs. He thought that some of the comments against the study seemed out of line. He urged Council to support the measure to calm the twin pairs. He told Mrs. Carroll that he would talk to her over the phone and give her an update on the Downtown Business District.

Mr. Peter Jones, 2502 57th Circle, Architect, urged Council to move forward with the study. It will increase the value and income coming into the City. He recalled that this came before the Visioning Committee and he was a member on that Committee.

Mr. Daniel Fourmont, member of Main Street, and also a member of the Taxpayer's Association, stated that he doesn't understand why the Press Journal is so stubborn and not listening to the experts who have done this study. He hopes that Council will approve the Planning and Zoning Board's recommendation.

Mrs. Ellen Gower, 7435 Cypress Bin Manor, read a letter into the record (attached to the original minutes).

Ms. Janie Hoover commented that her family owns an office building on 14th Avenue. She was before Council to urge them to support calming traffic on the twin pairs and moving forward with the study. The reason they elect people into office is because they trust that politicians will make good decisions. She noted that the Courthouse is located in downtown Vero Beach and that is where it is going to stay and the lanes that the jurors have to cross to get to the Courthouse is dangerous. She went over some other businesses in the downtown area and noted that there are now 28 restaurants located there. She felt that some of the arguments brought up tonight are way out in the left field. She didn't agree with having this item on a ballot and having an election. She was at tonight's meeting to encourage the Council to vote in favor of the study. She doesn't know why anyone would be against improving downtown and making it a better place.

Mrs. Sharon Sexton talked about the success of downtown. She has an art gallery in the downtown area and this has been her best year yet. The downtown area is growing and there are people who want to be downtown. The twin pairs is something that is going to have to be addressed whether it is now or seven years down the road. What she sees happening is exciting. Everyone needs to think about the future. She agreed that they would succeed whether they do this or not, but she has some concerns about people walking across the busy street.

Mr. Barry Shapiro, owner of Lighthouse Art Framing Studio, read a prepared statement and was in favor of the study.

Mrs. Deborah Daige, 1846 21st Avenue, stated that she was in favor of improving what they have and the twin pairs should not have been done in the first place. She addressed the evacuation route and said that it is not going to be a problem. In an evacuation all roads lead out and there is a plan in place. She said that she will not walk downtown because she is not a fast walker. She agreed with the study.

Mrs. Linda Hillman commented that there could not be any more traffic on 18th and 23rd Streets than what there already is on Sundays because of all the churches in the area, so she is not afraid of having more traffic on her neighborhood streets. She questioned if there has ever been a referendum on the ballot concerning Royal Palm Pointe or Ocean Drive. That is ridiculous and absurd (referring to having one for the twin pairs). She encouraged Council to approve the study.

Mr. Joseph Guffanti made a comment about Mr. Larry Reisman, Editor of the Press Journal, that he is one of the few educated people that he has come across in Indian River County. He asked why this item was on the agenda under public comment. He said that the people from Kimley-Horn are not the public, they are consultants. He asked if the County was pleased with the intersection of 20th Avenue and Route 60. He was told that they cannot speak for the County. He then asked for some figures.

Mr. Brian Good, Kimley-Horn, went over the options and the costs.

Mr. Guffanti suggested having an experiment done and do this as a temporary changeover to see how it is going to work out. He is going to make a prediction that if you do this it will not work. It will alienate a lot of people who use the twin pairs now and cause them to avoid the area completely.

Council took a ten-minute break at 8:35 p.m.

Ms. Rosemarie Wilson commented that the twin pairs was constructed to accommodate traffic flow without creating bottle necks in the City. She suggested doing a survey to find out if the citizens of this community support the narrowing of the twin pairs. She was not talking about having a referendum that will cost money. She suggested just doing a simple survey. She believes that the majority of residents feel if it is not broken then don't fix it.

Mr. Jack Flash was a firm believer in logic control of traffic and doesn't have a desire to change things because of political power. He is also a firm believer of leaving what is there remain there. He said to change to two lanes in each direction is obsessive and costly.

Mr. Scott Chisholm, owner of Scott's Sporting Goods, said that there needs to be an adjustment made to the road for safety reasons. He invited each Councilmember to stand at his front door and if they (Councilmember) walk away saying it is safe then he will never say another word about this. He suggested that the road be converted to a smaller size.

Mr. Ken Daige, 1846 21st Avenue, said that it is time for a change and it is in the Council's hands to do the right thing. The window is open now for this change. He said that downtown is thriving and urged them to make this change.

Mr. George O'Malley, owner of a business on 14th Avenue, commented that everyone is polarized on this idea of change and he was not sure that this is a change. The reason there is a problem is because there wasn't a plan and now they are fixing the problem. He encouraged Council to vote in favor of the study.

Mayor Fletcher explained that this is a conceptual study and Council is voting to accept or reject the study. He made it clear that this is not an implementation of any plan because there is no plan.

Mr. Kramer made a motion to accept the study. Mrs. Carroll seconded the motion.

Mayor Fletcher stated that he could not support this.

Mrs. Carroll commented that she received a lot of communication from people on this matter. She read excerpts from a letter that she received and answered the questions brought forth in the letter.

Mrs. Turner complimented Kimley-Horn on doing a great job and what they were asked to do. She has no problem with approving the study, but to move forward on this issue she would like to see a cost benefit analysis, more detailed funding options, timing of schedules, and potentially doing a trial case.

Mr. Kramer mentioned that he is a hard fighter for property rights. He recalled that Council did approve lowering some speed limits in residential neighborhoods, provided a dog park for citizens that wanted one, and that this is not Agenda 21. He has a list of the property owners of downtown that have signed off on this request. He said that these are local people, local businesses, and local property owners who want to take control of their local neighborhood. He will support the local people on this.

Mr. Winger was in favor of moving forward to the next step.

The motion passed 4-1 with Mayor Fletcher voting no.

Mr. Charlie Wilson commented that he had two matters to bring up tonight. He said that the first thing is the election results from the referendum that was voted on. The results were clear and congratulations to everyone who worked hard “pro and con.” He said that every precinct voted in favor of selling the Power Plant to FPL. This means that they have reached a turning point. What has changed is that the City has a contract and approval by the public. He would like to see all of them working together and he mentioned the penalties involved if they were to stop the negotiations.

Mr. Wilson brought up that there is still some old business relating to the OUC contract that was signed in 2010. He said that no one has ever been held accountable and now is the time to let the public know what happened once and for all. He realized that there was an investigation done by the State Attorney’s office, but they never put anyone under oath and the person doing the investigation once worked for the former City Manager. There are still a lot of questions about the Public Records law, Sunshine Law, bidding process, conclusion, contracts missing, things redacted in regards to the OUC contract, etc., that need to be answered. There is one organization that can investigate this and they are the Florida Department of Law Enforcement (FDLE). The City Attorney has provided Council with a name and contact number. He asked that the City Council write a letter in reference to this matter to FDLE and ask for an independent review, which costs nothing. If it is not their jurisdiction or they are not interested then they will relay that to Council.

Mayor Fletcher asked Mr. Coment if the FDLE would be the proper agency to send the letter to.

Mr. Coment explained that the State Attorney's office has jurisdiction. He understands that FDLE is a State agency and reports to the Governor. If Council agrees to send a letter to FDLE then they would initiate the request with the local agency located in Ft. Pierce and they evaluate the situation and determine if it warrants being sent to Tallahassee. He said that his contact on this would be through their Police Chief because in the past he has had contact with this agency.

Mrs. Carroll commented that Mr. Wilson mentioned a conflict of interest because of the fact that the former City Manager was also the former Police Chief.

Mr. Coment was not saying go through the Police Department. He said that Chief Curry was very helpful in obtaining information in tracking down the process. He said that anyone can call up this agency and make a complaint. He said it doesn't have to come from the City Council.

Mrs. Carroll asked Mr. Wilson to go over the investigation done by the State's Attorney's office.

Mr. Wilson understood that the State Attorney's office did interview after a grand juror asked for information during the grand jury proceedings. He said that an interview was done with a City employee, but the interview was never released and the information obtained in that interview was never released. As far as he (Mr. Wilson) knows no one has ever been put under oath, including the consultant from Boston and Mr. RB Sloan (former Utilities Director). He said that an individual could probably make a complaint to the FDLE, but they respond to an official body. It would be a correct thing for the City Council to issue a letter to FDLE to ask for this information. He wasn't sure when the Statutes of limitations runs out on this matter because it has been delayed for years.

Mrs. Carroll agreed since they do have a signed contract in place and she does not feel that OUC had a wrong point in creating the termination clause. Mr. Wilson said that OUC is held harmless and has "clean hands" and he will tell who ever interviews him just that. Mrs. Carroll continued by saying that since she feels that they are in good standings with OUC that perhaps now is the exact time to go forward with an investigation. Mr. Wilson agreed and said that FDLE is the agency to do this investigation and they will come back with a report to City Council saying whether or not there is cause and then Council will be able to tell the public.

Mrs. Carroll recalled that four of the sitting Councilmembers were on the Council when there was one other Councilmember who was asked the question if he ever saw that penalty in the OUC contract that he signed and that Councilmember refused to answer the question.

Mr. Wilson agreed that person (former Councilmember) should be asked by FDLE under oath if that is the case. Mrs. Carroll added as well as all the sitting Councilmembers at that time, the former City Manager and those involved.

Mrs. Turner suggested that the Council send a letter to FDLE requesting an investigation.

Mrs. Carroll felt that the letter needed to come from the Mayor.

Mayor Fletcher asked both Mr. Kramer and Mr. Winger if they had any thoughts. Both Councilmembers said nothing.

Mayor Fletcher stated that the general feeling is that three members of the Council would like to have the letter written. He instructed the City Attorney to work with him in writing this letter to the FDLE asking for assistance.

Mr. Wilson asked the Mayor if he should take a vote on this.

Mayor Fletcher answered no and said that it is general consensus of the Council (3-2) to investigate.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – March 5, 2013**
- 2. FRCC Non-Statutory Assessments**
- 3. Refurbishment of Wastewater Treatment Plant Influent Barscreens – Water and Sewer Project No. WS13002**
- 4. Contract Renewal – Utility Bill Printing and Mailing**
- 5. Monthly Capital Projects' Status Reports**

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

3. PUBLIC HEARINGS

- A) A Resolution of the City Council of the City of Vero Beach, Florida, recognizing the need for action to address the Health of the Indian River Lagoon Ecosystem, Supporting the Indian River Lagoon Coalition, and Pledging the Cooperation of the City of Vero Beach in efforts to find solutions for restoring the Health of the Indian River Lagoon; Providing for an Effective Date. – Requested by the City Council**

Mayor Fletcher read the Resolution by title only. He opened and closed the public hearing at 9:12 p.m., with no one wishing to be heard.

Mrs. Carroll 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.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

A) A Resolution of the City Council of the City of Vero Beach, Florida, to enter into a Grant with the State of Florida, Florida Department of Agriculture and Consumer Services, Florida Forest Service; Providing for an Effective Date. – Requested by the Park’s Department

Mayor Fletcher read the Resolution by title only.

Mayor Fletcher commented that in the Resolution he did not see anything in the way of a contract and asked what the “hooks” are if they go along with this and approve it.

Mr. O’Connor explained that this would be a fifty-fifty matching grant and if the City does receive the grant money then the 50% matching money would come out of the Tree and Beautification planting account. He said of course there was no guarantee that they would get the grant money.

Mayor Fletcher opened and closed the public hearing at 9:13 p.m., with no one wishing to be heard.

Mr. Winger 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.

B) A Resolution of the City Council of the City of Vero Beach, Florida, requesting the Board of County Commissioners of Indian River County to authorize reimbursement to the City of Vero Beach for Dune Restoration Expenditures incurred due to Hurricane Sandy; Providing for an Effective Date. – Requested by the City Council

Mayor Fletcher read the Resolution by title only. He opened and closed the public hearing at 9:15 p.m., with no one wishing to be heard.

Mr. Winger reported that the Beach and Shores Committee met yesterday in an effort to go forward with a special revenue that was voted down at this time. He mentioned that some such district named MSBU came up and was discussed.

Mr. Winger made a motion to approve the Resolution. Mrs. Carroll seconded the motion.

Mrs. Carroll was looking through some backup material for the Beach and Shores Committee and commented that the Committee is in place to make recommendations to the County Commission. She showed a document and asked who prepared it. She was told that it was prepared by Mr. Jason Brown, County Finance Director. She felt that the document was telling the Beach and Shores Committee which way to vote.

Mr. Winger reiterated that this document was produced by Mr. Jason Brown, but there was no vote taken on that document. The meeting when that document was presented was three meetings ago.

Mrs. Carroll still had some concerns with the document and read excerpts from the last page of it.

Mr. O'Connor also attended the meeting and said that Mr. Jason brown did present the document, but the Beach and Shores Committee did not take any action.

The Clerk polled the Council on 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 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 Director

Mayor Fletcher read the Ordinance by title only.

Mr. McGarry explained that this Ordinance revises Chapter 77 and sets up review procedures and the process for design review with the Architectural Review Commission. However, it only grants them power to look at the overlay district at this time.

Mayor Fletcher referred to page 10 of 16, Section 77.04, Powers and Duties. He read item (1) which states “Hear, consider, approve, approve with conditions or deny applications for design review approval as required by this chapter and other provisions of this Code.” He has a problem with the Architectural Review Commission denying anything. He said that the only Board that should be able to deny anything is the Planning and Zoning Board and the City Council.

Mr. McGarry recalled that in the conceptual planning process this was discussed and the intent was to give the Architectural Review Commission some power. He said that if they (Architectural Review Commission) don't have some power then the public won't listen to them and it will be a waste of time. This is a careful balance to keep the Architectural Review Commission out of the zoning balance and just to have them look at the design elements. He said that the zoning requirements would all be done by the Planning and Zoning Board.

Mayor Fletcher asked Mr. McGarry if he is saying that the Architectural Review Commission has the right to preempt the Planning and Zoning Board.

Mr. McGarry explained that if there is a design requirement, the applicant will have to pass the design review and the Planning and Zoning Board will still have to approve the site plan.

Mr. Winger asked Mr. McGarry when the City Council comes into the picture. He asked if the Architectural Review Commission could preempt the City Council.

Mr. McGarry answered no, because the City Council was the appellate body. He said that any appeals from the Architectural Review Commission will come to the City Council. He reiterated that the only reviews being done are for the overlay district.

Mayor Fletcher referred to page 12 of 16, where it states “the Architectural Review Commission will conduct a quasi-judicial public hearing on the application.” He wondered if this was necessary.

Mr. Coment said that it is necessary because the Architectural Review Commission will be determining the applicant’s rights.

Mayor Fletcher did not see any vehicle that assigned the application to the City Council for a public hearing.

Mr. Coment explained that is located in a Section in their Code and also on page 14 of this Ordinance under appeals.

Mr. Winger wondered if there was an urgency to get this Ordinance passed.

Mr. McGarry explained that the overlay district goes into effect on April 1st, which is why he wanted this Ordinance in place. However, at this time there are no applications in the process.

Mr. Winger said that he would be more comfortable if the Mayor was given more time to review this Ordinance.

Mrs. Turner commented that it will be heard at a public hearing.

Mayor Fletcher said this would give him enough time to meet with the City Attorney and Planning and Development Director to go over his questions.

Mrs. Turner made a motion to move the Ordinance to public hearing on April 2, 2013. Mr. Winger seconded the motion. The motion passed 3-2 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll no, and Mayor Fletcher no.

6. CITY CLERK’S MATTERS

None

7. CITY MANAGER’S MATTERS

A) Proposal – Property formerly known as Dodgertown Golf Course

Mr. O'Connor reported that the City has received a request to lease the Dodgertown golf course and turn it into a driving range. They (person wanting to lease the property) do not plan on paying any rent, but will maintain the grounds and pay the utilities. He said that there is an estimated cost savings outlined in their proposal. He asked Council if this item should be taken before the Recreation Commission.

Mr. Winger would like to see it go before the Recreation Commission.

Mayor Fletcher's main concern was liability.

Mr. Coment stated that Mr. John Hendricks (person requesting this) would have to provide the City with the proper insurance and indemnify the City.

Mrs. Carroll asked if they were also proposing a fence.

Mr. O'Connor answered no.

Mr. John Hendrix, President of American Golf Club, along with Mr. Paul Thomas, were present for tonight's meeting. Mr. Hendrix explained that his vision is to use the building for a small pro shop and use 300 yards of the property for a driving range. In return they are proposing to keep the building maintained, pay the electric for the building, and mow all the area around the building and the area for the driving range (38 acres). This will allow the City to store all their recreational equipment in the balance of the building and keep the City from having to mow the grounds. He said that it would be a cost savings to the City of about \$23,000 per year.

Mrs. Carroll asked Mr. Hendrix if he would be utilizing the restrooms in the club house.

Mr. Hendrix explained that patrons would be able to access the restrooms from the outside of the building. The American Disability Act for handicap restrooms would need to be followed.

Mr. Rob Slezak, Recreation Director, stated that there still are some things, if approved, that would have to be done. He said that Mr. Hendrix would need to build a firewall, get FAA approval, and get the appropriate insurance protecting the City and abide by current parking restrictions and any other necessary contractual obligations.

Mayor Fletcher didn't see where the Planning and Zoning Board would be reviewing this.

Mr. O'Connor explained that they were just trying to get the conceptual plan down first and then they will be sending it to the Recreation Commission and the Planning and Zoning Board for all of the specifics.

Mrs. Turner asked that since the maintenance will be taken care of, will there be a reduction in Public Work's staff.

Mr. O'Connor explained that there is no one person assigned to mowing this area and it is only cut every couple of months.

Mrs. Turner questioned the estimate given and would there be any savings to doing this.

Mr. Monte Falls, Public Work's Director, felt that they were trying to put the cart before the horse. He said that if this moves forward and there is something that happens he will adjust his Public Work's staff accordingly as he always does to their work load. He said that there are some areas at this time that he is looking at and outsourcing some of the services that the City provides and he will be bringing that to Council at budget time.

Mr. Winger noted that as he read the proposal that if there is a better use for the area that the City could cancel the agreement given a six month notice to vacate. He would like to see a better and higher use of that area that would bring in more money for the City.

Council agreed conceptually that they would like the proposal taken to the Recreation Commission and the Planning and Zoning Board and they wanted to see what the cost savings were going to be.

B) Street Sweeper Replacement

Mr. O'Connor reported that in the 2012/2013 budget and the 2013-2017 Five Year Capital Program both included an item for Streets and Stormwater vehicle replacements. These items are for their specialty vehicles. The plan for 2012/2013 was to replace their 2003 Johnson 605 street sweeper and fund the replacement over the next five years with a capital lease. The City has obtained a price for a Tmyco Model 600 street sweeper from the Florida Sheriff's Association contract and have received proposals through an RFP process from four leasing companies. The final lease agreement will be brought before Council. No action was needed tonight from the City Council.

Mrs. Carroll brought up the letter from the School District and asked Mr. O'Connor to give Council an update.

Mr. O'Connor explained that under State laws schools are protected and they work under their own set of building codes and State laws. He said that under the State law an existing school fits within the comprehensive plan so modifications can be made. However, if it was a new school then they would have to come under the comprehensive plan review. So this being an existing plan it is not increasing the enrollment of the schools and the School Board will be operating under State law.

Mrs. Carroll commented that the Planning and Development department has told the School Board that they don't want them to cut down some of the trees located near Beachland Elementary, so now the School Board has found another avenue (State law) to work under.

Mr. Coment thought that in the beginning the School Board probably did not realize that they didn't have to go before the Planning and Zoning Board and that they are exempt under State law because it is only a modification to an existing site. The School Board code also provides for landscaping and they consider trees part of landscaping. He said that this matter has to go to a technical review committee who will have the final vote on it.

Mr. McGarry added that the technical committee has not met since 2008, but the School Board will still need to meet City codes. The technical committee will hold a public meeting, but it may not have to be a public hearing.

Mrs. Carroll brought up the survey for all of their utility customers to vote yes or no on if they want the utilities sold to FPL.

Mr. O'Connor reported that the survey was mailed out yesterday and the City has asked that the surveys be returned by April 5th. He said that everyone that has a meter was mailed a survey.

Mrs. Carroll commented that the City Council received a letter from the Vero Beach Art Club who are the co-leasees of approximately 7.1 acres of ground owned by the City. The Vero Beach Museum of Art constructed its museum on a portion of this property, but there is still a section of open space. The Vero Beach Art Club wishes to construct a home of their own as a community art center on approximately one acre in the northeast corner of the open space. They have started the process of negotiating with the Vero Beach Museum of Art for the use of this land and the cost of construction. Mrs. Carroll asked where they plan on building this community home.

Mr. O'Connor explained that there will have to be a joint effort between these two bodies to agree to how the site plan will be developed. The retention pond will probably have to be relocated in order to make this work.

Mrs. Carroll asked if the Vero Beach Art Club has to get approval from the Vero Beach Museum of Art to build, then did the Vero Beach Museum of Art need to get approval from the Vero Beach Art Club when they added on to their building. She was told that the Vero Beach Art Club signed off on the agreement when the addition was made to the Vero Beach Museum of Art's building.

Mr. Coment added that before the Vero Beach Art Club can build anything that they have to get Council's approval. He noted that he has not seen a site plan of where the building will go. He said if the Vero Beach Art Club wishes to proceed with this project that a site plan would have to be submitted and the applicant would need to go through the Planning and Zoning Board.

Mrs. Carroll referred to the letter that Council received today from their Transactional Attorney in regards to the purchase agreement with FPL (letter on file in the Clerk's office). The letter was written to remind the City Manager and all City officials that the

City has agreed to cooperate and must act in good faith in working with FPL under the covenants of the agreement in the contract that was recently signed. Mr. Igoe states in the letter that everyone that is an employee of the City, plus the Council, are entitled to their own views and opinions on any issue, but it is imperative that City officials refrain from conduct, which could be construed as a breach of the covenants under this agreement. He goes on to say that according to the signed contract neither buyer nor seller will without prior consent of the other advocate or take any action which would reasonably be expected to prevent or materially impede, interfere with, or delay the transactions contemplated by this agreement or which could reasonably be expected to cause, or to contribute to causing, the other to receive less favorable regulatory treatment than that sought by the other. The letter also states that City officials must refrain from any discussions with other parties about an alternative sale or structure based on Section 6.21 in the agreement and in Section 6.5 the parties are not allowed to issue any press releases or other public disclosure with respect to the agreement or the transactions contemplated hereby without first affording the non-disclosing party the opportunity to review and comment on such press release or public disclosure, except for disclosure made in order to comply with applicable law or stock exchange rules.

Mrs. Carroll asked Mr. O'Connor why Mr. Igoe felt that it was necessary to remind Council and City employees of the covenants of the contract.

Mr. O'Connor commented that there were several reasons. He reiterated that this not only applies to the City Council, but it also applies to employees (everyone within the organization).

Mrs. Carroll mentioned that she spoke with Mr. Igoe this afternoon and he indicated that this letter came as a request from the City to clarify concerns with the City staff or Council attempting to circumvent what is now a binding contract. Mrs. Carroll asked him what would be some types of prohibitive behaviors and his answer was they could be conversations with a lobbyist for the FMPA or other lawyers seeking to influence approvals of FMPA. A prohibitive behavior would be leaking any negotiations or discussions to online or print media. Another possible prohibitive behavior would be if, for example, FAA approval was being sought and a City official or City staff member called FAA trying to give them information that might impact their approval process. It would be members of the City Council calling or visiting other members of FMPA municipalities that will need approval from concerning the contract. Mrs. Carroll asked Mr. Igoe when she called him where do they draw the line between freedom of speech and a binding contract. Mr. Igoe stated that there is an element of law called tortious interference.

Mr. Kramer told Mrs. Carroll that does not apply to the City Council.

Mrs. Carroll said that their Transactional Attorney gave her this information.

Mr. Kramer mentioned that he (Mr. Igoe) has already screwed up several contracts.

Mrs. Carroll told Mr. Kramer that it may be his belief that he knows more than their Transactional Attorney does. However, as a representative of the City of Vero Beach, Mr. Kramer may want to concern himself in regards to damages. She did some research on what tortuous interference means and explained it. She said every individual can make their own decisions in terms of their choices and behaviors, but the City is in the midst of a binding contract with FPL and each individual has to govern their own behavior.

Mrs. Turner added that they have had the referendum and she hopes that they all will pull together because this is what the majority of their citizens/voters want them to do. It is Council's job to take their decision and move forward.

Mrs. Carroll asked Mr. Coment as their legal advisor if he sees behavior occurring with their City employees or with City Council that he felt was in violation of this contract or could lead to damages against the City, she would appreciate his suggestion to the person that some behavior modification might be necessary.

Mr. Coment commented that if he hears of something that could create a liability for the City then he would certainly point it out and make suggestions as to what should or should not be done.

Mrs. Carroll told Mr. Coment that she would also appreciate his legal representation for this Council in the work that they do. If he saw some behavior from an individual Councilmember that could jeopardize this contract then he (Mr. Coment) would advise them on that. Mr. Coment answered "sure."

Mr. Kramer told Mrs. Carroll that he knows she wants to shut him up, but it is not going to work. He sees a lot of things that are wrong and he will continue to publicize that.

Mayor Fletcher asked that the Council treat each other with courtesy and respect.

Mr. Kramer said that he has a Councilmember (referring to Mrs. Carroll) that is threatening him with a lawsuit.

Mayor Fletcher stated that he did not interpret it that way (referring to what Mrs. Carroll just said).

Mr. O'Connor brought up the Business Improvement District and said that both the Oceanside Business Association and Main Street are working very diligently on this. He anticipates that Council will be receiving an application soon from one of these bodies and the Planning and Development Department is working on what questions would be appropriate to ask.

8. CITY ATTORNEY'S MATTERS

None

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**

Mayor Fletcher reported that he attended the Under the Oaks Art show, the Antique Car Show, the Homeless Family Center Day and the Treasure Coast Regional Planning Council meeting.

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

Mrs. Carroll reported that she also attended the Homeless Family Center Day and the Girl Scout Women of Distinction luncheon.

- C. Councilmember Pilar Turner's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

Mrs. Turner attended an FMPA Board meeting, the Elk's & Oceanside St. Patrick's Day parades, the Habitat Hoedown, and the Florida League of Cities seminar on developing and communicating your budget. She reminded the community about the lagoon symposium, the annual Easter Egg hunt on Saturday at 10:00 a.m., and that Downtown Friday would be on March 29th.

- D. Councilmember Jay Kramer's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

Mr. Kramer attended the Under the Oaks arts reception, the St. Patrick's Day parade downtown, a Main Street Vero Board meeting and the Economic Development Committee meeting.

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

Mr. Winger also attended the Under the Oaks art show reception, the Antique Car Show, both St. Patrick Day parades, the Vero Heritage Building function and the Spring Fling at the Recreation Department.

11. ADJOURNMENT

Tonight's meeting adjourned at 10:15 p.m.

/tv