

**CITY OF VERO BEACH, FLORIDA  
MAY 1, 2012 9:30 A.M.  
REGULAR CITY COUNCIL MINUTES  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**1. CALL TO ORDER**

**A. Roll Call**

Mayor Pilar Turner, present; Vice Mayor Craig Fletcher, present; Councilmember Jay Kramer, present; Councilmember Tracy Carroll, present and Councilmember Richard Winger, present **Also Present:** James O'Connor, City Manager; Wayne Coment, City Attorney and Tammy Vock, City Clerk

**B. Invocation**

Rabbi Birnholz of Temple Beth Shalom gave the invocation.

**C. Pledge of Allegiance**

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

**2. PRELIMINARY MATTERS**

**A. Agenda Additions, Deletions, and Adoption**

Mrs. Tammy Vock, City Clerk, requested that item 8-A) be added on to the agenda "Update Council on the Florida Public Service Commission docket" and discussed under the City Attorney's Matters.

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

**B. Proclamations**

**1. National Safe Boating Week – May 19-25, 2012**

Mayor Turner read and presented the Proclamation.

**C. Public Comment**

Mr. Brian Heady stated that he knows Council has heard this before, the Utilities Commission has heard it a number of times, and that it sounds like a broken record, but he has been accused of that before. He said that the article in Saturday's newspaper written by Mr. Barry Moline, Florida Electric Power Agency (FMEA), demonstrates what he has been saying for a long time. If they are serious about selling the electric

utility, the entry level questions that need to be asked are regarding the exit from Orlando Utility Commission (OUC) and the exit from Florida Municipal Power Association (FMPA). The question that he has asked, as a member of the Utilities Commission, about OUC is what is it going to cost the City to get out of this. They have heard different answers and the City Manager said the penalty could be as low as zero. They have had consultants that said the penalty could be as high as \$85 million dollars. He said that somewhere it is between \$85 million dollars and zero. He felt that as a Council, they cannot continue to be paying someone \$500 an hour to research the definition of the word "person" until they find out the two entry level threshold questions, which are; is OUC going to let the City leave without an \$85 million dollar penalty or a \$50 million dollar penalty. He said that they could look at three different meetings and find three different answers from the City Manager as to what the penalty is going to be. He said anywhere from zero to \$50 million dollars is what he (the City Manager) has said. But, when pressed we don't have anything in writing. Mr. Heady said that is what they need. They need something in writing from OUC. The City needs to tell OUC that on January 14, 2014, they are not going to be OUC's customer anymore. Florida Power and Light (FPL) will be the owner. He said make a decision, pick a date, and let's see if there is a penalty. If they decide the penalty is \$50 million dollars then they need to tell the City what clause allows that \$50 million dollars. He said when they point to the \$50 million dollar penalty clause then the City should ask them where it came from because he and Mr. Charlie Wilson have pointed out that there are some serious questions. Mr. Heady said that when he asked OUC where that penalty came from he was told that they didn't know about it and that it didn't come from them. He said that he asked Mr. Thomas White, past Mayor who signed the agreement, was that in there and he said "not that I know of." Mr. Heady said that it was reported in the newspaper that Mr. Bill Fish, past City Councilmember, said that he knew nothing about it. Mr. Heady said if the penalty came out of nowhere and if they are going to claim that the City is contractually bound by this penalty then OUC needs to identify where the penalty came from and someone needs to show the contract that was on the table on April 7<sup>th</sup> before any such penalty should be borne by the people that pay these rates. The same for FMPA that the City is "slaves forever" is absurd. He said that the history of this Country demonstrates that there have been people in our history that thought we were slaves forever and there were people in this Country that declared independence. There comes a time in history when we do break those bands that bind us and it is time to break the band that binds the City to FMPA. He felt that what they need to do at the next FMPA meeting is that the City needs to rise and make a motion for the dissolution of the FMPA, that this organization has become destructive to the citizens of the State of Florida. He said that something needs to be done and maybe it needs to start in Vero Beach. Certainly the City is not a slave forever and has the right to choose their destiny. If the community wants to stay in the power business that is fine, but he did not think that someone from Tallahassee is going to dictate that the citizens in this community have to pay in excess rates. He said at next week's Utility Commission meeting he would be saying the same thing that he always says, but these are entry level questions that need to be asked and are questions that need clarification in writing. If they don't give the City something in writing then the City needs to give them something in writing and tell them what the City's understanding is. That it is the City's understanding that there is no penalty. He said

that the City needs to declare their independence and they need to do it sooner, not later, and they need to stop spending \$500 an hour to define the meaning of “persons” when the entry level questions have not been asked and answered.

Mr. Peter Gorry, Chairman of the Finance Commission, reported that the Commission would be meeting next week to vote on recommendations for the mid-year budget amendments, as well as the Transactional Attorney (TA) fees. He said with regards to what Mr. Heady just spoke about, the City has bonds expiring between now, 2017, and 2020. He said that the contract with OUC is going to be reasonably renegotiated as time goes on. With respect to Mr. Barry Moline, he is incorrect in saying that the City can't get out of these contracts. Mr. Gorry said as a point in fact, the contracts with OUC and FMPA are issues that are being negotiated. He said that this is a complicated issue that is being worked on.

Mr. Charlie Wilson, 1057 6<sup>th</sup> Avenue, said the reason that he came to today's meeting was not because of a specific issue, but because there are so many complicated items being heard at the same time and he wanted to wish Council some encouragement because these are complicated issues. He said that there are alternatives to the electric issue, but they have to finish one before they get to another. He felt that he and Mr. Winger would agree that this whole activity may be more important and more difficult than they thought before. He said that as they get more information they realize what this does to their community. It is not just this, but it has to do with the Police. Nobody wants bad things to happen, but they are facing an incredibly difficult series of decisions brought about by years of neglect. The City Council is now having to pay the bill for partying like it's 1999 since 1999. He wished Council some encouragement and stated that there were a lot of people that wished the City success. He said that this is a wonderful City with good people serving on their Committees and on Council. He thanked Council for whatever decisions they come up with. He felt that it was wonderful that they were trying so hard to help this City.

#### **D. Adoption of Consent Agenda**

- 1. Regular City Council Minutes – April 17, 2012**
- 2. COVB Bid #030-12 – Boiler/Furnace Repair & Mechanical Maintenance Contract**
- 3. Bid 100-12/CSS – Annual Materials and Supplies Contract for Water and Sewer – Recommendation of Award**
- 4. Conn Beach Dune Restoration – Final Payment and Project Acceptance – City of Vero Beach Project No. 2011-20**

Mrs. Carroll asked if she could ask the City Manager a question regarding item 2D-2) without pulling it from the consent agenda. Council had no objections. She said on the information from the Power Plant regarding the bid for the boiler/furnace repair, it states several different accounts that funding could come from if a situation arises where the need for boiler/furnace repair and mechanical maintenance assistance is required. She felt that money coming from all these accounts seemed redundant.

Mr. James O'Connor, City Manager, explained that all the listed line items are for specific work that would be done under this contract. The contract is giving the City an hourly rate for the type of individual the City would need to address the issue. He noted that depending on the work that needed to be performed, it would be charged to that line item.

Mrs. Carroll said within the budget they have all these various line items for particular types of maintenance instead of rolling it up to a maintenance contract per equipment.

Mr. O'Connor said that is correct. He said that it breaks it down to the different type of boiler they have so they can line item it in the cost to the particular boiler involved and the type of maintenance involved.

Mrs. Carroll felt that was a lot of busy work.

Mr. O'Connor noted that it does help in the accounting for the system.

Mrs. Turner pulled item 2D-3) from today's agenda.

Mayor Turner made a motion to adopt the Consent Agenda with the exception of item 2D-3). Mrs. Carroll seconded the motion and it passed unanimously.

### **3. Bid 100-12/CSS – Annual Materials and Supplies Contract for Water and Sewer – Recommendation of Award**

Mayor Turner noticed that the contract is a three year agreement with the estimated cost of \$200,000 a year. She asked what is the cost savings of having this type of supply contract, versus individual purchases and what would the mechanism be for actually utilizing this contract.

Mr. O'Connor explained that it locks in the pricing and guarantees a supplier for goods and materials that they possibly would need. He said that last year the actual expenditure from this account was \$112,940.35. Also, whenever they have a project they line item the materials needed and the vendor only sends the materials needed for that particular project. Therefore, each project has the accountable cost as to the supplies shipped.

Mrs. Carroll said the contract states that the supplier is required to keep three-percent of this material on their shelves at all times. She felt that was strange because most of the items state "estimated quantity, one." She asked how can they keep three-percent of one item.

Mr. John O'Brien, Purchasing Manager, explained that the items are not necessarily all items that the City would necessarily use, but it is basically an entire inventory of what they have. He explained that the items that have "one" are actually used as a marker for a price. He said that the two suppliers that bid on this were the largest ones around.

Mrs. Carroll questioned, so when stated that there are five of each, that is not the expected usage.

Mr. O'Brien explained that they were probably quantities from previous years. They are estimates and the City is not required to purchase any quantity.

Mayor Turner made a motion to approve Bid #100-12/CSS HD Waterworks Supply, Ltd. Mr. Kramer seconded the motion and it passed unanimously.

### **3. PUBLIC HEARINGS**

None

### **4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING**

- A) A Resolution of the City Council of the City of Vero Beach, Florida, Expressing Support for the Honorary Designation of the 17<sup>th</sup> Street Bridge in Vero Beach as the "Alma Lee Loy Bridge;" Providing for an Effective Date. – Requested by City Council**

The City Clerk read the Resolution by title only.

State Representative Debbie Mayfield thanked the City Council for allowing this to be done. She also thanked Mr. O'Connor and the Recreation Department for their assistance in getting the site facilitated. She reported that the renaming of the 17<sup>th</sup> Street Bridge to the Alma Lee Loy Bridge will take place on May 12, 2012 at 10:00 a.m.

Mr. Fletcher made a motion to adopt the Resolution as presented. Mrs. Carroll seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner 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 Code of the City of Vero Beach to create a New Section 54-54, Powered Model Vehicles, in Chapter 54, Parks and Recreation, Relating to the Operation of Powered Model Vehicles in City Parks, Beaches, and Recreation areas; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the City Council**

The City Clerk read the Ordinance by title only.

Mr. Wayne Coment, City Attorney, reported that this Ordinance would outlaw the use of powered model vehicles. The Recreation Commission discussed this and their

recommendations have been presented to Council. The only thing that he would recommend leaving was the wording “unlawful” as it would be consistent with the Code.

Mayor Turner said to clarify, the City Manager would be able to approve a permit for the “Quiet Birds of Vero Beach” to utilize the Park.

Mr. Coment said that is correct. He said that they would have to meet all the requirements needed to make sure it is safe.

Mr. Winger asked Mr. Coment to clarify some language.

Mr. Coment explained that they wanted to reference Section 54-71, which has to do with the permit process and so what he did was add Part B that defines an unauthorized person and he added 54-2 because that is already in the Code and states that a governmental employee performing official duties is also an authorized person.

Mr. Winger was not in favor of a lot of regulations. He wondered if the wording could be made clearer that the City Manager can grant permits.

Mr. Coment said that typically they don’t have that sentence in any other Code sections. The Recreation Commission asked that Section 54-71 is referenced.

Mr. Winger questioned were they writing this for lawyers or citizens.

Mr. Coment said that they don’t reference Section 54-71 in any of the other Subsections. But, there is a provision that provides for these permits. He said it is up to the Council and if they want it to be amended to something more specific they can do that.

Mr. Kramer felt that it would be nice if it stated “unless granted by permit” so anyone who flies a model airplane would see that there is a possibility.

Mr. Coment said honestly, people who are flying airplanes aren’t going to read this anyway. They are going to be approached by a Police Officer who is going to ask them if they have a permit or to let them know it is not allowed.

Mr. Winger said their intent is to make things transparent to the public. He would rather have clarification that states “the City Manager can issue a permit.”

Mr. Coment said that they can change it to say that the City Manager may issue a Park use permit pursuant to Section 54-71 of this Code to conduct any of the activities otherwise prohibited by this Section. The Ordinance is on the agenda for first reading so they can change it prior to the public hearing.

Mayor Turner made a motion to bring back the Ordinance for public hearing on May 15<sup>th</sup> with that clarification.

Mrs. Carroll said that Section 54-54 (b), states that a power model vehicle shall include any self propelled car or boat. Therefore, a child at a Park with a remote control boat in the river is no longer allowed and a child with a remote control car on a sidewalk is not allowed.

Mr. Coment said this would apply to all those things if self propelled. He said that the Police Department requested that every possible type of self powered vehicle be included.

Mr. Fletcher felt that was going a little too far.

Mrs. Carroll said that she would not agree with this wording. She said that Council received additional recommendations from the Recreation Commission this morning. She felt that they needed to hold off in moving forward with this Ordinance until they looked at some of these modifications.

Mr. Fletcher suggested giving staff distinct instructions that they are to remove the prohibition of cars and boats and limit it to the model airplanes.

Mrs. Carroll added that they (staff) also look at the recommendations from the Recreation Commission that they recently received.

Mr. Coment noted that those recommendations were incorporated.

Mr. Fletcher said with the modifications made they could bring the Ordinance back on May 15<sup>th</sup> and he would be in favor of it.

Mr. Coment asked Council if they wanted this brought back for first reading or if they want it to go back before the Recreation Commission.

Council agreed that it did not need to go back before the Recreation Commission.

Mrs. Carroll said it would be up to the Recreation Commission if their Chairman wanted to put it back on their agenda.

Mr. Dick Yemm, Chairman of the Recreation Commission, felt that Council addressed this well. It went through the Recreation Commission and they made their recommendations. He did not think it needed to go back before them.

Mrs. Carroll asked was there any discussion regarding the inclusion of the other types of vehicles.

Mr. Yemm answered nothing major.

The motion died for lack of a second.

Mr. Fletcher made a motion to forward this to their May 15<sup>th</sup> meeting with the revisions for public hearing. Mayor Turner seconded the motion.

Mr. Fletcher said that he had a list of items that he presented to the City Manager and to the City Attorney regarding issues that he would like to see included in any agreement that goes forward that has to do with associate members, technical issues, etc., when the permit comes up (copy given to the City Clerk).

The Clerk polled the Council and the motion passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes and Mayor Turner yes.

**B) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach to create a New Chapter 29 relating to Economic Development; authorizing Designation of Economic Development Zones and Trust Funds; Providing for Funding based on Tax Increment Values; Providing for Conflict and Severability; Providing for Inclusion in the Code; and Providing for an Effective Date. – Requested by Councilmember Jay Kramer**

The City Clerk read the Ordinance by title only.

Ms. Cindy Lawson, Finance Director, explained that the way this was constructed requires the involvement of the Property Appraiser for two reasons. The Property Appraiser in addition to certifying the total tax value of the City every year, they also create another form that belongs in the millage calculation where they certify the value of just the zone established, both the base year and the current year. She said that does two things for the City. The first is if they are involved and do this form up front and they calculate the rollback rate every year, it prevents a slow degradation of the allowable rollback rate because that form allows the City to remove the money that they dedicated to the zone from the prior year proceeds and it will remove the incremental value from the City's current year value before they calculate the rollback rate. The second thing that it does for the City is if the Property Appraiser certifies both the base year and each subsequent year, there is a method within the Florida Statutes that allows for people to contest that value as opposed to it being where staff tries to keep a spreadsheet. This way if there is a question as to what the value really is there is a process for that to be vetted through the Property Appraiser rather than being an administrated discussion between staff and whoever is challenging it. Therefore, she felt there was a benefit doing it through the Property Appraiser.

Mayor Turner said this Ordinance references economic development plans. She asked who is going to prepare and submit those plans to the Council for review.

Mr. Coment felt that it would be a good idea for these zones to have a Committee that would help the City Council formulate these plans. He said that they have to have a plan showing where the money is going to be expended. He said that it would fall on the shoulders of property owners, business owners, etc.

Mayor Turner said then they would have a plan before they would have a Resolution. Her concern is that they have a very broad Ordinance with no details on how it would actually be implemented.

Mr. Coment said it is envisioned that the work is that they would create the zone through a Resolution designating the properties. He explained that certain things have to be designated, such as the zone, the properties, the base tax year, etc., through Resolution.

Mr. Fletcher asked do they have to go in the depth of the legal description for each piece of property or can they just have an outline.

Mr. Coment said they would give the Property Appraiser the designated area and specify the parcel numbers.

Mayor Turner said that she was struggling with the timing and the structure of this.

Mr. Coment said that this Ordinance tells the structure of how to do it. It explains how the calculations are done, how to establish the zones, how to create a plan, etc.

Mrs. Carroll asked wouldn't the group of members of the community involved or the businesses involved in the zone, once they become a group, become subject to the Sunshine law.

Mr. Coment answered yes.

Mrs. Carroll said in the Vision Plan they speak about various entities throughout the City that could possibly utilize these types of planning mechanisms. There were five different zones delineated, which were Beachland Boulevard, Ocean Drive, Miracle Mile, Royal Palm Pointe, and Downtown. She said that theoretically all five of those zones could follow the same mechanism that the Downtown area would like to do.

Mr. Coment said that is correct.

Mrs. Carroll asked if all five of them and perhaps the businesses throughout the US1 corridor were to do this, then what is the City left with on the tax base for commercial properties.

Mr. Coment said that would be a decision that the City Council would need to make.

Mrs. Carroll asked as cities have utilized this type of mechanism, has there ever been a concern come up about the loss of tax revenue to the city when these things get going.

Mr. Kramer answered yes. He said that was a big concern by a lot of residents that as these take off, would the residents or businesses outside the zone subsidize the services that are given inside the zones. The Ordinance does have leeway that they can adjust the

base. He explained that when taxes go down and they go to rollback, they don't accrue. When the value of these areas goes up, instead of money going into the City CAFR's, it will go into those areas for capital improvements.

Mrs. Carroll referred to the Vero Beach Downtown Action Plan that was put together as a result of the 1990 and 1992 Downtown Redevelopment Plan, the 2005 Vero Beach Vision Plan the 2006 Vero Beach Mainstreet Plan, and the 2006 Downtown Charettes. She said that the first priority was to create a Downtown Master Plan. She asked has that ever been done.

Mr. Kramer said that this does not create a Master Plan. This just funds it.

Mrs. Carroll asked wouldn't it seem that the next step would be to create a Downtown Master Plan.

Mr. O'Connor said there is a Master Plan that was approved by the City Council on Ocean Drive. However, he did not know if one has been approved for Downtown.

Mrs. Carroll asked what the time constraints are and what would happen over the next two years.

Ms. Lawson said that they have not talked to the Property Appraiser. She said the Ordinance has a deadline of May 1, 2012, which she felt that exists for them to create this in time for, as an example, last year would be the base year and next year would be the first increment value. She said that they would need to discuss the deadlines with the Property Appraiser on the possibility that they could go back in time to create a base year and how soon they would need to get them the zone for the first taxable year that they would certify. Also, even though a Property Appraiser does things like this, they probably would require a separate agreement with the City and possibly a charge for them to do it. She noted that she did not want to discuss this with the Property Appraiser until Council gave staff the direction to do it.

Mrs. Carroll asked is the document that they have in front of them similar to what other municipalities have used.

Mr. Coment said that they looked at other jurisdictions and this was based on the simplest in that it is without having to create statutory redevelopment districts, which they would then get into reporting to the State. They were keeping this under home rule powers. He said that the Statute involving tax increment financing does allow them to do this by local Ordinance. He noted that the May 1<sup>st</sup> deadline is statutory as far as reporting certifying information to the Property Appraiser. He said that Council could organize a Committee for a zone and have them work on a plan. He noted that if all Council does is adopt this Ordinance, nothing is going to happen until they adopt a Resolution implementing it.

Mayor Turner asked why adopt the Ordinance at this time without a plan or Resolution. She felt that it was a good idea to try to support it, but without any details or a plan she is hesitant to go forward.

Mr. O'Connor explained that the Ordinance is to allow implementation of a program like this.

Mrs. Carroll asked does the City have any type of formal recommendation from Mainstreet Vero, or any other entities within the Downtown area.

Mr. Kramer answered yes. He said that he can't find anyone that doesn't like it.

Mrs. Carroll agreed in that she could not find any businesses that don't like it, but she wondered if they had a formal recommendation.

Ms. Barbara Hoffman, Chairman of the Cultural Council, said that they recognize that new challenges are needed to spur the economic advancement and require new kinds of solutions. This proposed Ordinance does just that. It creates a solution to spur the local economy without costing our citizens anything. She said that the Board and membership of the Cultural Council are in support of this Ordinance and view it as planting a seed for economic growth in key areas that are critical to the cultural framework of this community. Without taking any funding away from any current budgeting areas and without creating another government body, this Ordinance provides future funding for much needed improvements. The Cultural Council and its members look forward to working with the City as they create new solutions to help grow our economy and improve our community. She then recognized some of the people who were present today in support of the Ordinance.

Mayor Turner asked what percentage of the City's tax roll the downtown area represents.

Ms. Lawson answered about \$70 million dollars, which for the City would be about three to four percent of what was assessed last year.

Mrs. Carroll asked in terms of the Board that is put together to look at these issues, would that Board be created similar to the other City Boards/Commissions in that they report only recommendations to the Council or would they make all decisions without bringing them to Council.

Mr. Coment said that they would be an Advisory Board. He noted that the City Council has the option of creating a board and therefore business owners on their own could tell the City what they like in the plan and staff could bring it back to the City Council to approve.

Mr. O'Connor said that staff envisioned the Planning and Development Department being the liaison with that Commission.

Mr. Winger did not see any reason not to move forward with this Ordinance. He made a motion that they move forward with the Ordinance to a public hearing on May 15, 2012. Mrs. Carroll seconded the motion.

Mr. Fletcher asked if they create this, is there some way to put a sunset clause in it.

Ms. Lawson said that they can change the Ordinance, but it may well be that whatever money they have put in may not be transferred to be used for some other purpose after they end the development zone.

Mr. Kramer said one good thing about doing this under home rule is they can change it, stop it, etc.

Mayor Turner noted that the set amount is reviewed on an annual basis.

Mr. Coment explained that they would set that percentage by taxation that Council would devote to the fund.

Ms. Lawson noted that the expenditures would have to be part of the budget process.

The Clerk polled the Council and the motion passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner yes.

Mr. Fletcher asked if they needed some sort of vehicle to get an Economic Development plan started.

Mayor Turner said that they can't come forward with a Resolution until any of these groups wish to come forward with an economic plan.

Mrs. Carroll said that they could suggest that they have the various entities throughout the Downtown area come together.

Mr. Kramer said that he would work with them on putting together some sort of plan.

## **6. CITY CLERK'S MATTERS**

### **A) Request to have a Code Enforcement Lien Reduced – CEB Case #09-CE-721 -920 Coquina Lane**

The City Clerk reported that they received a request to have a Code Enforcement lien reduced that was imposed by the Code Enforcement Board. She noted that a representative from Van Horn Realty was present for today's meeting.

Mr. Ed Van Horn, of Van Horn Realty, stated that he was representing SunTrust Mortgage. He reported that SunTrust became the owner of the property through certificate of transfer on February 24, 2012. They then contacted his office to find out if

there were any violations on the property. They found that there was a violation, which they corrected on March 16, 2012. They were then notified that there was a substantial Code violation fine against the property. He would like this fine either reduced or eliminated. He felt that SunTrust should not be held accountable for the past faults of the homeowner and therefore, they are requesting that the fine be eliminated.

Mrs. Carroll asked were there expenditures of the City for keeping the grass mowed during this time period.

Mr. Coment answered no because mediation was not ordered on the property and it was unkept for quite a while. He reported that there was an adjacent property where there was a new owner, other than a bank, where the City Council did reduce the fine to \$2,500.

Mayor Turner said that there was a three year period of code violations on this property.

Mrs. Carroll said it was from November 5, 2009 to March 15, 2012 before any entity took care of the property.

Mr. Winger asked could SunTrust and Van Horn Realty have known about the lien at the time of purchase.

Mr. Fletcher said it is the responsibility of the purchaser to check for liens before they buy property.

Mr. Van Horn said that SunTrust did not become the owner of the property until February 24, 2012. He did not know when the lien was filed on the property.

Mr. Fletcher could not believe that SunTrust didn't know about this before buying the property. He said that he was not being harsh, but he keeps seeing these keep rolling over and over and coming back to the City wanting to avoid the lien and the City is eating this money. He said that he would be inclined to reduce the fine somewhat, but not too much.

Mrs. Carroll noted that the Code Enforcement Board voted unanimously on this fine.

Mr. Coment explained that there were two orders on this case. The first was the order imposing a continuing penalty. The Board members asked at their last meeting when it was reported that the property was brought into compliance if they were allowed to reduce the fine and because the first order was recorded that duty could only fall on the City Council. What the Board did was cap the total penalties to the amount accumulated to the date it was corrected.

Mr. Winger asked what is the point of having fines if they don't invoke them.

Mr. Coment noted that this is a vacant piece of property. He did not see the bank specifically listed on the citation and therefore he could not state if the bank received notice on this case.

Mayor Turner asked during this three year period was the property in foreclosure.

Mr. Coment reported that the City received a letter on March 8, 2010 from the property owner's attorney stating that the property was in foreclosure and they (property owners) are financially unable to pay the penalties.

Mr. Kramer asked what the value of the property is.

Mr. Van Horn reported that the property is listed at \$106,000.

Mr. Kramer felt that the penalty could be a great disincentive to do anything with that property.

Mr. Fletcher agreed that they need to reduce the penalty.

Mr. Van Horn understood the reason rational for a period of issues and has sympathy for that. What he did not have sympathy for was penalizing someone who has no control of the property. Prior to February SunTrust had no control over the property and the City is going to penalize them for something that someone else did.

Mr. Coment noted that banks are noticed and some of them do take care of the property.

Mrs. Carroll said the bank in question chose not to have the property mowed.

Mr. Fletcher did not think \$43,000 was realistic.

Mr. Kramer wanted to know when the bank was first noticed because that is when their responsibility first started.

The City Clerk reported that an order was sent to SunTrust Mortgage on March 16, 2010.

Imposing a fine of \$15,000 was suggested by Mayor Turner.

Mr. Fletcher would agree to the \$15,000.

Mrs. Carroll felt that it should be higher.

Mr. Kramer felt that Council needed to set a policy to have in place for the future that is not subjective. He wanted them to have a more professional approach.

Mr. Coment reported that other cities have adopted specific procedures for forgiveness of penalties like this.

Mr. Fletcher made a motion to reduce the civil penalty to \$15,000. Mr. Kramer seconded the motion and it passed 4-1 with Mrs. Carroll voting no.

Mayor Turner asked to see what other cities have done for forgiveness.

Mrs. Carroll felt that by creating a policy for forgiveness they are setting themselves up that the public's opinion is going to be that codes enforced by the Code Enforcement Officer and passed by the Code Enforcement Board don't matter because the City Council will forgive it. That is the reason she voted no.

Mr. Coment said that he would get information from other cities for the City Council.

At this time, Council took a 10-minute break and reconvened at 11:03 a.m.

## **7. CITY MANAGER'S MATTERS**

### **A) Bob Summers Park, MacWilliams Park, and Dog Exercise Area**

Mr. O'Connor read to Council the recommendations of the Recreation Commission (on file in the City Clerk's office). He reported that they voted to designate the area outside Bob Summers ball field as part of Bob Summers Park. They also voted to designate a dog exercise area in Bob Summers Park.

Mr. Dick Yemm, Chairman of the Recreation Commission, reported that in 2002 a policy was adopted for a six-month trial period for a dog exercise area and there was never an issue until recently when someone wanted to lease the land. The Recreation Commission formulated a proposed new policy and that is when they found out the area was being referred to as MacWilliams Park, but it was actually part of Bob Summers Park. He reported that the only thing that was adopted was Bob Summers ball field. He showed on the screen the proposed areas to be identified as Bob Summers Park, which Bob Summers ball field is part of Bob Summers Park (on file in the City Clerk's office).

Mayor Turner asked is a ballpark in that zoning area allowed.

Mr. O'Connor said that it was his understanding that they designate an area as a Park and they can use that area designated Park in any zone. He noted that there are Parks in designated residential zones.

Mr. Coment noted that Recreation and Park use is a permitted use in the Marina District.

Mr. Fletcher referred to the drawing and asked what the blue line designates.

Mr. Yemm answered the shoreline.

Mr. David Gay, Chief Surveyor, explained that the blue line represented the mean high water line.

Mrs. Carroll said there have been discussions for a number of years for the utilization of the Marina zoned property throughout the area that they are looking at designating, including the Marina District proposal. She said this property was zoned for Marina usages. She asked does the designation of calling it a Park and naming it put any qualification in terms of future usages.

Mr. Yemm said the name does not restrict the use.

Mr. Coment said one thing that comes into mind is the City's Charter. He noted that one of the parcels is listed as Bob Summers Park and is not allowed to be alienated. He said that if they add all of that area as Bob Summers Park they could then effect or restrict something.

Mayor Turner said that she discussed this with Mr. Gay and she was told that when the property was deeded to the City it was the entire area that was incorporated.

Mr. Gay reported that the City received all the property as one deed, which included Riverside Park, MacWilliams Park, the boat basin, and Beachland Elementary. As time went on, the City formally dedicated some areas as Parks, but this particular area was never formally dedicated as a Park. Therefore, right now that area is undesignated land. Bob Summers Park is actually the ball field and that was formally dedicated as a Park in 1958. The surrounding land is City lands and has not been formally dedicated as a Park.

Mr. Fletcher did not like the idea of encumbering themselves in naming that as a Park just as convenience. He likes it the way it is. He said that they could just say "dog exercise park and storage area."

Mrs. Carroll would like to hear from the Recreation Director in terms of the utilization, how the City is maintaining the property, are they treating it like a Park, is there any differentiation on how they take care of City owned property verses a Park, etc.

Mr. Rob Slezak, Recreation Director, reported that currently they maintain a little of the landscaped area and are not giving it as much attention as a designated Park.

Mrs. Carroll said there are employees who clean up the area by emptying the trash cans, etc., which is a City expense. She said the utilization of that property is as an emergency debris storage area where City vehicles would bring debris in and dump it on the property and then remove it to landfills.

Mr. O'Connor said that they were discussing this as a dog exercise area and therefore it would not preclude the City from using it.

Mrs. Carroll asked did the physical footprint of the debris storage include around the perimeter of Bob Summers Park back into what is designated to be the dog exercise area.

Mr. Slezak answered for the hurricanes of 2004, the general Park use area was the area designated for debris.

Mr. Fletcher asked did the Recreation Commission discuss fencing the dog exercise area.

Mr. Yemm answered yes. He said the reason they see the white outline was to separate what would happen if they fenced the area, verses not being fenced. He said that if it were to be fenced along the white edges they would lose additional land for exercise.

Mayor Turner said the first item was to consider naming the dog exercise area as Bob Summers Park.

Mr. Yemm explained that all the Commission was trying to do was identify the land.

Mr. Fletcher made a motion to not name the area as a Park.

Mrs. Carroll agreed.

Mr. Kramer said the reason they would motion not to designate the area as a Park is to keep their options open. He asked by calling it a Park would there become restrictions on the land.

Mr. Coment said by sweeping in the rest of the land into Bob Summers Park may bring it into the restriction of alienation, which means they would have to have a referendum to okay any transfer or leasing unless it fits into the exception of public or civic purpose, recreation, artistic or cultural purpose.

Mr. Kramer said it seemed like they had a large number of signatures (referring to a petition signed) to keep the area designated as Park type uses.

Mr. Coment said that if the Council wanted to designate all that area as a Park, they probably would want to rezone that area as strictly Park use.

Mrs. Carroll said there is a Marina right next door and if the Marina wanted to expand it would be more difficult if the area was zoned Park. She felt that by leaving it the way it is they are leaving the capability of future City Councils' to determine the usage of the property.

It was the consensus of the Council not to name the area as a Park.

Mayor Turner said the second request from the Commission was that Council consider designating MacWilliams Park dog exercise area and Bob Summers Park as general use.

Mr. Slezak reported that for a number of years people informally took their dogs to the area and there was a group of people who wanted to have an area to at least not be cited for allowing animals.

Mrs. Carroll asked were there actually citations given.

Mr. Slezak was not sure. He said the group went before the Recreation Commission in 2002 where the City Council at that time voted on and accepted a policy to allow people to exercise their animals for a short period of time. They also recommended a six-month plan to see how it worked. He reported that the time allowed for this was from 5:30 a.m. to 8:30 a.m. The City Council voted 4-1 to accept this for a six-month trial period. At that time, there were no issues found and it has been going on ever since.

Mayor Turner said the situation is that they have restricted hours for the off-leash area that has been totally ignored.

Mrs. Carroll said a number of rules are posted and she went through some of them with Council. She said that she was given a DVD showing cars pulling up and dogs running everywhere (on file in the City Clerk's office). Her biggest concern was safety. One of the pictures in the DVD shows children running after their dogs. She is extremely concerned about the lack of fencing and the lack of following these rules. She said by designating this a dog exercise area it will leave the City open for litigation.

Mr. Winger commented that the area called MacWilliams Park has a lease restriction and that should be enforced.

Mrs. Carroll asked Mr. Coment to address how liable would the City be if they opened this up.

Mr. Coment expressed that lawyers are creative even though State Statutes dictate that dog owners are responsible if their dog bites someone. He said that there are other things that could come up with dogs running loose. He explained that they have not specifically designated this as Park land, but it is on City land. The other issue is with animal control, who say if an animal is off of your property that the animal has to be on a leash. They are addressing allowing dogs in an area that is used for recreational purposes and then they have the off-leash issue. The City Manager can designate areas where dogs can be allowed, but when it comes to an animal being off a leash and it falls under the animal control Ordinance then issues like that would have to come to Council. His preference would be to have a fenced in area and have some kind of regulations that are enforceable.

Mr. Winger asked Mr. Yemm what his opinion of having a fence is.

Mr. Yemm understood that there was a section in MacWilliams Park (South side as you come under the bridge) where they were letting primarily Police dogs use.

Mr. Coment said that as long as he can remember that has always been an on-leash area.

Mr. Yemm continued by saying that part of the question was if you go with a fence or not. He said that if you go with a fence you would have to go along the white lines as shown in the diagram in order for City vehicles to be able to get in and out of the area if they need to. Also, if you do put a fence up you have shrunk the dog exercise area.

Mr. Winger stated that he was against fencing and setting this land aside for any particular group. This land has been used this way for a long time without any problems. He felt that they should drop the whole matter or allow for dogs in daylight hours.

Mrs. Phyllis Frey, 275 Date Palm Road, felt that the public wants this to be a public Park and not on-loan as a Park until some further agenda decides it is going to be developed or no longer a Park and taken away. She agreed with making it Bob Summers Park and it could still have Marina use. She has some ideas for beautification that she will be bringing forward in the future.

Ms. Barbara Barnes, Date Palm Road, commented that she did not know the history of why this became designated as Marina use. She has a love for dogs, Parks, and boating. She said that this is waterfront land zoned for Marina use and the Council voted against a boathouse and now they are looking at making this area a dog park that may exclude launching of boats, etc. She said to zone this Marina use for a non-marina use is confusing to her and she wondered if the zoning would remain. The liability seems higher here then having a plane hit you in the head (referring to model airplanes as discussed earlier in the meeting).

Mr. Dennis Reems, Date Palm Road, felt if the area is fenced it would be a liability for the City. The fact that the proposed dog park is being used entirely as a dog park now and special interest taking over this area should be dropped. He said don't designate this area as a City Park and leave it as City land.

Ms. Toni Kiser, Fiddlewood Road, commented that this area has been used as a dog park since the 1990's and to her knowledge there have not been any lawsuits because of the dogs. They are making a mountain out of a mole hill. There has been a petition signed that the community wants it left as a dog park. If they are looking at installing a fence why not go with hedging. Her Committee wants to have the Council's blessing on leaving this a dog park and then plan to raise money to beautify the Park. There is no other place in Vero Beach for dogs to go.

Mr. Yemm commented that he does not think that they have agreed to separate the dog exercise area from the debris area. The suggestion of the Recreation Commission would be to separate it.

Mr. Winger referred to #2 in the recommendations made by the Recreation Commission (attached to the minutes), which seems to be appropriate. He made a motion to accept paragraph #2 which reads "A motion was made to recommend that the City Council consider designating the MacWilliams Park dog exercise area and the Bob Summers Park

as general use Parks and leave the right-of-ways at Bob Summers Park, for future development based on the Master Plan. The Commission would also like the City Council to consider designating the area labeled as the dog exercise area on the map as an off-leash area in the general use property of Bob Summers Park and be available for use from dawn to dusk. Motion passed 4-1.”

Mr. Winger added that it should be understood that if there is future use for this land that the City can change it. He said all they are doing here is doing what they have been doing and what the public wants.

Mr. Kramer asked Mr. Coment if this land gets designated as a Park does it then become protected under the Charter.

Mr. Coment said that is an argument that could be made.

Mr. Kramer thought that the argument here is do they designate this as Park land to prevent future development of this land.

Mr. Coment said that you could still have, as an example, the boathouse go in this location because that could be considered recreation and could be allowed through a lease agreement.

Mr. Winger referred to paragraph #2 and said that they could change it to read “A motion was made to recommend that the City Council consider designating the MacWilliams Park dog exercise area and the area surrounding Bob Summers Park, for future development on the Master Plan.”

Mr. Fletcher felt that the dog exercise area was working the way that it is and he did not feel that they needed to take any action at all.

Mr. Kramer stated that if it is going to be a Park than he wanted to see something more formal presented to Council.

Mr. Winger made a motion to table this matter and refer it back to the Recreation Commission.

Mrs. Carroll commented that the Recreation Commission has discussed this numerous times and made their recommendations to Council. They can’t keep funneling it back and forth.

Mr. Kramer seconded the motion.

Mr. Yemm explained that they need to recognize that there was a policy adopted many years ago for six months and they need to bring that forward with some formality.

Mayor Turner commented that the times imposed at that time was so the land could be used for multiple purposes and not solely for dogs.

Mrs. Carroll said another thing that concerns her is that the rules that were originally voted on are not the same rules that are on the signage and therefore are not being enforced, which leaves them open to public safety concerns.

Mr. Fletcher stated that as he sees it the only thing that they need to do is decide if they want to change the exposure time. He realized that there was a motion on the floor.

Mr. Winger restated his motion, which was to modify paragraph #2 so that they do not call this Bob Summers Park. He said that this would be left an open issue and they say the motion was made to the City Council to consider designating the MacWilliams Park dog exercise area and the area surrounding Bob Summers ball park as general use land and leave the right-of-way of Bob Summers Park for future development.

Mr. Winger commented that the land is being used from dawn to dusk now so that won't change. He thought to make laws that were not forcible was stupid.

Mrs. Carroll thought that was in place now and was enforceable, but the City Manager and the City Council chose not to enforce it. Mr. Winger disagreed with her. He said that if they were to enforce it they would get another petition and in the long run the property is being used dawn to dusk and he did not see any reason to not continue it that way. He did not want to call it a Park because that was not the sense of the Council or the community.

Mr. Yemm agreed and said that the way it is being identified is as a dog exercise area.

Mr. O'Connor suggested if they want dogs to exercise in the area that the motion made should be to allow dogs to be unleashed and used as an exercise area in the designated City owned land outside of Bob Summers Park.

Mr. Coment would prefer to say that it is an allowed use and not a designated area.

Mr. O'Connor will bring back a Resolution at their next meeting for Council consideration.

Mr. Winger withdrew his motion.

## **8. CITY ATTORNEY'S MATTERS**

### **A) Florida Public Service Commission Docket No. 090524-EM-Status**

Mr. Coment recalled that this matter was previously held in abeyance by the Florida Public Service Commission (FPSC) pursuant to a motion filed jointly with the complainants, Dr. Faherty and Mr. Heran. The term of abeyance granted by the FPSC

will end June 29, 2012. This upcoming expiration of the abeyance period was recently discussed with the City Manager and Dr. Faherty and we all are in agreement that, if the Council approves, an additional joint motion should be filed with the FPSC asking to continue the docket in abeyance through January 31, 2014. If Council approves, he will prepare a motion for the parties to execute and file with the FPSC for consideration.

Mr. Winger made a motion to instruct the City Attorney to prepare a motion for the parties to execute and file with the FPSC to continue the docket in abeyance through January 31, 2014. Mr. Fletcher seconded the motion and it passed unanimously.

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

#### **1) Revise Personnel Policy for New Hires – Requested by Mayor Pilar Turner**

Mayor Turner brought back revising of the personnel policy for new hires to eliminate the banking of vacation and sick pay. They have been discouraged from taking any action on this for existing employees due to union contracts and even for non-union employees saying it would encourage more union participation. She thought that it was time to carry this policy forward for new hires and give them some direction for the future with their negotiations.

Mrs. Carroll asked Mr. O'Connor to explain that why they cannot as a City Council create policy for the City employees who are members of union contracts. She did not understand why they could not delineate policy and enforce it Citywide.

Mr. O'Connor explained that cannot be done because Council has signed a contract agreement with the bargaining unit and under State law that bargaining units represent members that are in the designated job classifications in the contract and that contract sets the standards for their employment, which have to be negotiated under State law.

Mrs. Carroll wondered if the City Council chose to uniformly modify that they would not be allowed to do it by State law or they would leave themselves open to City employees walking off the job.

Mr. O'Connor stated that they would be in violation of State law. However, what the Mayor is suggesting in having a policy change to the general employees personnel policy would apply for new employees hired outside of the bargaining unit. It would set a standard as they go forward with negotiations with the union contracts and they would understand where they are coming from.

Mrs. Carroll asked what is the date of the next contract discussions.

Mr. O'Connor explained they are involved in two different negotiations now, the establishment of two others and in 2013 all the negotiations will take place unless they reach an agreement between now and then.

Mrs. Carroll commented that by passing this policy for the new hires, she would suggest that they also include this policy as a mandate for the negotiations letting them know that this is City policy moving forward.

Mr. O'Connor explained that would be unfair labor practice. He said that negotiations have to done in good faith so mandates cannot be given. He said that Council has the final decision on the acceptance of a contract. He asked for consideration with the sick days that they go to 180 days, which would allow an employee to get an insurance package for coverage in case they needed it. He doesn't see a problem with doing this since they will not be paying anyone for sick leave.

Mayor Turner accepted that modification because she agreed that the employee would be able to use the long term insurance. She agreed with the extension of 180 days.

Mr. O'Connor also suggested that instead of having the five days of vacation that they allow an employee to accumulate the earned vacation time from the previous year. He said that this is a personnel policy that he has used in the past.

Mrs. Carroll asked if they would receive the payout of those benefits if they choose to leave the City and still have the vacation time.

Mr. O'Connor explained that there are payouts for vacation time when an employee leaves. He said that the employee earns this time and they cannot be denied. He said one of the concerns he has is if vacation time is limited to five days they could have some problems with a lot of employees in the same department taking vacation at the same time.

Mayor Turner was concerned with the management of the vacation policy. She said that vacation time is be used in the year that it is earned. She said that they need to encourage employees to take their vacation time. She said that the quality of the employee's work is better after they have had a vacation. It is not meant to be a departure benefit.

Mr. Kramer commented that this is something that they are going to do for new employees being hired and something that they can observe to see if it affects the quality of people applying for jobs.

Mr. O'Connor stated that he will bring back a policy change that they will need to adopt by Resolution.

Mr. Winger asked when a new employee is allowed to start taking vacation time. Mr. O'Connor told him that a new employee cannot start taking vacation time until after he

has been working for six (6) months. He said that an employee can earn a one-week vacation in their first six months.

Mayor Turner instructed Mr. O'Connor to bring back a Resolution at their next meeting to change this policy including the 180 days for the sick time accumulation and they are still looking at use it or lose it vacation time (including five days carryover).

**B. New Business**

**10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

**A. Mayor Pilar Turner's Matters**

**1. Correspondence**

Mayor Turner recalled that they received a letter from the owner of the pipe shop downtown expressing his concerns about parking spaces being utilized by employees of the courthouse. She thanked Mr. O'Connor and Chief Curry for looking into this situation.

Mayor Turner asked Mr. O'Connor for an update on the sign located at Miracle Mile. Mr. O'Connor said that Mr. Chris Mora, County Traffic Engineer is looking into this and then Council can decide how they want to proceed.

Mayor Turner commented that she has been talking with the public regarding the PBA petition and felt it would have been far more persuasive if people signing the petition had been asked if they were willing to pay more taxes to avoid the proposed reductions.

Mrs. Carroll added that she was very concerned that there seemed to be a large number of forgeries in this document (petitions that were signed). She said it appeared in some cases that separate signatures gathered at the same address may have been signed by the same person. She was concerned about Police Officers being present when the apparent forgeries were made. She discussed this with the City Manager and he will be looking at the ramifications.

Mayor Turner asked Mr. O'Connor if they have started hurricane preparations. Mr. O'Connor answered yes and said that the first County drill will be on May 22<sup>nd</sup> and the City will be participating.

**2. Committee Reports**

Mayor Turner reported that FMPA is moving forward in trying to refinance some bonds. She attended a Florida League of Cities health care and pension reform seminar and will be providing some information to Council that she obtained at that seminar. She attended the Community Leaders Summit and the focus continues to be on jobs. She also attended the dedication ceremony at Veterans Memorial Island. She thanked the members of the Tree and Beautification Commission on such a nice Arbor Day celebration that they had.

She thanked all the volunteers who came out for a Day of Service on Saturday and reported that this Saturday there will be the fundraiser ball game for the United Way, as well as Cinco de Mayo at St. Francis Manor.

**3. Comments**

**B. Vice Mayor Craig Fletcher's Matters**

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

Mr. Fletcher reported that he also attended the Vietnam Veterans ceremony for the new display, which is beautiful. He enjoyed Arbor Day and at Leisure Square there was another ceremony held by their Tree and Beautification Commission.

**C. Councilmember Tracy Carroll's Matters**

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

Mrs. Carroll reported that she attended the Chamber of Commerce Leadership Summit. She met with the City Manager in terms of how other cities handle streamlining their Council meetings when there are a lot of public comments. She has received more communication that semi-trucks continue to drive through beachside neighborhoods. She asked Mr. O'Connor if he has contacted all the vendors on Ocean Drive about this situation. Mr. O'Connor explained that he spoke to the Oceanside Business Association and notified the business owners whose truck was seen driving in the neighborhood. Mrs. Carroll expressed that City streets are not appropriate for semi-trucks to be going down.

Mrs. Carroll expressed that herself, the City Manager, and the Public Work's Director, met with the County on the Twin Pairs and found out a number of meetings have taken place. The matter (looking at traffic calming on the twin pairs) is currently being sent to MPO Advisory Committees and they are looking at hiring a consultant and having the funding come out of MPO funds.

Mrs. Carroll commented on the kickball game that took place between the City and the County last Saturday and wondered if there would be a rematch.

**D. Councilmember Jay Kramer's Matters**

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

Mr. Kramer attended an Economic Development Council meeting, the City versus County kickball game, the Chamber of Commerce Community Leaders Summit, and

agreed that the Vietnam Veterans Memorial monument is wonderful. He commented on the mural done by the Vero Beach Art Club and thanked them for doing that and noted that the Vero Beach Art Club presented a check to the Recreation Department.

**E. Councilmember Richard Winger's Matters**

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

Mr. Winger attended Mr. Jim Stevens retirement party, he attended the Arbor Day ceremony, and reached out to South Beach property owners to enter into talks concerning their water, and that it would not hold up anything. He said that they appreciated that.

**11. ADJOURNMENT**

Today's meeting adjourned at 12:19 p.m.

/tv