

**CITY OF VERO BEACH, FLORIDA
SEPTEMBER 7, 2010 3:00 P.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Roll Call

Mayor Kevin Sawnick, present; Vice Mayor Sabin Abell, excused absence; Councilmember Tom White, present; Councilmember Brian Heady, present and Councilmember Ken Daige, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

B. Invocation

Rabbi Michael Birnholtz, of Temple Beth Shalom, gave the invocation.

C. Pledge of Allegiance

The audience and the Council joined in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

The City Clerk requested that item 2D-5) "Ratification of Teamsters Contract" be pulled off of the consent agenda and placed under the City Manager's Matters as item 7-E).

Mr. White requested that items 9A-5), 7), and 8) be removed from the agenda. He said that these items have been brought up in the past and the questions have been answered. He made a motion to remove items 9A-5), 7), and 8) off of the agenda. Mayor Sawnick seconded the motion.

Mr. Heady asked Mr. White why he was removing item 9A-5) off of the agenda. Mr. White said because Mr. Heady received the transcript from that meeting and keeps asking the same questions. Mr. Heady said that he did not receive the transcript. He asked Mr. White again why he was removing 9A-5). Mr. White told him that this was an item that he needed to discuss with the City Manager. If the City Manager wants to give him a written answer that is up to him, so this should not be under City business. Mr. Heady said that his only dealings with the City Manager involve public business and as Mr. White knows he does business in the public eye. Mr. White said that is fine, but this item does not belong on the agenda. Mr. Heady told him that he was certainly entitled to his opinion. He just wanted to know why Mr. White wanted the item removed. He then asked about item 9A-7). Mr. White explained that for years any type of discussions about upcoming elections has never been discussed. That is something that does not fall

under the purview of the City Council and he feels that item should be removed. Mr. Heady explained that the City Council certainly does control the elections and they control what it is that they want to put on the ballot for the electors to have a choice to vote on. He thinks that is an appropriate discussion. That is not an election hearing. It is simply stating for the public record some things that he thinks should be on the ballot in the November election. Mr. White said then Mr. Heady needs to list that as his item. He already has another item about putting something on the ballot. Mr. Heady explained that the other item is more specific and this is just a general item. He reiterated that item 9A-7) is a general discussion about what everyone thinks would be appropriate to put on a ballot. He said that you cannot have backup for something when you're asking for general discussion to try to get the opinions of Councilmembers on a particular topic. The Sunshine Law requires the only time that he can ask these types of questions of Councilmembers is at a noticed meeting. This particular item has been removed from every meeting since February. Mr. White told Mr. Heady if he had backup material pertaining to what he just said it probably would not be removed. Mr. Heady said okay, he was just specific in what he just said so does Mr. White rescind his motion or remove that item.

Mayor Sawnick commented that what Mr. White is saying, which is the same thing that he has been saying the past few months, is when the public reads the agenda and it only states the November Elections, the public does not know what that means. Mr. Heady explained that he does not know what it means until they have discussion. Mayor Sawnick told Mr. Heady that he is the one that requested that the item be on the agenda. He felt that being clearer was very important.

Mr. Heady told Mr. White that he has also pulled item 9A-8) and wanted to know why. Mr. White said that he pulled it because it is something that happened in August 2008 and the City Council has been provided with the DVD. It has been brought up several times before and discussed. Also, this is something that Mr. Heady needs to work out with Mr. Gabbard. He said that Mr. Gabbard gave him the transcript of what he said at this August 12, 2008 County Commission meeting and again this has nothing to do with City business.

Mr. Heady reiterated that he does City business in the public eye. He said that this DVD has never been played for the public to view at this meeting. There have been several attempts and every time he wants it played the DVD does not work. Once again he would ask that the video be played and that they have a discussion about what they see in that video. He feels that if the public was allowed to view the video they would be as troubled as he is. He stated that the City Manager has never given him a transcript of what he said at that meeting. That is absolutely not accurate. If that is true then he would ask for its production and he would think that the Clerk would say that it does not exist.

Mr. Jim Gabbard, City Manager, explained that he gave a transcript to Mr. Heady regarding item 9A-5).

Mr. Daige commented that there has been quite a bit of time put into items 9A) 1-11 that Mr. Heady has requested. The City Clerk's office spent a lot of time in collecting the data. He said that Mr. Heady has put these items on the agenda and he feels that he is not being heard so he (Mr. Daige) wants to know what his intent is. He will support items 9A) 1-11 to hear Mr. Heady out.

Mayor Sawnick withdrew his second to the motion.

Mayor Sawnick made a motion to adopt the agenda as amended. Mr. White seconded the motion and it passed unanimously.

B. Proclamations

- 1. National Sickle Cell Awareness Month – September 2010**
- 2. Constitution Week – September 17-23, 2010**

Mayor Sawnick read and presented both proclamations.

C. Public Comment

- 1. Mr. Ken Bennett to speak on Airport Matters**

Ms. Florence Licatta was at tonight's meeting representing the Vero Beach Oversight Committee. She explained that Mr. Ken Bennett was unable to be here so she was speaking in his place. She then read a prepared statement (please see attached) and asked that Council postpone the Special Call meeting scheduled for October 14, 2010 and hold it in the beginning of next year.

Mayor Sawnick told Ms. Licatta that Council would be happy to reschedule that meeting. He also will be speaking to the City Manager about the testing process and what the costs will be.

Mr. Heady noted that he did not meet with Mr. Bennett because Mr. Bennett never called him. He explained that the City Clerk gave Mr. Bennett his cell phone number and asked him to call. Mr. Heady asked Ms. Licatta what neighborhood they were referring to. Ms. Licatta explained in detail where the neighborhood is located.

Mr. Heady asked the Airport Director about the specific FAA requirements that Ms. Licatta was questioning.

Mr. Eric Menger, Airport Director, explained that there have been tests like this one done in the past. He will look into it, but has no idea what the expense will be.

Mr. Heady asked about proper protocol and wondered if this would be a City expense or something that could come out of the Airport expenses.

Mr. Menger felt that the environmental portion of the master plan probably could be funded. He did not recommend that the funding come out of the General Fund because it could be biased. He said that if the homeowners paid for it themselves it would be less biased.

Mr. Heady recalled that there have been a lot of communities throughout the Country where children have been effected by certain chemicals. He felt that if there were some concerns of the neighbors and proper protocol by FAA, he would like to know what the expenses would be.

Mr. Menger said that the future meeting coming up on October 14th is a good time to bring these questions up before the consultants.

Mr. Daige had no problem with postponing the meeting. He had a meeting with Mr. Bennett and the minutes and tape recording are on file. He would be talking to the City Manager about this type of study and what it will cost to have it done.

Corporal Phil Huddy, Vero Beach Police Department, said that over the last two months he has been carrying the concerns of his fellow Police Officers on his shoulders. They have expressed their concerns of the possibility of diminished wages and increased healthcare costs. Many of his fellow Officers feel that they will have to roll the dice and opt for the least expense of the three healthcare plans the City is proposing. These Officers are willing to risk one of their family members falling victim to a catastrophic illness rather than incurring a 35% increase in their health benefits. This decision becomes more evident when coupled with the possibility of the Officers receiving 10 to 12 furlough days, which amounts to about a five percent decrease in pay. They understand the difficult economic times they are currently living in with some of their own family members out of work. But, to some of them it appears that City officials are trying to use the growing animosity toward public employees to leverage their Officers into an agreement they (Police Officers) cannot accept. If the City of Vero Beach continues on this course, the Police Department will eventually be forced to lower their hiring standards because quality Officers will have to go to other Police Departments who offer better benefits. There is also a cost that could lead to greater liability in the long run. While dealing with these economic issues, many have become frustrated over certain decisions being made by City officials. On July 20th he spoke in front of the Council expressing his concerns with his fellow Officers and their futures in this City and the Police Department. During the City Council budget meeting held on July 21st, the Council agreed to see if money could be found to avoid extending furlough days to the City's Police Officers. One of those solutions was possibly dipping into the City's General Fund. On July 23rd there was a meeting between the City Manager and City Council and they decided to abandon the idea of using money from the City's General Fund to avoid giving the Police Officers furlough days. On July 27th they were told by the City's bargaining unit that they have the option of either taking furlough days or taking a five percent pay cut as well as an increase in health premiums. This was the same offer they had given to the Police Officers at their second bargaining meeting, which was held on July 21st. At the July 20th City Council meeting, they voted to allocate

approximately \$140,000 to upgrade the audio/visual system in the Council Chambers. During the week of August 15th, Council voted to appropriate \$21,000 to hire a firm to search for a new City Manager rather than forming an in-house search team. Also during that same week, Council voted to use up to \$85,000 for a study of the City's water and sewer system, which he felt would eventually be taken over by Indian River County. He said that even though City officials are asking the Police Officers to make sacrifices, these same City officials have granted a pay increase of \$23,692.00 to the City Attorney's office in the 2010/2011 budget. There are five employees in the City Attorney's office, two Paralegals and three Attorneys. The total of City funds devoted to salaries to the City Attorney's office is approximately \$389,726 and 76% of that amount goes to the three City Attorneys. This equates to approximately \$4,738.40 for each person working in the City Attorney's office. This is the same City Attorney's office that at times has to farm out work to other agencies for litigation. When the Police Officers see that City officials are able to allocate financial resources to other projects and departments it becomes disheartening. On August 17th the City Council passed an Ordinance to allow dog friendly dining. He found it ironic how quickly City officials can create an Ordinance to allow dog owners to bring their dogs to dinner, but cannot resolve issues concerning their Police Officers. If they can find the resources for the above items then why can't they find resources for the Police Officers who are laying their lives on the line every day and who have the highest clearance rate of any agency in Indian River County and St. Lucie County. In the past they have tried to appeal to the City Manager and City Council, but it appears that their concerns have fallen on deaf ears. He said that he was present today appealing to those individuals who live and work in the City of Vero Beach. They are asking the citizens of Vero Beach to email or call the City Manager and members of the City Council to let them know how much they appreciate the level of service the Police Department provides and to help persuade them to rethink their position. They are also urging all City voters to contact the 11 candidates running for City Council to let them know that they want the Police Officers to maintain the benefits they currently have. He invited members of the City Council to contact the Police Department to ride along with them in their police cars and experience what they go through on a daily basis.

Mr. White appreciated that Corporal Huddy spoke today. He said that Council did meet and he was surprised at some of the comments made. He noted that they were looking at getting funding from the Reserve Fund, not the General Fund, to cover the furlough days. He felt that public safety was one of the reasons people move to Vero Beach. He knows that this will cause a rift among the Teamsters and everyone else who is being forced to take furlough days. He supported the Vero Beach Police Department and he did not want to see less Police Officers. He asked Council to do this for this one year and they can try to come up with funding for next year. He understood that this was going to be tough because of the hard economic times.

Corporal Huddy said it was not like they were not trying to meet the City half way on this. But, it appears that the City is telling them that they (Police Officers) are going to take what the City is going to give them and they are going to like it.

Mr. White felt that they, as Council, should make sure that the citizens' safety comes first.

Corporal Huddy said that a lot of the Police Officers are willing to meet half way. But, to take 10 to 12 furlough days plus an increase in health insurance is hard to take in one year.

Mr. White commented that Council use to receive a monthly report on all the lawsuits that the City was involved in.

Mr. Vitunac stated for the record that no one in the City Attorney's office is getting a raise this year and they did not receive a raise last year. He said that they have all taken 12 furlough days last year and they will be taking 12 furlough days this year.

Mr. White agreed that no one in the City Attorney's office was receiving a pay raise and they all have taken a five percent reduction in taking furlough days. He asked Corporal Huddy to call him if he has a question on the City's budget and if he does not know the answer he would find it.

Mr. Daige said that it was very important to him that the City's Police Officers are taken care of, but there is a cost. He said that the Police Department's budget is approximately seven million dollars and it has been like that for a number of years. They have to figure out where the money is coming from and if they keep increasing the budget to pay for items that are important to everyone the taxes are going to go up. Regarding Corporal Huddy's comments regarding the Water and Sewer Department being taken over by Indian River County. He said that he would like to know what they know that he does not know. He stated that the Water and Sewer Department is operating as it should and it is also generating funds like it should. He would be concerned if they took money out of the reserves. He noted that wages and benefits are very important to City employees, but they have to look at how they are going to pay for this. If they keep taking out of the reserves like they have done in the past, it would bring their credit rating down. Then if the City has to borrow money, they would borrow at a higher interest rate. The City Council was informed that the services of the Police Officers would be okay and they left the negotiations in the City Manager's hands and that is where they are going to stay for the time being. He noted that Councilmembers' doors are always open. There was no question that the Police Officers work very hard and that they have the best equipment that the City can give them. Their wages and benefits are very important and Council does everything they can to provide those benefits. He wanted the citizens of the City of Vero Beach to understand that there is a cost and asked that they contact the City Councilmembers to let them know if they are okay with getting their taxes raised. Other cities this size have smaller police budgets. He said that to his knowledge the City has not laid anyone off. He said that it was very important to him that no one is laid off and he is trying to make sure that everyone keeps their job and earns a paycheck.

Mr. Heady said that Corporal Huddy made some comments regarding a meeting on July 23rd. He asked was that the Shade meeting.

Mr. Vitunac said that there was a Shade meeting, but he was not sure that was the date.

Mr. Heady asked were minutes taken of that meeting and was there a vote taken at that meeting.

Mr. Vitunac answered no.

Mr. Heady did not know what Corporal Huddy meant when he stated that there was a decision made to abandon them. He did not recall voting in favor of anything that would abandon the Police Officers.

Corporal Huddy said that during the budget meeting there was an openness to find a way to have the Police Officers exempt from taking furlough days. Then they went back into negotiations and they were told that they were back to the way they were in June, which was that they could either take furlough days or a five percent cut in pay and they could expect the health insurance premiums to go up.

Mr. Heady said that he did not approve any raises in the City Attorney's office. He said that there are department budgets that have gone up or down, but that does not necessarily transfer into salary increases. He felt that Corporal Huddy was correct in the dollar amount that the City spends for legal expenses. The City pays way too much and part of that expense is the unwillingness of the City Council to address issues.

Mr. Vitunac explained that in the previous year there was discussion on cutting the hours of their part time Attorney, but they were able to get through the budget without cutting that salary. Therefore, all they were doing was keeping the salary the way it was before they reduced the part time hours. He said that Corporal Huddy could have called him and he would have explained this to him. He said that no one received a raise in his office and they are taking 12 unpaid furlough days.

Mr. Gabbard explained that the reason they had the Executive Session with the City Council was to brief them on the Police and Teamster's negotiations. It is their obligation to keep Council informed. There were no minutes kept and no votes were taken. The direction Council gave them was to do their best to come back with a balanced budget without any tax increases to the taxpayers. There was a \$700,000 increase in pension benefits for the Police Department alone that had to be found in the City's budget. He said last year their increase was \$400,000 and \$700,000 this coming year and they are trying to cover those deficits from the General Fund. He said that they were trying to get some help from the Police Department. No one wants to cut their workforce and the Police Chief stated that there would not be a lack of service if the Police Officers were asked to take furlough days. The PBA is at impasse and the City is continuing to have discussions with them. The City has tried to give as much as they can, but there are no funds available. He said that they are trying to keep everyone working and there are huge issues with health care. He said that next year there are going to be some very tough decisions to be made because the easy and difficult things to cut are

gone. Next year there will be layoffs for sure. He noted that as soon as this budget is ratified they are going to start the budget process for next year's budget. He said that this would include all the Department Heads, which they would be asking for their input. He noted that everyone in the City has taken furlough days and has not received any pay increase. He said that the Police Department did not have to take furlough days last year because they knew this was the last resort. The budget situation is very serious and the trouble is in the General Fund, the Police Department, Recreation, Parks, etc. This is where the money is and when they have a nine or ten percent reduction in ad valorem taxes right off the bat the City was in the hole by \$400,000 in the General Fund.

Mayor Sawnick appreciated Corporal Huddy for attending today's meeting. He noted that nothing is set in stone. Regarding the public contacting them, he said yes, have the public contact them. He said that he has received about three emails regarding the Police Department and he has not received any telephone calls. He said that they would work with the Police Officers and they know what they do is very important. He said that these are tough times and they want to be fair to all City employees. They want to treat everyone equally.

Mr. Rusty Bragg, 1915 17th Avenue, stated that whether they like it or not, Councilmember Heady is "King" around here. He was also sorry to see Mr. White and Mr. Gabbard leave the City.

Mr. Dave Barnadam, (spelling may be incorrect) 1936 41st Avenue, asked what could be done about updating some of the Code Ordinances. He said that any truck weighing over 5,000 pounds is deemed a commercial vehicle and from 2003 and up, any mid to full size pickup truck well exceeds a 5,000 pound rating. Also there seemed to be a big difference in Code Enforcement regarding trailers. He stated that he has a personal use tandem axle car trailer that he was told was a commercial use vehicle and he could not have it on his property. He said that his trailer is used for recreational purposes, not commercial purposes. He noted that the Code regarding the trucks being 5,000 pounds was written in 1984. He noted that a few months ago there was an issue regarding the Go-line buses being at the location of the old County Administration building and Mr. Daige stated that there would be increased Police presence in that neighborhood. He noted that he looked at the Indian River County Sherriff's Office website and from July 1st to today there has been nine incidences in that neighborhood. In his neighborhood there were 55 incidences during that same time period. He thanked the Police Department for being there whenever there is a problem in his neighborhood. He said that he would not object to the City doing everything that needs to be done to keep the Police Officers in that area.

Mr. Heady said that Mr. Barnadam brought up a good point because the trucks are larger and this is something that they need to look at. He asked the City Clerk to give him a copy of the Ordinance. He said that SUVs are the vehicle of choice for many people and they should not be classified as commercial vehicles. If the Ordinance is not keeping pace with today's reality of vehicles, then they need to update that Ordinance. He said that he would bring his recommendations back to Council at a future meeting.

Mr. Daige had an article from the Press Journal dated September 3, 2010, which had some comments made by Mrs. Tracy Carroll who indicated that there were backroom deals taking place in the City regarding Code Enforcement. He asked that the City Manager look into this and if there are deals being made then Council needs to be aware of it.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – August 17, 2010**
- 2. Special Call City Council Minutes – August 16, 2010**
- 3. Award of Bid No. 280-10/CSS – Supply of Unleaded Gasoline and Diesel Fuel to the Marina**
- 4. Reduction of Retainage from 10% to 5% for Interstate Engineering Corp.**
- 5. Ratification of Teamsters Contract**

Mr. White made a motion to adopt the consent agenda. Mr. Daige seconded the motion and it passed unanimously.

Council took a five-minute break at 4:12 p.m.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, providing the Levy of Ad Valorem Taxes for the Fiscal Year 2010-2011 at a Millage Rate of 2.1528 which equates to \$2.1528 per \$1,000 of Assessed Property Value.**

Mayor Sawnick read the Ordinance by title only at 5:05 p.m.

Mayor Sawnick recalled at their budget meetings that they (Council) set their tax rate at roll back to give the flexibility at this meeting and also at the next public hearing. He believes it is the intention of the City Council to keep their tax rate what it is at this time which is \$1.9367. He asked the City Attorney if they have to set that rate tonight or wait until the second public hearing.

Mr. Vitunac stated that this is the first of two advertised public hearings and the public has the right to speak at both hearings. He said that final action will have to be taken at the final public hearing. However, they could indicate that it is their desire to lower the millage or do some other change, but that vote should come at the second hearing.

Mr. White recalled that the last vote that they took they all agreed with 1.9367. But staff recommended leaving it at rollback rate. Now that he has received his Trim Notice it shows the \$2.1528. He expressed the importance of keeping the millage rate at 1.9367.

Mr. Heady made a motion to keep the millage rate at 1.9367.

Mayor Sawnick told him that they needed to have the public hearing first before they have a motion.

Mayor Sawnick opened and closed the public hearing at 5:09 p.m., with no one wishing to be heard.

Mr. Heady made a motion to keep the millage rate at 1.9367 and not go to the roll back rate of 2.1528. Mr. White and Mayor Sawnick seconded the motion.

Mr. Daige thanked the City Manager and staff for all of their hard work in being able to go to this millage rate. He said at the budget hearings Council gave staff some wiggle room and they met their expectations. There is not going to be any type of tax increase.

Mr. Heady expressed that this is not an increase, it gives the City the same dollars. This is a tax decrease.

Mayor Sawnick reiterated that he was in favor of keeping the millage rate at 1.9367. He said that they could easily raise the millage rate to keep the Police Officers from having to take furlough days and that is an option that they have.

Mr. Daige added that the general public appreciates not having to have a tax increase. He said this is what their citizenry expects them to do.

Mr. Heady objected to the characterization to Mr. White's proposal/motion that they roll this back is somehow translating to this means they can't do something with the Police Department. He does not see the two things as tied together. He would object to that characterization as Mr. White's proposal. He does not believe by doing this that they are negatively impacting the Police Department and again he doesn't think that you can tie these two things together.

Mr. Steve Maillet, Finance Director, handed out a copy of "Truth in Millage TRIM Workbook" which is on file in the Clerk's office. He explained that within 65 to 80 days of certification of value, the taxing authority holds a public hearing on the tentative budget and proposed millage rate (final hearing for school districts). This hearing is publicized on the TRIM Notice, which is mailed by the Property Appraiser. At this hearing, the taxing authority amends and adopts the amended tentative budget, re-computes the proposed millage rate, publicly announces the percent, if any, by which the re-computed proposed millage exceeds the rolled-back rate, and adopts a tentative millage and budget. If the tentatively adopted millage rate is greater than the proposed rate used for the TRIM Notice, each taxpayer within the jurisdiction must be notified of the increase by first class mail, at the expense of the taxing authority.

The Clerk polled the Council on the motion and it passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, and Mayor Sawnick yes.

The second public hearing on this Ordinance will be heard at the September 21, 2010 City Council meeting.

- B) An Ordinance of the City of Vero Beach, Florida, Adopting the Annual Budget of the City for the Fiscal Year beginning October 1, 2010 and Ending September 30, 2011, appropriating funds for the Operating Expenses, Supplies, and Personnel, and otherwise appropriating funds for the efficient and effective operation of the Government of the City of Vero Beach and its Departments; such appropriations being from anticipated revenue; providing a means to amend the Annual Budget to carry forward the funding of Purchase Orders, Work Orders, and Grants outstanding as of September 30, 2010; providing a means to amend the Annual Budget to reflect Grants received after September 30, 2010; and authorizing the Transfer of Funds appropriated so long as the total combined appropriations shall not be increased thereby; providing an effective date.**

Mayor Sawnick read the by Ordinance by title only at 5:18 p.m. He opened and closed the public hearing, with no one wishing to be heard.

Mr. White made a motion to approve the Ordinance and set the second public hearing for September 21, 2010. Mr. Daige seconded the motion and it passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, and Mayor Sawnick yes.

Council took a five-minute break at 5:18 p.m.

- C) An Ordinance of the City of Vero Beach, Florida, abandoning all of that 7.5 foot wide alley lying North of Lots 1 through 12, between 21st Street and 22nd Street, of Conn Addition Subdivision.**

Mayor Sawnick read the Ordinance by title only.

Mr. Monte Falls, Director of Public Works, noted that all the utility providers have reviewed the application and agreed to the abandonment subject to a retention of an easement for utilities. He said that staff is recommending approval.

Mayor Sawnick opened and closed the public hearing at 4:25 p.m., with no one wishing to be heard.

Mayor Sawnick made a motion to approve the Ordinance. Mr. White seconded the motion and it passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, and Mayor Sawnick yes.

- D) A Resolution of the City of Vero Beach, Florida, adopting a Revised Schedule of Fees for Use of Recreation Department Facilities and for Participation in Recreation Programs; providing for an Effective Date.**

Mayor Sawnick read the Resolution by title only.

Mr. Rob Slezak, Recreation Director, noted that these are the new membership rate adjustments that were discussed at their last meeting with no changes being made to them.

Mayor Sawnick opened and closed the public hearing at 4:27 p.m., with no one wishing to be heard.

Mayor Sawnick made a motion to approve the Resolution. Mr. White seconded the motion and it passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes and Mayor Sawnick yes.

E) An Ordinance of the City of Vero Beach, Florida, requested by Indian River Plaza, LLC, to amend the Official Zoning Map by Changing the Zoning designation from B-1, Planned Business Commercial District to C-1, Highway Oriented Commercial District for the property located generally South of the Southwest corner of the Intersection of US Highway No. 1 and 16th Place, in the City of Vero Beach, including all of Tracts I and II of Indian River Plaza, according to the plat recorded in Plat Book 10, Page 73, of the Public Records of Indian River County, Florida, containing 16.343 acres, more or less; and providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, announced that this was a quasi-judicial hearing,

Mrs. Vock swore in enmasse anyone testifying at today's meeting.

Mr. McGarry reported that the applicant is requesting to change the zoning map and rezone approximately 16.343 acres from B-1, Planned Business Commercial District, to C-1, Highway Oriented Commercial District. The applicant is requesting the zoning map change to accommodate the property owner's desire to lease building space to tenants with uses not permitted in the existing zoning district. The subject property is located north of 15th Place, south of 16th Place, along the west side of U.S. Highway No. 1 and the east side of 10th Avenue. The proposed zoning map change to C-1, Highway Oriented Commercial, will allow additional permitted uses on the subject property. The additional permitted uses are: commercial amusements, funeral homes, guest house and transient quarters, hotels and motels, nonprofit clubs, plant nurseries, self-service storage facilities, trade service and repair, vehicular sales and services, veterinary services, and wholesale trades and services. In some cases, the additional permitted uses are considered to be more intense and may have greater impacts on the surrounding area, such as commercial amusements, vehicular sales and services, etc. He said that the proposed zoning is found to be consistent with Policy 1.10 of the Land Use Element due to the following conditions: the subject property is located adjacent to the U.S. Highway

No. 1 commercial corridor; near two high access points, such as the intersection of 17th Street and U.S. Highway No. 1, both urban arterial roadways; and it is adjacent to U.S. Highway No. 1, an urban principal arterial street. Staff recommends that the Ordinance be approved because based on the evidence presented it meets all of the requirements. Mr. McGarry entered all documents presented by staff into the record.

Mr. White asked Mr. McGarry if by adopting this Ordinance, will it allow increase intensity. Mr. McGarry said yes. He explained that the floor area ratio does not change. The increased intensity means that there could be hotel uses where they don't have any density right now for that use. Mr. White then asked what kind of amusement were they talking about. Mr. McGarry said these would be things like allowing a sports bar that has video games, pool tables and that kind of thing. He said that right now the bar in this location has some limited uses and this would allow them to expand. He said that the owner is looking at bringing in other restaurants to this area. He reiterated that since there are no hotel uses allowed right now this would increase that density.

Mr. Heady added that basically there is an empty parking lot there now. He knew that the contiguous properties within the City limits are C-1. He asked Mr. McGarry if he knew what the contiguous properties that are outside the City limits, right across the street and to the South are zoned. He wondered if the County rating was similar to C-1. Mr. McGarry answered yes.

Mayor Sawnick opened the public hearing at 4:34 p.m.

Mr. Joseph Schulke, applicant in this case, stated that he has been sworn in. He said this request is give them more fair and equal opportunity to lease space. It allows them a few more uses than B-1. If not granted this C-1 zoning they feel like they are at somewhat of a disadvantage when compared to the other properties. He thinks that this site is consistent with what is around them with this proposal and it is consistent with the Comprehensive Plan and adjacent and nearby uses. The contiguous properties to the east and to the south permitted uses are almost the same (question asked by Mr. Heady). He then referred to the questions asked by Mr. White and said that he doesn't believe this permits additional intensity. If a hotel or motel type site was proposed then the density would increase. He said that this is not being planned at all.

Mayor Sawnick closed the public hearing at 4:37 p.m., with no one else wishing to be heard.

Mayor Sawnick made a motion to approve the Ordinance. Mr. White seconded the motion and it passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, and Mayor Sawnick yes.

Mr. Daige is familiar with where this property is located (old Denny's location) and feels that this will be a great improvement. He agreed with moving forward and allowing this rezoning.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

A) A Resolution of the City of Vero Beach, Florida, amending the City of Vero Beach General Employee Retirement Plan as to Eligibility, Participation, Contributions and Retirement Benefits; providing for an Effective Date.

Mayor Sawnick read the Resolution by title only.

Mr. Maillet stated that this Resolution amends the General Employees Retirement Plan. By implementing these changes it will allow them to balance the budget for FY10-11. The Union approved these changes on September 1, 2010 when they ratified the Collective Bargaining Agreement for October 1, 2010 through September 30, 2013.

Mayor Sawnick asked Mr. Maillet how much will the City save by making these changes.

Mr. Maillet said approximately \$700,000.

Mr. Heady referred to the savings as just pointed out in the plan before them today and asked are the pensions that are earned in any given year also funded in that year under this plan.

Mr. Maillet explained that there are two parts to the annual payment. There is the part that pays off old costs and there is the part that makes payments towards the benefits that have been earned.

Mr. Heady explained that his concerns with pension plans is that he thinks that they need to make it policy that they fund pension plans in the year that it is earned. So if an employee is earning a future benefit it needs to be funded now. He just heard Mr. Maillet say that some of this funding is for retirees that are currently collecting from the plan. He said anytime that they take a pension plan and don't fund it in the year earned then what they are doing is transferring the responsibility or payment to some future generation. He thinks that government needs to rethink pension plans and the benefit needs to be funded in the year that it is earned.

Mr. Maillet reported that the plan will be for employees who have already reached 25 years of service or employees at least 65 years old with at least five years of service will remain on the old plan until retirement or termination of employment. For all other employees covered by the General Employee Retirement Plan their pension contribution will increase from 2.25% of their pay to 3.25% of their pay. Their pension benefit will decrease from 2.25% of their pay to 1.6% of pay for each year of service and the penalty for early retirement will increase from 1.5% to 3.0% of their benefit for each year of early retirement.

Mr. White referred to page 5 where it states "vested" describes a Participant who has completed five years of service.

Mr. Robert Anderson, Human Resource Director, stated that under the current plan employees are vested after five years. The changes before them are the same changes that the Teamsters agreed to at the bargaining table. There were no discussions of changing the vested time when they met.

Mr. White commented that the State is looking at changing their vested times and the City probably should follow the State recommendations.

Mayor Sawnick announced that the State has two options. He said the first option is that you are vested after six years and the other option is if it is an investment plan you are vested after one year and you can invest your own money.

Mayor Sawnick made a motion to adopt the Ordinance. Mr. White seconded the motion. The motion passed 3-1 with Mr. Daige voting yes, Mr. Heady wanted to explain the reason that he was voted no and the Mayor told him that he would need to wait until after the vote was taken. Mr. Heady asked the Mayor to show him the procedure that disallows him to explain why he is voting no. He thought that this was kind of ridiculous. He was voting no because the plan is not funded in the year that benefits are earned. Mr. White voted yes and Mayor Sawnick voted yes.

B) A Resolution of the City of Vero Beach, Florida, Directing the City Manager to extend the Mandatory Budget-Required Furlough Leave Program for a Period of Time beginning October 1, 2010 and ending September 30, 2011, unless terminated earlier or extended by direction of the City Council; providing for an Effective Date.

Mayor Sawnick read the Resolution by title only.

Mrs. Peggy Lyon, Assistant City Attorney, reported that this Resolution directs the City Manager to extend the Furlough Program that was adopted by the City Council on September 8, 2009 (Resolution No. 2009-29), and that terminates on September 20, 2010. This new Resolution, if adopted by Council will terminate on September 30, 2011 unless further extended by action of the City Council, or terminated earlier by the City Manager upon direction of the City Council. The Resolution applies to all City employees and any changes would mean that a new Resolution would have to be brought back before Council.

Mr. White asked if this Resolution includes the Police Officers.

Mr. Anderson explained that this Resolution does not exempt Police Officers like the last Resolution did. However, whatever agreement is reached at the bargaining table supersedes this.

Mayor Sawnick made a motion to approve the Resolution. Mr. Daige seconded the motion and it passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, and Mayor Sawnick yes.

C) A Resolution of the City of Vero Beach, Florida, adopting the Military Leave Policy as an amendment to the City of Vero Beach Personnel Rules; providing for an Effective date.

Mayor Sawnick read the Resolution by title only.

Mrs. Lyon reported that this Resolution provides for the adoption of a revised Military Leave Policy that reflects recent changes in statutory and Federal law relevant to military leave, and incorporates by reference the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA). The policy differentiates between the varying requirements for Federal active or inactive duty training, Florida National Guard active State duty, and active military service in the National Guard or a reserve component of the Armed Forces of the United States. She said that staff recommends approval.

Mr. White made a motion to approve the Resolution. Mayor Sawnick seconded the motion.

Mr. Daige commented that their military does a great job. He thanked Mrs. Lyon for taking care of this.

Mr. White recalled that a few years ago he went to Orlando to receive an award because the City allowed two employees to return to work after they had served some military time.

Mr. Heady thanked Mrs. Lyon for taking care of his concerns with regards to health benefits. He wanted to ensure that an employee's health insurance benefits would not be delayed as originally spoken about. He said one thing that Mrs. Lyon mentioned today is that the pension benefits are unbroken for the term that an employee is gone. He said theatrically an employee that has been with the City for one year and then they put four years in the military will be vested in their pension plan if they have a five year vesting right. He asked if someone could put something on the books so that the City Council faces that underfunded pension the year that the veteran returns. He said that this would create four years of underfunded pensions. If they are going to have a veteran return and be immediately vested in a pension plan, he wanted to see the City Council address that in that year and fund that unfunded portion.

Mr. White asked if an employee uses their military time for that hypothetical four years they are not allowed to buy that military time after they are invested. He said that would be double dipping.

Mr. Maillet explained that the purchase would be for military time purchased prior to employment with the City.

Mayor Sawnick made a motion to adopt the Resolution. Mr. White seconded the motion and it passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, and Mayor Sawnick yes.

- D) A Resolution of the City of Vero Beach, Florida, adopting the 2010 revised Indian River County Unified Local Mitigation Strategy; authorizing the Mayor, City Clerk and City Attorney to execute said agreement on the part of the City; providing for an Effective Date.**

Mayor Sawnick read the Resolution by title only.

Mr. Falls reported that this Resolution is because back in 1992 the State of Florida mandated that all County Emergency Management Agencies develop a strategy for participation in FEMA's Hazard Mitigation Grant Program if funding became available after a disaster was declared by the President. The local Mitigation Strategy Plan is a Countywide effort to be prepared for funding opportunities from FEMA should a disaster strike Indian River County or any of its municipalities. In 1998, Indian River County and all the municipalities participated in developing a Local Mitigation Strategy. The plan is updated periodically and was last adopted by the Board of County Commissioners and municipalities in 2005. FEMA requires that the plan be reviewed and adopted every five years. City staff has been in attendance during the review process and updating of the plan.

Mr. White made a motion to approve the Resolution. Mayor Sawnick seconded the motion.

Mr. Daige wanted to add in Section 2, Authorization of Execution, that the City Manager's name be added.

The Clerk polled the Council and the motion passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, and Mayor Sawnick 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, Providing and Establishing Revisions to the Budget for the City of Vero Beach, Florida, for the period beginning October 1, 2009 and ending September 30, 2010, by increasing the General Fund by \$1,216,448; by increasing the One Cent Sales Tax Fund by \$6,994,783; by increasing the Electric Fund by \$9,172,719; by increasing the Water and Sewer Fund by \$366,877; by increasing the Airport Revenue Fund by \$650,282; by increasing the Marina Fund by \$122,100; by increasing the Solid Waste Fund by \$156,100; by increasing the Self Insurance Trust Fund by \$15,100; by increasing the Confiscated Property Trust Fund by \$7,200; all from Revised Revenue and Expenditure Estimates; by increasing the Debt Service Fund by \$2,500; by increasing the General**

Construction Fund by \$12,790,832; by increasing the Electric R&R Fund by \$2,622,719; by increasing the Water & Sewer R&R Fund by \$13,354,213; by increasing the Airport Construction Fund by \$4,221,768; by increasing the Recreation Fund by \$270,100; by increasing the Recreation Construction Fund by \$85,000; All From Revised Expenditure and Transfer Estimates.

Mayor Sawnick read the Ordinance by title only.

Mr. Maillet reported that this is the first of two hearings. He said that by passing this amendment to the budget it will catch up all of the activity that they have gone through for the fiscal year.

Mr. White made a motion to approve the Ordinance on first reading and set the public hearing for September 21, 2010. Mayor Sawnick seconded the motion.

A brief discussion took place as to what time their next meeting will be held. Council agreed to start their next regular Council meeting at 6:00 p.m. and hold their Special Call meeting at 9:30 a.m. that same morning. Mr. Heady noted that he does have a conflict with the 9:30 a.m. Special Call meeting, so he was not sure that he was going to be able to attend that meeting.

The Clerk polled the Council on the motion and it passed 4-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, and Mayor Sawnick yes.

6. CITY CLERK'S MATTERS

None

7. CITY MANAGER'S MATTERS

A) Award of Contract to Dickerson Florida, Inc., to Rehabilitate Sections of Runway 11R-29L and Taxiway "C" (Bid No. 260-10/CSS); FDOT Project No. FP 428512-1-94-01; FAA AIP No. 3-12-0093-034-2010

Mr. Eric Menger, Airport Director, reported that the first two items (7-A and B) are both for the same project. He reminded Council that they approved accepting Federal grant money for the project at their last meeting. Then staff went through the bid process and chose the lowest bidder.

Mr. White made a motion to approve the Award of Bid No. 260-10/CSS, to Rehabilitate Sections of Runway 11R-29L and Taxiway "C", to Dickerson Florida, Inc., in the amount of \$632,006.00. Mayor Sawnick seconded the motion and it passed unanimously.

B) Work Order #1372-8 between URS Corporation and the City of Vero Beach; Rehabilitate Sections of Runway 11R/29L and Taxiway C

Mr. Menger reported that this work order is to authorize on-site project engineering and inspection services in conjunction with the project to rehabilitate sections of runway 11R/29L and Taxiway C at the Airport.

Mr. White made a motion to approve Work Order #1372-8 with URS Corporation to rehabilitate runway 11R/29L and Taxiway C, in the amount of \$92,265.00. Mayor Sawnick seconded the motion.

Mr. White asked Mr. Menger that in the future to please explain where the funding is coming from for these projects. He wanted it clear that no monies are coming out of ad valorem taxes.

Mr. Menger commented that typically funding for Airport projects comes from Federal and State funding. This project is 95% funded by Federal funding, 2.5% funded by the State and 2.5% funded by Airport revenues.

The motion passed unanimously.

C) Ranger Construction Industries, Inc., Change Order Number 3 to Replace Existing Taxiway Light Fixtures with New Light Emitting Diode (LED) Light Fixtures (FDOT #416303-1-94-01) – Contract #1495 (Bid #440-09/CSS)

Mr. Menger reported that Council approved the Award of Bid to Ranger Construction Industries for this project on April 6, 2010. This change order authorizes Ranger Construction to purchase and replace all existing incandescent (quartz) medium intensity taxiway light fixtures with more energy efficient light emitting diode (LED) technology light fixtures. All remaining stake-mounted medium intensity taxiway lights will be replaced with base-mounted lights and conduit system. He recommended that Council approve this change order.

Mayor Sawnick made a motion to approve Change Order Number 3 to replace the existing taxiway light fixtures with new light emitting diode LED light fixtures, with Ranger Construction Industries, Inc., in the amount of \$393,835.00. Mr. White seconded the motion and it passed unanimously.

D) Deep Injection Well System – Clean Water State Revolving Fund Loan Program (SRF) – St. John’s River Water Management District (SJRWMD) – Recommendation of Final Acceptance and Payment, City of Vero Beach Project No. WS07013 (Bid No. 290-09/JV)

Mr. Rob Bolton, Water and Sewer Director, reported that this is the final acceptance and payment for the deep injection well system.

Mayor Sawnick made a motion to accept the Deep Injection Well System and approve Change Order No. 2, for a decrease of \$276,843, which results in a total savings of

\$248,491.00 and Final Payment, in the amount of \$225,597.15, to Youngquist Brothers, Inc. Mayor Sawnick seconded the motion.

Mr. Daige complimented Mr. Bolton on the money that he saved on this project.

The motion passed unanimously.

E) Ratification of Teamsters Contract

This item was pulled from the consent agenda and heard under City Manager's Matters.

Mr. Robert Anderson, Human Resource Director, passed out the Summary of Economic Changes for the three year contract (please see attached). He said that employees who have already reached 25 years of service or employees at least 65 years old with at least 5 years of service will remain on the old plan until retirement or termination of employment. For all other employees covered by the General Employee Retirement Plan their pension contribution will increase from 2.25% of their pay to 3.25% of their pay. Their pension benefit will decrease from 2.25% of their pay to 1.6% of pay for each year of service. The penalty for early retirement will increase from 1.5% to 3.0% of their benefit for each year of early retirement.

Mr. Anderson explained that the Union has agreed to the proposed three tier health insurance plan including increases in their costs. The Union has agreed to up to 96 hours of furloughs per member for FY 2010-2011. The City has agreed to no layoffs for the same fiscal year. As far as wage increases go there will be no wage increases for FY 2010-2011 and renegotiations for wage and longevity increases only, if any, for FY 2011-2012 and FY 2012 and 2013. He explained that what this does for the City is lock them into a three year contract with the Union and what it does for the Union is it locks them into a three contract knowing that nothing can be taken away from them. He would recommend approval of the Teamsters Contract.

Mr. Heady noticed that the Union Representative was in the audience. He asked if he had anything to say.

Mr. Steve Myers, Union Representative, stepped up to the podium and said no.

Mr. White made a motion to ratify the Teamsters Contract. Mr. Daige seconded the motion.

Mr. Daige thanked Teamsters Local Union 769 and staff for reaching this agreement.

The motion passed unanimously.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

Mayor Sawnick stated that there were eleven items under Old Business and six items under New Business. He said that these items were not necessarily for bringing up things over and over again, but if action needed to be taken they need to take it now. If action is taken and it does not receive a majority vote then they need to drop it. He said that the majority rules and that is how they will continue.

A. Old Business

1. FEMA Audit – Requested by Councilmember Brian Heady

Mayor Sawnick reported that the City received a letter stating that they were going to audit some documents. He asked Mr. Gabbard to give Council an update on where the audit is at this point.

Mr. Daige noted that he was in agreement with the Mayor's comments.

Mr. Heady said that anytime he wants to bring anything up he would put it on the agenda. If Council wants to pull that item off the agenda, that is Councils' pleasure. He said that the Mayor would not stop him from putting things on the agenda regardless of whether or not there has been a vote on it at a prior meeting.

Mayor Sawnick noted that if an item is voted upon, only the member voting for it can bring it back up.

Mr. Gabbard reported that the City was contacted by FEMA that they would be doing a routine audit that would be looking at the whole process of how the City spent FEMA money. He noted that the City of Vero Beach was one of 750 cities they were reviewing. There were six representatives from FEMA who stated that they do not make any comments to the media, that they were here to do a job. Mr. Gabbard said that FEMA did not give the City a time frame on the audit. The City has been very cooperative and has given them office space to conduct the audit. He reported that they are here for a few days and then they leave and come back again. Mrs. Jackie Mitts, Assistant Finance Director, is the contact person for FEMA. He said that he would keep Council updated on the process.

Mr. White said that FEMA was also auditing themselves. He said that records were kept by the City and every penny was accounted for.

Mr. Heady said that this item was finally allowed to remain on the agenda by Council. They have heard exactly what he wanted to hear and that is whether or not FEMA was still here. He felt that it was appropriate to update the Councilmembers on the process. He said that he would continue to put this item on the agenda until the audit is completed. He said that he would like to get a list of the items that FEMA has been requesting so that

he has an idea on what they were looking into and what they were auditing. He thanked Council for allowing this item on the agenda as it was appropriate and should have been done a long time ago.

Mayor Sawnick said that he would check previous agendas, but he thought that this was the first time that the FEMA audit was placed on the agenda.

Mr. Heady said that this was not the first time that he requested the FEMA audit be placed on the agenda. This is the first time that Council agreed to discuss it. What happened was that in a 4-1 vote, Council decided that they did not want to air this publically, which is wrong because it is public business and should be aired publically.

2. Ballot initiative for electric utility – Requested by Councilmember Brian Heady

Mr. Heady said that there was no question that the electric utility has been contentious, that there has been more than one point of view, that the natives were restless with respect to paying their electric bills and that Mr. John Lee's (Acting Electric Utilities Director) office has had several calls from ratepayers concerned about the different things in the electric utilities. He said that there was an initiative that was started some time ago by Mrs. Tracy Carroll, who worked very hard to get this initiative on the ballot. He felt that it was important for citizens to know what the constituents are thinking and what they would vote for if they were given the opportunity. Mrs. Carroll's initiative did not reach the required number of signatures by the deadline. There were more than enough signatures, but they discovered that many of the signatures were within the Vero Beach utility, but not in the corporate limits. The only ones who can ask for something to be placed on the ballot would be the citizens of the City or the City Council. In keeping with Council's job and obligation to uphold the provisions of the Constitution, it is important to give citizens the opportunity to instruct their representatives. He said that if Council was to make a motion to place a nonbinding referendum on the ballot to ask the voters whether or not they want to sell the electric utility. He wanted to have a discussion regarding a non-binding referendum to let Council know what the voters were thinking.

Mayor Sawnick asked if Council wants to get an initiative on the ballot in November, would it have to come back to Council or could they do this at this time.

Mr. Vitunac said that it is pretty complicated. He said that the Supervisor of Elections has a deadline for items to be placed on the ballot.

The City Clerk reported that the deadline to place items on the ballot closed today at 12:00 p.m.

Mr. White said that he didn't have a problem with what the City was doing with FP&L as long as they do it like business people. He did not have a problem with this going on the ballot if FP&L makes the City a reasonable offer. That is when this should go to the

ballot. He said that if he agreed with Mr. Heady they would both be wrong. He said that it is important to run it and handle it like a business and not having a fire sale.

Mr. Daige said that everyone in Indian River County knows that there was a ballot petition drive going on. There was a lot of press coverage on this. He said that a lot of City voters looked at it and the ones that had an interest in the City stepped back because a lot of the facts started coming out. Council voted 5-0 to have FP&L explore the situation as far as the City selling. The City taxpayers, as well as Indian River County customers, expects Council to do due diligence. Like Mr. White said, just having a fire sale and kicking this thing into the river is not a wise decision. The City has been beat up enough in the press. Council has the message. He said that FP&L received all the information that they have requested. He said that the City is doing everything they can to cooperate with FP&L.

Mr. Heady did not remember ever making any suggestion that the City sell the Power Plant at fire sale rates. He did not remember ever making any suggestion that the City sell the Power Plant at any price. What he has said was that they are representatives of the people. He has said over and over that it would be nice to know exactly what camps would like and to do that they would need to put it on the ballot. The initiative that did not have City signatures was not at all what he has been suggesting that they place on the ballot. What he suggested is that they place the question on the ballot, what do the voters want. Do they want the City to participate in a sale or are they content to keep the City the way it is. He felt that it was unfortunate that Council refused to discuss this before now. He has placed this item on the agenda and it has been removed repeatedly. The question he had was whether or not City residents wanted to entertain selling the utility in whole, which would be the generating, transmission and distribution. Maybe if Council had some debate and dialog they could have maybe come to the conclusion that maybe they should be asking the voters whether or not they want to sell the transmission and distribution outside the corporate limits. They have missed the window of opportunity because Council has refused to debate this until today. He did not know that a motion was necessary, appropriate, or worth wild at this point.

3. Replacing vacancy in City Manager office – Requested by Councilmember Brian Heady

Mayor Sawnick said that Council requested at a Special Call meeting that the Human Resource Director bring back to them RFP's for search firms for a City Manager. He said that they have not decided who it would be or what it would cost.

Mr. White said that he discussed the Range Rider program during the Florida League of Cities Conference. He reported that they would make some suggestions to the City and if the City does not find an Interim City Manager in-house, they would try to find someone who is both qualified in utilities and in running the City to fill in until the City finds a full time City Manager.

Mayor Sawnick said that he would be placing options for an Interim City Manager on the next Council agenda, which would include the Range Riders.

Mr. Daige was in agreement with Mayor Sawnick and Mr. White.

Mr. Heady said this is another item that has been removed from past agendas and not allowed to be discussed. Ever since the City Manager tendered his resignation there has been a drive by Councilmembers to see what they were going to do to replace this vacancy. He felt that they needed some dialogue as to whether or not they want to fill this vacancy. The City Manager form of government is not the only form of government that they can operate under. He said that there were other things that they could do that would yield considerable savings to the taxpayers. He said if Council had allowed this discussion to happen prior to today they might have been able to get some dialogue going. He said that by eliminating the City Manager position they would eliminate that cost to the taxpayers. By changing to a strong Mayor form of government it could have yielded considerable savings to the taxpayers. But, since this was not allowed to be on the agenda and open for discussion until today, it is too late.

Mr. White said that this was not allowed on past agendas because Mr. Heady never provided any backup material. He said that Mr. Heady has provided backup for this meeting.

Mr. Heady said that he did not provide anything other than what he has provided for past meetings.

Mr. White said that he has backup included in today's agenda. He said that the City Clerk's office worked for two days to make sure that Mr. Heady had backup material.

Mr. Heady said this happened basically because Council demanded that they have all this documentation before they would allow discussion. They did not need documentation to sit and have a discussion about the possibilities that are available to them. Council demanded that all of this be put together. He said that he did not put anything together. The City Clerk added the backup to the agenda. What he did was give the City Clerk a memorandum.

Mayor Sawnick said that Council had a Special Call meeting only on the City Manager search. He said that to change to a strong Mayor they would have to change the Charter and that would have to go before the voters.

Mr. Heady said that if this was discussed prior to tonight, it could have generated some interest or it could not have generated some interest.

Mr. White did not know where the savings would be.

Mayor Sawnick said at this point this item is done.

Mr. Daige said that there was a vote taken a number of meetings ago that backup material be provided with the agenda so Councilmembers know what the item is about and if they needed to do some research prior to the meeting they could. The City of Vero Beach is a Charter form of government and it is in the Charter that the City has to have a City Manager in place.

Mr. Heady said that is why the debate needed to happen prior to tonight. If Council had this discussion prior to tonight there might have been some interest. He felt that it could have been a debate had the Council not rejected the idea of having an open public discussion in the public eye.

Mr. Daige said the point that he was making was to have backup material showing their intent.

4. Reconsideration of presentation by Dr. Faherty and Glenn Heran Requested by Councilmember Brian Heady

Mr. Heady said the City sale of the City utilities has been a bone of contention for a long time and it has been a contentious debate. Councilmembers received presentations from staff and from FP&L. Over the years they have had presentations from OUC, etc. Dr. Faherty and Mr. Glenn Heran have presented a financial analysis to other political subdivisions within the community and to FP&L. He felt that it was a shame that there were two gentlemen who are giving presentations throughout the community on the City's electric utility and they can't give a presentation at a City Council meeting for staff and Council to have the opportunity to debate that presentation in an open public forum. He said that this is something that is important to the community and they should be allowed to give their presentation to Council.

Mr. White said that he has listened to their presentations several times in these Chambers. He said that the City is in negotiations with FP&L.

Mr. Heady did not know how Mr. White can draw the conclusion that having information presented to Council somehow says that they are right for the picking. They have never been allowed to come into this room, in front of a full City Council, and given the opportunity to give their full presentation. They have given their presentation piece mill. Mr. Heady made a motion that Council give Mr. Heran and Dr. Faherty the opportunity to give their full presentation to Council. The motion died for lack of a second.

Mayor Sawnick said that he has met with Dr. Faherty and Mr. Heran and his door is always open. He felt that the City needed to continue their talks with FP&L.

Mr. Daige said for the record Dr. Faherty and Mr. Heran have stood before this Council on numerous occasions. They had plenty of time with no pressure and they chose themselves to shorten their presentation. They have had numerous meetings with staff and they presented their full model to FP&L. He said that he has sat through a number of

their presentations. He noted that all of their presentations are on record here in City Hall.

Mr. Heady asked their full presentation is on file.

Mrs. Vock explained that any presentation that Dr. Faherty and Mr. Heran have given to Council is on file.

Mr. Heady said if it is true that their full presentation is available then he would ask for its production.

Mrs. Vock reported that she has on file Dr. Faherty and Mr. Heran's presentation from a few meetings.

Mr. Daige said Dr. Faherty and Mr. Heran are more than welcome to come under public input as they have done that on numerous occasions. He said that Council lifted the time limit under public input and Dr. Faherty and Mr. Heran can go through their presentation. He said that Council has always been very open to hear from these gentlemen. He felt that they could put this item to bed.

Mr. Heady said that Mr. Daige basically invited Dr. Faherty and Mr. Heran to come to a future City Council meeting and give their presentation during Matters by the Public.

Mayor Sawnick noted that anyone is allowed to speak under Public Comments.

Mr. Heady said that they would be allowed ample time to give their full presentation under Matters by the Public.

Mr. White suggested that they give their presentation after the election.

Mr. Heady asked is that the ruling that they could only do it after the election.

Mayor Sawnick said that anyone is allowed to come to a City Council meeting and address the City Council.

5. Still waiting for written answers from City Manager – Requested by Councilmember Brian Heady

Mr. Heady said that the City Manager during a discussion said that he would provide written answers to him with respect to allegations that he (Mr. Heady) was less than truthful to the County Commission. Mr. Heady said that what he asked for was that Mr. Gabbard send him a memorandum stating what he said was inaccurate. He said don't give him a ten (10) page verbatim document and tell him to figure it out for himself. That is nonsense. Mr. Gabbard made the allegation that what he (Mr. Heady) said was not true. He has asked Mr. Gabbard to tell him what he said was not true. He asked Mr.

Gabbard to identify with specificity what he said that was inaccurate and then tell him what is accurate. That way he could go forward knowing the correct information.

Mr. Gabbard said that if Mr. Heady recalls, they have had this discussion at least two or three times during Council meetings. He gave Mr. Heady a transcript of what was said exactly and made it very clear on what Mr. Heady said that was not totally correct. He said that if Mr. Heady would recall, they discussed during a Council meeting Mr. Heady having access to the OUC contract, which Mr. Heady told the County Commission that he had not been provided a copy of that contract. At that Council meeting the City Clerk stated that Mr. Heady was given a copy of the OUC contract. He said that is being as specific as he can.

Mr. Heady said if that is the long and short of it, then what is so difficult about putting that in writing.

Mayor Sawnick said that Mr. Gabbard has answered the questions and they need to move on to the next item.

Mr. Heady said then the City Manager is not willing to sign his name to what he just said.

Mr. Gabbard said that he signed a copy of the verbatim transcript.

Mr. Daige said that is true that the City Manager signed the paperwork he sent to Mr. Heady. He said that he was satisfied with Mr. Gabbard's answer and it is on record. He felt that they could put this item to bed.

Mr. Heady asked the City Clerk to write each and every thing that the City Manager just identified and have the City Manager sign it and then send it to him in memo form that this was what the City Manager identified, that is what he (Mr. Heady) said that was not true.

Mr. Daige said to make an assumption that the City Manager is not going to sign something, he was not in agreement with that. This is a public meeting and the City Manager knew what he was saying. He did not see a problem with him (Mr. Gabbard) signing anything, but he is not asking him to do that. He said to make a comment that he (Mr. Gabbard) is not willing to do something, he did not want that on the publics' mind that he is not willing.

6. Missing report from City Manager requested by Councilmember Daige – Requested by Councilmember Brian Heady

Mr. Heady said that Mr. Daige requested that the City Manager put in writing his comments and thoughts that were made to the County Commission. That was Mr. Daige's request and they are still waiting for this. He said to the best of his knowledge this does not exist.

Mayor Sawnick said that Council just discussed this item.

Mr. Heady asked does that report exist. He asked Mr. Daige if he received that report. He said this is a totally different meeting and a different report.

Mr. Daige asked Mr. Heady what report is he referring to.

Mr. Heady referred to the backup material where the minutes state that “Mr. Daige requested to the City Manager to put in writing his comments and thoughts that were made to the County Commission at their August 12, 2008.” That is the report that Mr. Daige requested. He asked Mr. Daige if he had that written report.

Mr. Daige said that he did not have that in front of him.

Mr. Heady asked can we get that report. He said that he is asking for the report that Mr. Daige requested. He felt that the words speak for themselves.

Mayor Sawnick said that the City Manager said that he submitted what he was going to submit and Mr. Daige was happy with that.

Mr. Heady said the City Manager has not said a word on this item.

Mr. Gabbard said there was some conversation about whether or not they were going to bring the County Commission video to be played, which there were comments made by him regarding the value of the system and the bonds with FMPA. He said that Mr. Lee spoke about a telephone call he received about the bonds and that is what he (Mr. Gabbard) relayed to the County Commission. He said that this dates back to a few years ago.

Mr. Heady said at the City Council meeting on May 4, 2010, Mr. Daige asked the City Manager to put in writing his comments and thoughts regarding that meeting.

Mr. Gabbard said that his best recollection was that would be the video that is on file and his comments are right there.

Mr. Heady said so Mr. Gabbard’s answer is that he is not going to honor Mr. Daige’s request to put his thoughts and comments in writing.

Mr. Gabbard said that he could not do it any better.

Mr. Daige was satisfied with the transcript.

Mr. Heady said that there is not a transcript.

Mr. Daige said Mr. Heady is referring to the August 12, 2008 meeting, which was a public meeting.

Mr. Heady said that there is not a transcript.

Mr. Gabbard said there is a video of that meeting.

Mr. Heady said that he made a copy of the video for each and every Councilmember because the City Clerk was unable to make the video with her equipment, so he made it for them and turned over several copies of that meeting to the City Clerk and asked that it be played with a discussion to follow. That has been turned down over and over again.

Mr. Daige said the City Manager made some comments at the County Commission meeting on August 12, 2008 regarding the City's electric utility. That information is on a DVD and the County also keeps minutes of their meetings. He said what Mr. Heady is looking for is the comments made by Mr. Gabbard at that meeting in writing.

Mr. Heady said that what he is asking for is the report that Mr. Daige requested.

Mayor Sawnick asked Mr. Daige if he was satisfied.

Mr. Daige answered yes.

7. November Elections – Requested by Councilmember Brian Heady

Mr. Heady said this was another item that he has placed on the agenda over and over again that has been removed by Councilmembers. The City pays for elections and the taxpayers should be getting the most bang for their buck. One thing that they heard earlier in today's meeting was that the Police Officers have some concerns regarding their pay scale, pension, health plan, furlough days, etc. He said that he has heard outside of a public meeting that several people made the request that the City consider having police join with the Sherriff's Department and have the Sherriff's Department cover the entire County. He understands that request, but he felt that the public should be granted the opportunity to express their viewpoint. He was content paying extra dollars in his taxes to have their own Police Department. He understood that it was possible that there might be some savings if they join with the Sherriff's Department. That is a question that is out there in the community. He was hoping to get some discussion on this. The same thing goes for some other questions that are of public interest, such as the golf course, the electric, reuse water, the red light cameras, etc. He was not sure what the majority of people want. He did not know if it was meaningful to have any more discussion on this since the deadline for items to be placed on the ballot has passed. He felt that it would have been nice if the Council had allowed some open public debate on some of these ideas, and whether or not they could have put some of these questions on the November ballot.

8. 8/12/08 to be played and discussion to follow – Requested by Councilmember Brian Heady

Mayor Sawnick noted that the members on Council have a copy of the August 12, 2008 County Commission meeting DVD.

Mr. Heady made a motion to play the August 12, 2008 County Commission meeting at tonight's meeting. The motion died for lack of a second.

9. Update on a Federal Lawsuit – Requested by Councilmember Brian Heady

Mayor Sawnick made a motion not to discuss this item because Council was advised by their attorney not to discuss it. Mr. White seconded the motion.

Mr. Heady said that this item has already been placed on the agenda for discussion. He said the motion should have been made at the beginning of the meeting.

Mayor Sawnick said as Mayor, he has the right to make the motion at this time and if he receives a majority vote it will pass.

Mr. Heady did not agree.

Mr. Vitunac said that any deliberate body has the right to amend their agenda at anytime during a meeting as long as the majority wishes to do so.

Mr. Daige said that if Mr. Heady wanted to give his thoughts on the number two suit he did not have a problem with that. Council has been instructed not to discuss the lawsuit as Council, which he would abide by that.

Mayor Sawnick withdrew his motion as long as Mr. Heady does not discuss anything that is in the lawsuit.

Mr. Heady said the Police Department was before Council earlier in tonight's meeting and one of the questions they had was whether or not the City Attorney's office were receiving raises. He said that was inaccurate as no one in the City Attorney's office is receiving an increase in pay. But, certainly there has been a tremendous burden on the taxpayers because of lawsuits. Currently before the Court is a lawsuit "Heady verses the City of Vero Beach." That lawsuit is a result of Councilmembers arbitrarily removing items from the agenda and treating Councilmembers differently. The Constitution of the United States trumps every other rule and freedom of speech prevails, even if the Mayor does not think so. The provisions of the Constitution, particularly in Article 14, states that there is equal protection under the law. If they look at case law, what it says is that every citizen is entitled to equal opportunity. When they allow one group of citizens to give a presentation and they deny another group of citizens an opportunity to give a presentation, then they have not abided by the Constitution. Then the Council removes a certain number of Councilmember's items off the agenda because they don't want to discuss them, then they have violated that Councilmember's right of free speech. The opportunity to present and to speak, are the core issues to this lawsuit. What the majority of this City Council has decided to do is to spend a tremendous amount of money in order

to prevent people from speaking. He said that there is this lawsuit and there also will be a State lawsuit filed. He said there is a way to prevent these lawsuits from moving forward. Regarding the State lawsuit, the questions regarding the OUC contract still prevail. The evidence that has been presented since he has been on Council is that the Councilmembers who voted on the contract were unaware of the changes to the contract. If Council wanted to save a lot of legal fees they could. He said that if the changes to the contract are changes they agree with then all they would have to do is put the contract before this Council and vote on it. He said when a contract is attached to a signature page and it is not the contract that was reviewed, then there are legal questions as to the validity and enforceability of the contract. He said that he has said this before and it is not hard to resolve. If they like the contract the way it is and they think all the changes are okay then all they have to do is ratify the contract that is attached to the current signature page. This would eliminate the lawsuit because then the contract with all the changes would be reviewed and voted on by the Council. Instead, Council wants to do things the hard way and to him that does not seem to be an effective use of tax dollars.

10. Honest Services Fraud – Requested by Councilmember Brian Heady

Mr. Heady said that he would like to have some discussion on Honest Services Fraud.

Mr. Vitunac said in the anticipation of this Mr. Wayne Coment, Assistant City Attorney, prepared a report on Honest Services Fraud that should end this.

Mr. Coment felt that they should first hear from Mr. Heady.

Mr. Daige was in agreement with Mr. Coment since Mr. Heady placed this item on the agenda.

Mr. Heady said Council always relies on staff to give them good advice. He asked Mr. Coment to tell him what the presentation is.

Mr. Daige asked to allow Mr. Heady to finish first as he put this item on the agenda.

Mr. Heady said that he would first like to hear Mr. Coment's presentation.

Mr. Coment said that he was asked to explain Honest Services Fraud. He said that Honest Services Fraud has been around since like 1941. He reported that there have been several changes over the years because of court interpretations. He said that the United States court ended the debate about Honest Services Fraud. What they did in June of this year was state that there was no doubt that Congress intended to reach at least bribes and kickbacks. He then read Section 1346.

Mr. Heady said that they more narrowly defined past decisions. He asked Mr. Coment to get the ruling to him. He thanked Mr. Coment for the update.

11. Golf Course – Requested by Councilmember Brian Heady

Mayor Sawnick said there will be a Special Call meeting on September 21, 2010 to discuss Dodgertown.

Mr. Heady said if they are having a Special Call meeting on it then that is what he was trying to do so they do not need to discuss this item at this time. He said that he would reserve his comments on the golf course until September 21st.

Mr. Daige said for the record, Council began City Council Old Business at 5:43 p.m. and ended at 6:48 p.m. Therefore there was ample time to go over all these items and they were discussed in full.

B. New Business

1. City Attorney to give a report how much money has been spent up to date on the lawsuit filed by Councilmember Brian Heady – Requested by Councilmember Tom White

Mr. Vitunac reported that through August they have spent \$20,010 on both lawsuits (the first complaint and the amended complaint).

Mr. Heady said it is one lawsuit, not two. The Judge moved the State issues off and asked him to refile them.

Mr. Vitunac said there were two complaints filed.

Mr. Heady said there is one case with one docket number.

Mr. Vitunac said that was correct. He reported that the motion to dismiss the first complaint was granted and the plaintiff (Mr. Heady) filed it again.

Mr. White asked is he suing the City or the City Council.

Mr. Vitunac said he was suing the City.

2. Move vested retirement date from 5 years back to 10 years – Requested by Councilmember Tom White

Mr. White said Council discussed this earlier and he would be bringing this back at a later date.

Mr. Heady felt that this was something that the City seriously needed to look at in terms of vested times. The pension packages in government have exceeded the taxpayers' ability to pay. He agreed with Mr. White that moving vested retirement back to 10 years might be something that Council should consider. They must consider some changes to the retirement plans in order to ensure that they don't continue to put the burden of

retirements on future generations. They need to ensure that when a benefit is earned, that benefit is paid for in that year. There are ways to accomplish this without transferring the burden to future generations and vesting from five to ten years might be one of the ways to eliminate some of the underfunded plans that they are currently facing. He felt that this was a good topic that deserves some meaningful discussion. The presentations given to them by staff have looked at how they take the current plan and reduce the cost. They do need to look at new types of plans.

Mr. White said that when new employees are hired, the City spends a lot of money on training. Then they have five years vested and the City has spent all this money on them and then they might leave. He said that it is a benefit to the City to keep the employees who they have trained.

Mr. Heady said the City could spread that expense over ten years, which would reduce the cost to the City. He felt that this was a good idea. This is something that they need to bring back in the short term rather than the long term. He noted that the City is not funding the benefit in the year that it is earned and he did not think they should be doing that. They need to look at ways to provide pensions so they can attract good people, but they need to pay for pensions in the year earned. He felt that Mr. White's suggestion was a good start to open up that dialogue.

3. Utility Fact Information Sheet – Requested by Councilmember Ken Daige

Mr. Daige said that he asked staff to work on this information sheet because there is a lot of misinformation being put out to the general public and he wanted to get things out for clarity. He then went over the information sheet with Council (please see attached).

Mr. Heady appreciated that Mr. Daige had requested this information, but he was puzzled because he (Mr. Daige) read the questions, but not the answers. He asked Mr. Daige why he did not give the answers.

Mr. Daige said that he was trying to save a little bit of time because of the length of today's meeting. He will submit the information sheet to the City Clerk.

4. Letter to FP&L – Requested by Councilmember Ken Daige

Mr. Daige read a letter to Council that he would be sending to FP&L (please see attached). He hoped to mail this letter tomorrow.

Mr. Heady thanked Mr. Daige for the plug to his television show.

5. Water & Sewer Issues – Requested by Councilmember Brian Heady

Mayor Sawnick said that the City hired a consultant to look at the City's system in the Indian River Shores area.

Mr. Heady asked how much the City approved to hire the consultant.

Mr. Rob Bolton, Water and Sewer Director, answered that Council approved about \$84,000.

Mr. Heady felt that the 5-0 vote in favor of this was unfortunate. If he had really thought through all the provisions, he would have voted differently. Part of the expense is basically another rate study.

Mr. Bolton said that was not correct.

Mr. Heady said in the documents that he looked at, he did not understand that they were going to be looking at the rates.

Mr. Bolton said the only rates that they would be looking at is for the cost of service for maintaining vacant lots. He explained that the City maintains lines in front of vacant lots and the City does not receive any compensation.

Mr. Heady said then they would not be looking at any rates other than undeveloped lots.

Mr. Bolton said they also would be looking at capacity utilization as to the way the bills are given out.

Mr. Heady thanked Mr. Bolton for the clarification.

6. City Parking – Requested by Councilmember Heady

Mr. Heady said that when he originally put this item on the agenda a couple of months ago he had some photos that he took Downtown. There are a couple of people who questioned the parking Downtown and whether or not the City could provide for new parking spaces. He went Downtown around 6:00 a.m. and took several pictures, but he did not bring those pictures with him today. He said maybe they could put this back on the next Council agenda because the pictures are very telling and demonstrate that they could continue two lanes of traffic in each direction without any major expense for increase in parking spaces and yet wind up with a tremendous number of parking spaces by just restriping. That would probably require the City asking permission from the State. He said that he would place this item on the next Council agenda and would provide the photographs. Another thing this would do is in the event of a hurricane the parking restrictions would come into play. The diagonal parking would then open up for an extra lane. He felt there was room for discussion on this. He said that they could do this without spending a lot of tax dollars and it would go a long way in showing the businesses that the City Council is willing to cooperate. If it doesn't work then they could go back and restripe it.

Mayor Sawnick suggested that Mr. Heady speak with Mr. Monte Falls, Public Works Director, about this.

Mr. Heady said that he would put this back on the next Council agenda and would show the pictures at that time.

Mr. White agreed that Mr. Heady should meet with Mr. Falls.

Mr. Heady said that he did not need to meet with Mr. Falls to bring up an idea to the general public. He understood that Mr. Falls would need to be involved, as well as the State.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters

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

Mayor Sawnick reported that he attended an Affordable Housing Committee meeting, the Florida League of Cities Conference, the Mayors beach cleanup, and the employee retirement party. He said that he would be attending the MPO meeting tomorrow and Coffee with the Council on Friday.

B. Vice Mayor Sabin Abell's Matters

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

Mr. Abell had an excused absence from today's meeting.

C. Councilmember Tom White's Matters

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

Mr. White reported on his trip to the Florida League of Cities Conference.

D. Councilmember Brian Heady's Matters

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

Mr. Heady reported that he was part of a Committee who has helped in giving to Haiti and he thought that there might be some areas where the City could get involved.

Mr. Heady said that during tonight's meeting the Mayor commented that there is a procedure that disallows Councilmembers from explaining their votes. He asked Mayor Sawnick to provide the City Clerk's office with a copy of those procedures.

Mayor Sawnick said that it is Robert's Rules of Order.

Mr. Heady said that it is fine. Whatever procedure the Mayor is using to disallow him from explaining his vote he would like to see it.

Mayor Sawnick said that it is in Robert's Rules of Order, which is a book and you can't copy a book because of copy right laws.

Mr. Heady said that if the Mayor does not want to produce the rules and regulations that is fine, but he would ask for the production of the procedure the Mayor was using to disallow Councilmembers from explaining votes. He said this is not a hard concept. The Mayor can give the procedures to the City Clerk who could then give them to him.

Mayor Sawnick clarified that Council is allowed to explain the reason of their vote, but it should be done after the vote, not during the vote. He said that he would show the rules to Mr. Heady.

Mr. Heady asked the Mayor not to show them to him, but give them to the City Clerk. He did not want to speak to the Mayor outside of this meeting.

Mr. Heady asked Mrs. Vock if she went out to bid for the new audio equipment.

Mrs. Vock explained that it was a State contract.

1. **FP&L and Public Business in the Public Eye**
2. **Liars, Cheats and Thieves**
3. **Bad Information = bad decisions**

These items were not discussed.

- E. **Councilmember Ken Daige's Matters**
 1. **Correspondence**
 2. **Committee Reports**
 3. **Comments**

Mr. Daige will give his report at their next meeting.

11. ADJOURNMENT

Mr. White made a motion to adjourn this meeting at 7:31 p.m. Mayor Sawnick seconded the motion and it passed unanimously.

/tv