

**CITY OF VERO BEACH, FLORIDA  
NOVEMBER 2, 2010 9:30 A.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, present; Councilmember Tom White, present; Councilmember Brian Heady, present and Councilmember Ken Daige, present **Also Present:** Monte Falls, Interim City Manager; Charlie Vitunac, City Attorney and Tammy Vock, City Clerk

**B. Invocation**

The invocation was given by Pastor Shelly Satran of Our Savior Lutheran Church.

**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**

Mrs. Tammy Vock, City Clerk, requested that item 7-B) be added on to the agenda under City Manager's Matters, which would be titled "Vero Beach Sports Village Minor League Baseball." She also requested that item 8-A) be added to the agenda under City Attorney's Matters, which would be titled "Update on Brian Heady Federal Lawsuit."

Mayor Sawnick made a motion to approve adding item 7-B) on to the agenda. Mr. Abell seconded the motion and it passed unanimously.

Mayor Sawnick made a motion to approve adding item 8-A) on to the agenda. Mr. White seconded the motion and it passed unanimously.

Mr. Heady asked if there was any backup for item 8-A).

Mr. Charles Vitunac, City Attorney, answered no. He stated that there is no action requested on item 8-A) and the outcome of the case was announced after the agenda had already closed.

Mr. Heady said that whether there is action requested or not, there has been a history of this Council not allowing things on the agenda without backup. He wanted the record to

show that this item was added to the agenda with Council approval and there is no backup provided.

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

## **B. Proclamations**

### **1. Plaque to be given to Councilmember Tom White thanking him for his years of service to the City of Vero Beach**

Councilmember White received a plaque thanking him for all his years of service to the City of Vero Beach.

### **2. Veterans Day**

Mayor Sawnick read and presented the proclamation.

## **C. Public Comment**

Mr. Kenneth Brandenburg, Vice President of the Original Town Neighborhood Association, read a prepared statement (please see attached). He had some concerns about the Go-Line bus “hub” in his neighborhood. He said that if the County moves the location to the new proposed location, it will not help their neighborhood because it is still within their boundaries.

Mr. White asked Mr. Monte Falls, Interim City Manager, to give an update on the Go-Line buses under City Manager’s Matters.

Council had no problems with Mr. Falls giving a report at this time.

Mr. Falls reported that staff sent a letter to the County Administrator regarding their concerns about the buses being parked there overnight. Last week the City received a temporary site plan for that location and the City would not approve overnight parking of buses in that location. The City has not received a preliminary site plan for the Veterans Services building site yet. They met with County staff and with the Senior Resources and discussed some alternative locations for the site. They (Senior Resources) are adamant that a location within the central area in Vero Beach is critical to making their routes work out. The City suggested some areas that were not in the City limits and were told that they would not work in routing of the buses. He noted that the City would continue to work with them on this.

Mr. Daige said that there were some comments that he would like to make after Public Input.

Mr. Heady said one of things that the City benefits from is being a hub and one of the things that this Council has voted on and voted in favor of is bringing a train into the City and again, expanding the hub idea. He understood that Original Town does not want this particular activity in their section of town, but it seemed to him that for a bus system to operate effectively it needs to be somewhat near the hub of the community and that would be in the City. With respect to the Veterans, unfortunately the older Veterans are becoming fewer and the younger Veterans are increasing in numbers because we keep making more Veterans in need of services because of what we do in the Middle East and other sections of the world. But, the comments on Veterans are interesting because those Veterans fought to protect everyone's rights and that is those who can afford private transportation and those who, unfortunately need to use public transportation. He was not necessarily opposed or in favor of the particular location, where it is now. But, moving it over to the Veterans building, he is in that building and he works with the Veterans and is there several days a week. He said from seeing the size of the operation where it currently is, that there is not enough room on the site where the Veterans building is, there is not enough room to accommodate the activity that is going on there now. Over at the County office building, behind what is now the Health Department and behind Building B (the Property Appraiser, Tax Assessor) on the back side, maybe that is an area they could look at that would not put it near any neighborhood. On the north side of that area is the relief canal and the Airport and it is only a few steps from where the central hub location is now. That is an area they might want to look at. Wherever they look at, one of the things that needs to be taken into consideration is there needs to be some facilities for people. He said that he has heard some problems from Original Town where they have had some difficulty. As far as foot traffic is concerned, the problems with foot traffic, foot traffic is one of the things they try to encourage, and the public transportation and foot traffic are overall helpful to the community and he understands the sidewalk problem that the gentleman talked about, but those are some thoughts.

Ms. Dorothy Mat, 2465 15<sup>th</sup> Avenue, said that she was probably the closest house to where the bus station is being proposed. She said that when they talk about no sidewalks, they mean that people are walking down the middle of the street. They are families with toddlers, babies in strollers, etc., that are going in between the traffic. She said that not having sidewalks is an issue. She said that their neighborhood has 66 homes and the reason people moved there is because they are small affordable homes. She asked everyone attending today's meeting who lives in Original Town to stand up. She thanked them all for attending today's meeting. She said that they need to preserve their neighborhood. She stated that when she moved there she was told that there was going to be a children's playground, which has not happened. She said that Mayor Sawnick and his generation represent the future of our City. She challenged Council to put together a Task Force of people to come up with an idea that is a win-win situation. She felt that they could preserve the oldest neighborhood in Vero Beach.

Mr. Heady asked to speak.

Mayor Sawnick said there were two more citizens who would like to speak.

Mr. Heady said so you are not going to allow me to speak to the remarks made by this speaker at this time.

Mayor Sawnick thought that the topic was about Original Town and it would be good to hear all of the speakers first.

Mr. Heady asked how the Mayor would know what they are going to speak on. He said it is Matters by the Public. He has comments for this speaker, Mr. Mayor.

Mayor Sawnick asked the next speaker to state her name and address for the record.

Mr. Heady said Mr. Mayor.

Mayor Sawnick told Mr. Heady after he lets the people speak then he could make his comments. He said that is his ruling at this time.

Mr. Heady appealed the Mayor's ruling.

Mayor Sawnick said at this point we are going to continue with Public Comment.

Mr. Heady asked are you going to allow an appeal of your ruling.

Mayor Sawnick asked Mr. Heady if he would like to make an appeal.

Mr. Heady said that he just did.

Mayor Sawnick asked is there a second to the appeal. There was no second to the appeal. He continued on with Public Comments.

Ms. Dorothy Will stated that she owns a duplex at 2458 15<sup>th</sup> Avenue. Shortly after she purchased the duplex someone tried to rape her in her home. She said it is a horrifying thing to have someone try to rape you in your own house. She then started the Crime Watch in Vero Beach. She said that they do not need any more problems in that area then what they have now. She wants to keep their neighborhood safe and she does not want those buses over there.

Mr. Heady had some questions.

Mayor Sawnick said they would continue with public comments.

Mr. Heady said that he had some questions.

Mayor Sawnick said Mr. Heady, we will wait until after public comments.

Mr. Heady said then you (Mayor Sawnick) are not going to allow me to ask questions of this speaker.

Mayor Sawnick said they just discussed that.

Mr. Heady appealed the Mayor's decision.

Mayor Sawnick asked for a second on the appeal. There was no second to the appeal.

Mrs. Anna Pease, 2436 17<sup>th</sup> Avenue, said on October 27, 2010 at 3:30 p.m. her husband received a telephone call from a neighbor stating that there was a very intoxicated man in their neighborhood going house to house. This man ended up passed out on her front porch. She said that he tried to get into their backyard and the Police were notified. She said that she is a stay at home mother with her daughter and she has a child in kindergarten. She happened to not be home the day that this occurred. She said that her goal and purpose in life is to protect her children. She does not feel safe in her home or in her neighborhood. She said that if she had been there that day and seen that man, they could only imagine the fear that a mother would have, not only for herself but for her children. She was present today asking them (City Council) to put themselves in her position and not to feel safe in their own home. She said that since the buses have been there, it has been disaster after disaster and nothing is being done about it. They try, as parents, to protect their children. She said that she does not feel safe allowing her children to go to the mailbox because of the constant traffic.

Mrs. Linda Hillman, 2315 18<sup>th</sup> Avenue, said now Council has heard from the rest of the neighborhood. She said that she urged them to come forward because this is a serious problem. The City in the past year approved and paid for a comprehensive plan for two neighborhoods. This plan is to preserve the neighborhoods. She heard Mr. Heady say that in order to have a bus system it has to be a hub. She said a hub is not on the outside of a wheel. It is in the center of the wheel. The current location is on the outside of this hub. If the buses provide transportation to the hub of Vero Beach place it back into the Downtown area, which is the hub of Vero Beach. The City did not want the buses there for a reason. With a child's playground there, it was proposing a problem. Parents did not feel safe going to Pocahontas Park. Thousands of dollars were spent to make that area safe. The City asked that the buses be moved and they were moved to the outside of the same neighborhood that abuts the Downtown area. If they are not approved to park buses at the temporary sight then why are they still there. She asked that everyone to please get these buses out of this neighborhood. That they find a way to stop the problem that these buses are creating and put the buses where they belong, at their own property. She said that bus stops are wonderful, but they don't have to be in one area of a residential neighborhood in order to transport people. She said that their neighborhood is not safe and it is not fair to not feel secure in their neighborhood.

Mr. Heady said that he had some questions.

Mayor Sawnick asked should the buses be parking there overnight.

Mr. Falls said that it is not approved by site plan.

Mayor Sawnick said then they can contact the County.

Mr. White said they need to send a letter stating that they do not need to park those buses there overnight.

Mr. Heady asked that the second speaker approach the dais.

Mayor Sawnick did not feel that was appropriate. He said that if she would like to approach the dais she can. He said that this is not an interrogation.

Mr. Heady said that people can't take time off and that is one of the reasons why he has been in favor of a night time and a day time meeting. He said that they need to schedule the meetings so that Council is available to all of the public. He felt that the morning and afternoon meetings accommodate that. He said that she made a comment about no representation and he would argue that she just talked to five elected officials (City Council) so she clearly does have representation. He said that the City Manager has been working on this and he is also on her payroll as well as all of the City Councilmembers. He felt that she does have representation.

Ms. Dorothy Mat said maybe they don't have communication.

Mr. Heady agreed that communication is a problem. He said that she mentioned people walking. He asked where are they walking from.

Ms. Mat said that they were coming from the other side of Route 60. She said that they are walking eight to twelve blocks.

Mr. Heady said if they knew where they were walking from they could possibly get a hold of the individual in charge of scheduling the routes and if they moved a couple of the stops, that might help.

Ms. Mat said strategically planning those stops would help tremendously. She did not think that they had any input into where the stops are placed.

Mr. Heady said that maybe they could get a survey from the people who are walking through the neighborhoods then put the stops closer to their homes, which would help with this situation.

Ms. Mat said that this is being lead by the Senior Resource Association. She said that she has never seen anyone over the age of 70 at that bus hub.

Mr. Heady had questions for the third speaker.

Mayor Sawnick did not think it was appropriate to be calling up people and asking them questions.

Mr. Heady said that he had questions for that speaker. It would have been a whole lot more effective use of time if he (the Mayor) had allowed him to talk to the speaker when they were at the dais, but the Mayor cuts him off on a regular basis and allows other Councilmembers at other times to ask speakers questions.

Mayor Sawnick asked if there were any objections from Council.

Mr. Daige said it is up to the speakers if they want to answer questions.

Mr. Heady said Ms. Will talked about a violent crime. He asked how long ago was that.

Ms. Dorothy Will answered about 30 years ago.

Mr. Heady asked Ms. Will if she knew what the crime rate is now verses what it was then.

Ms. Will did not know, but said that her daughter's home was broken into not too long ago.

Mr. Heady said that if you have one crime committed against you then the crime rate is very high. He said that he would see if he could get the City Manager find out if that kind of data is available as to the crime rate in particular neighborhoods.

Mr. Heady said that he has questions for Mrs. Hillman.

Mayor Sawnick said as long as Mrs. Hillman doesn't mind coming up to the dais. He still felt that it was inappropriate, but they would continue on since she was their last speaker.

Mr. Heady said that she talked about the current location as not being a hub. He asked for her definition of where the hub of the City ends (at what Street).

Mrs. Hillman said that she did not have an idea of where the hub would end, but the hub, just like on a wheel, is in the middle.

Mr. Heady said that he wanted to know if she had a definition. He said that clearly she was stating that this was not the hub, so he wanted to know if she had a definition of where the hub ended. He said that she talked about moving the location and asked if she any specific thoughts on where the new location should be.

Mrs. Hillman answered where it was before, in the downtown area.

Mr. Heady asked for an address.

Mrs. Hillman said it was located in the back of the Chamber of Commerce.

Mr. Heady asked so you think back by the Heritage Center and the Chamber of Commerce is where it belongs.

Mrs. Hillman answered yes.

Mr. Heady asked that is not too close to the neighborhood and would be acceptable.

Mrs. Hillman said that the traffic would not be walking through the neighborhood, they would not have the trash in their neighborhood, and they would not have people urinating on their lawns or alleyways. She said that she spoke to Council before about a child who was riding his bicycle and there was a man urinating in the alleyway in back of his home. She asked Mr. Heady would he like his granddaughter to watch a man urinate in the back of his house.

Mr. Heady said that he heard her comments before.

Mrs. Hillman said that he has not answered her question. She again asked Mr. Heady if he would he like his granddaughter to watch a man urinate in his back yard.

Mr. Heady said that he was answering her question before she interrupted. He said that she and the Mayor must be related because they have the same habits. He said the woman who spoke earlier addressed some of the problems as far as walking in the neighborhood. He felt that it would help if they could get the bus stops to where people are walking.

Mr. White commented that when a citizen or a taxpayer comes up to this podium with concerns to their elected official, they (City Council) sit here and listen. He said that they are the ones who have to do the research to find out what can be done to fix the problem. Not to sit there and interrogate them. When they do come up with a reasonable answer to the problem they will try to implement it. He appreciated everything that was said today. He said that he resides one neighborhood from Original Town and they see affects from it too. He sat on the Senior Resource's Board of Directors from 1998 to 2009 and he thought it was good to be able to transport low income people. But, it has gotten to the point where the Go-Line has become a major source of transportation for Indian River County. They need to come up with a reasonable plan. He said that the Train Station probably would not happen for another 10 or 15 years. He asked that they trust their Elected Officials to try to remedy this. They are aware of what is going on in their (Original Town) neighborhood and will try to help them as much as they can. He said that they will work hard to try to remedy this situation.

Mr. Abell asked what is the destination of the people walking through the neighborhood. He said that if they are using the present place where they are parking the buses as a terminal that should be stopped immediately. They should put the Police out there and stop this.

Mr. Daige went over the meetings that have occurred that he has been involved in (on file in the City Clerk's office). He said that this neighborhood has been very accommodating in waiting. He said that he was very familiar with the problems they are currently having. He was not going to tolerate the bus hub. It needs to get shut down now. He was not going to have their children in harm's way. The reason the hub was moved from the Pocahontas Park area was because of the safety of their children. They (Original Town Neighborhood) asked politely not to park the buses there. He said that he wanted to bring this up, as a motion right now, that the City Attorney and the City Manager figure out a way to stop this now. He said that the bus hub has to go. He said it appears that the best location is probably out at the Airport. It is not going to work in the location where it was previously. He said that they are not going to keep the Original Town neighborhood waiting another month, another year, etc. He said that they started asking for the County's help in April. He made a motion that within the next 24 hours that this is shut down and those buses can no longer be there. Mr. Abell seconded the motion.

Mayor Sawnick asked if they are operating legally is there anything the City can do.

Mr. Vitunac said that if they are operating legally they are not going to shut them down within 24 hours. The Planning and Development Director and the City Manager are already looking into ways to legally shut them down. He said that they would make this their highest priority. He noted that they would be speaking with the County after today's meeting and they would put this on the agenda.

Mr. Daige said that they did not ask the City for permission to park there in the first place. He said for the City Attorney and City Manager to figure it out and shut it down.

Mr. White said that this needs to be done legally and done correctly. He said that they could have them move buses to the County garage. He felt that they needed to start taking a firmer stand in protecting their (the City's) borders.

Mr. Abell suggested having Police surveillance. He said that until this gets properly taken care they could have increased Police surveillance and if the County does not want to share in that surveillance perhaps they can provide Sheriff vehicles equal to the number of Police vehicles that they think would do the job.

Mr. Daige was not interested in taking a long time with this. The buses are not supposed to be there and they need to be moved. It is all about taking care of our children.

Mr. Heady said that he had several comments regardless of Mr. Daige's instructions to staff that they have their marching orders. They may have Mr. Daige's marching orders, but that does not mean that they have the rest of the Council's marching orders. The strength of our Nation is not in our willingness or ability to engage in mob rule or majority. The real strength in our Nation is in our willingness and our ability to protect the minority. Before they react to a majority in the room and give marching orders for staff to take certain actions within 24 hours they need to know whether or not the actions they propose are legal and appropriate. He said there were a couple of good speakers.

The woman who spoke about the foot traffic, he felt that because of the debate and dialogue back and forth, they probably came to some reasoned conclusions as to what it is that they can do to end the problem. It seemed to him that was a more meaningful approach than just directing staff to do something within 24 hours, whatever that takes (fences, Police cars). He said that was just nonsense.

Mayor Sawnick clarified that the motion made was to direct staff to try to get the hub out of there as soon as possible (where they are parking the buses).

Mr. Heady asked the Mayor, are they amending the motion. He said that was not clarifying the motion because that is not what the motion is.

Mayor Sawnick asked Mr. Daige to restate his motion.

Mrs. Tammy Vock, City Clerk, stated that the motion was basically to shut it down within the next 24 hours and get the buses out of there.

Mr. Daige said that they may need more time to get the buses out of there. He amended his motion to take the time limit of 24 hours out and replace it with “as quick as possible.”

The motion passed 4-1 with Mr. Heady voting no.

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

- 1. Regular City Council Minutes – October 19, 2010**
- 2. Regular City Council Minutes – October 5, 2010**
- 3. Renewal of Sovereignty Submerged Land Lease**
- 4. MacWilliam Park Boat Ramp Reconstruction Project Agreement for FIND Grant Property #IR-B-10-50 COVB Project #2010-05**

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

At 10:38 a.m., Council took a five-minute break.

#### **3. PUBLIC HEARINGS**

None

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

None

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

None

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

None

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

\*Please note: City Manager's Matters was heard after City Attorney's Matters.

### **A) Report on Local Preference Ordinance**

Mr. John O'Brien, Purchasing Manager, was present for today's meeting to answer any questions Council may have on the report on the Local Preference Ordinance with Council (on file in the City Clerk's office).

Mayor Sawnick said that local preference really didn't help any local businesses.

Mr. O'Brien said that was correct. He said they had 14 bids, eleven were awarded bids on their own merits of being the low bidder. Not on the basis of the five percent preference.

Mayor Sawnick said having this on the books would not hurt anything. He said at some point it could help a local business down the road.

Mr. Daige liked having the Local Preference Ordinance on the books. He said that it helps local bidders. It also shows the outside bidders to keep their pencils sharpened. He didn't see any harm in keeping it. He felt they should continue with it.

Mr. Falls explained that this was an interim report for the first six months. After it has been on the books for one year staff would bring it back before Council and they would need to decide at that time if they want to leave it on the books or take it off.

### **B) Add on Item – Vero Beach Sports Village Minor League Baseball**

Mr. Falls stated that Indian River County selected County Attorney, Alan Polackwich, to work with City staff to work out the details of the agreement with MiLB. He reported that he, Mr. Vitunac and Mr. Polackwich met several times last week. He felt that the agreement they have was more in what the City Council asked them to do before. He then went through the details that were different than what they discussed before (on file in the City Clerk's office), which were 1) they agreed to exchange deeds or interest in title for the property. There would not be a lease exchange. He felt that this was a big plus because it gives them some long term assurance that the City will always control the destiny of the parcel they own and the County will always control the parcel that they

own; 2) the City would have to insure that all the parking required for the MiLB site can be met on site; 3) the City would grant a revocable license to the County that would allow parking to continue on the parking property; 4) the City would grant a license to the County to allow parking on Airport Parcels 17 and 19 to be used for parking should the License be revoked on the "Parking Property"; 5) should the City revoke the license on the "Parking Property," the City would agree to grant to the County, an access easement across the City property for another means of access to the expansion property (clover leaf parcel); 6) the City and County would each have the right to use the pond on the expansion property for stormwater management and irrigation. Each would be able to use it for drainage for the 43<sup>rd</sup> Avenue roadway improvements and the 26<sup>th</sup> Street roadway improvements for stormwater management and 7) within reason, the County would attempt to retain the heart shape of the pond to the best of their ability. He noted that because of the benefits that this tentative agreement offers to MiLB for them to expand and the finality of the title transfer to the City and County, staff recommends approval. He asked for approval today and noted that the County Commission would be acting on it during their meeting, which is being held at this time.

Mayor Sawnick summarized that MiLB wants this agreement in order to build fields. The hold up from the County was because they wanted to make sure parking would be available for special events. This issue was solved by the exchange of deeds. He felt that this agreement would satisfy both the City and the County.

Mr. Daige asked if he was correct that the acreage that was originally purchased was 37.6 acres.

Mr. David Gay, Chief Surveyor, said it was close to 37 acres. He stated with the land swap the acreage would be 35.2 acres.

Mr. Falls reported that the difference in acreage was the amount of difference that was transferred because of the pond.

Mr. Daige referred to Airport Parcels 17 and 19. He asked if he was correct that they could park on these parcels for free.

Mr. Falls said that would be subject to whatever arrangement they make with the Airport.

Mr. Daige asked are Parcels 17 and 19 leased at this time.

Mr. Eric Menger, Airport Director, answered no.

Mr. Daige said that if MiLB needs to use those Parcels for parking, the City does not have to charge them.

Mr. Menger said that would be done on a case by case basis. Currently, if the property is to be used for a for profit venture then the Airport would charge a fee. If it is a non-for-profit venture then the Airport would not charge a fee.

Mr. Heady said there were several pages of maps and parking designs. He asked is there any financial analysis.

Mr. Falls answered no. He noted that as it stands right now, the only thing that they were doing was trading land value.

Mr. Heady asked would MiLB pay for any damage done to the fields that would occur if cars parked on those fields.

Mr. Falls answered yes.

Mr. Heady said then the City would not incur any liability because of the parking on the fields. He said that MiLB is saying that they need this for the benefit of their business plan. He asked Mr. Falls if he has seen any income advantage to them. He asked Mr. Falls if he knew what the value to MiLB is.

Mr. Falls answered no. He said that Mr. Craig Callan could not be present for today's meeting because he is at the County Commission meeting, but he did tell Mr. Falls that they feel like this would give them another tool to bring opportunities to Vero Beach.

Mr. Heady asked Mr. Falls if he knows if there has been any financial analysis as to what the benefit to the community would be by bringing in youth baseball.

Mr. Falls said just what Mr. Callan has shared with Council before, which was that they have received positive feedback from the Chamber of Commerce from the hotels and restaurants that when MiLB was up and running, they experienced increased business.

Mr. Heady said that for several weeks there has been back and forth communication between the City Attorney's office and the County Attorney's office. He asked Mr. Falls if he had any idea of the cost of the legal work that has been done.

Mr. Falls reported that the majority of the negotiations were between himself and Mr. Polackwich. The City Attorney did sit in, but they did not keep a tab on how many hours were spent.

Mr. Heady said so there were no time sheets or any tracking at all on the time spent on this. He said that the MiLB were the ones who came to the City requesting this. He said that since there was no tracking of the legal work that was done, he assumed that there would not be any charge to MiLB for the legal work that was involved by the County and/or by the City.

Mr. Falls said that he could not speak for the County, but he has not had any direction from the City Council to track their charges.

Mr. Heady said at this point there are no directions and therefore there is no charge unless Council changes that. He asked regarding the question equal value, has there been a dollar amount placed on either of these parcels.

Mr. Falls answered no.

Mr. Heady referred to the comment made by the Mayor that this would help with future plans of the City for the rectangular piece of property. He said that having been involved in land development over many years, sometimes rectangular pieces of property are more advantageous and sometimes flag lots are more advantageous. He did not know that he would automatically buy into a rectangular piece of property being more beneficial. He asked the Mayor to explain what future plans were in mind that makes a rectangular piece of property more advantageous.

Mayor Sawnick said it may or may not.

Mr. Heady said that he could not imagine parking causing any meaningful damage being done by parking cars on the Airport property, but he could on the ballfields. He said that liability is provided by non-profit. He said that for profit is paying for use of the field. He asked does the City then assume the cost of the liability since the for profit would be paying for it.

Mr. Menger answered no.

Mr. Heady asked then typically when they use that property for parking they would not only be paying a fee, but would also assume the liability.

Mr. Menger said that was correct.

Mr. Heady asked is there a set fee or is it based on their income.

Mr. Menger explained that the fee is based on the square footage.

Mr. Heady asked has there been any effort by the Airport prior to leasing the property for parking to do a survey and fill in any potential liability (holes).

Mr. Menger answered yes. He explained that would fill in the holes or put fencing around them.

Mr. Heady asked is the coverage typically \$1,000,000.

Mr. Menger answered yes.

Mr. Heady asked is that per incident.

Mr. Menger said it is total coverage. He thought that it was \$300,000 per incident, but he would need to check on that.

Mr. Abell said that the Attorneys were on salary. The exchange for MiLB was necessary because it has to do with their success or failure. The Airport parking is as it was before and the rental arrangements at the Airport are as they were before. He said that anyone that has been on the City Council for awhile would understand that.

Mayor Sawnick made a motion to approve the proposed deed swap with the listed amendments that were presented. Mr. White seconded the motion.

Mr. Heady said regarding the comment made that anyone being on Council for any length of time would understand. He said that he clearly has not been on City Council as long as the Vice Mayor, but he felt that the record was clear that he has paid attention to what goes on in the City long before the Vice Mayor lived in this community. He felt that what MiLB originally proposed, what they are doing out there now, they did so with the idea that they were going to be very successful. At the last opportunity Mr. Callan had to address the Council, one of the things he stated was that they can't be successful unless they get this from the City. Mr. Heady said in the proposal before them, there is a complete restructuring of the pond. He asked is there any costs.

Mr. Falls said the pond work would be done in conjunction with the A1A road widening. The shape of the pond really doesn't matter. It is the surface area that is important. He noted that the roadway projects were still under design and have not been bid yet.

Mr. Heady said the proposed fields would be at the taxpayer expense. He asked what are the costs to the taxpayers for construction of fields going be.

Mr. Falls did not have those figures. He said the MiLB is a tenant with the County and it was his understanding that as part of their contract they have a deal for a certain amount of capital improvements to be done on site.

Mr. Heady said there was no dollar in the original agreement. In the proposed agreement, what is going to happen is that they could say they were going to let the taxpayer pick up the tab. That is the way this proposal is currently set. He said that before he would vote on this, he would like to know what the cost is. When Mr. Callan was before them he did not give Council a number.

Mr. White added that he heard some figures from Mr. Callan a while ago, but it was under the capital improvement money that the County set aside for this.

Mr. Heady asked what is the dollar amount.

Mr. White thought that it was about \$750,000.

Mr. Heady said it was his understanding of the agreement that there was no dollar amount in the contract.

Mr. Falls said that if this agreement is approved by the City and the County, it would give MiLB and the County the opportunity to work out the details of what improvements would be built under the capital that was approved.

Mr. Daige said that when he spoke with Mr. Callan, he (Mr. Callan) did not want to approach the County or the City for any tax dollars. He felt that this was a good thing and very doable. He was in favor of the land swap. He said that there were a lot of people who were depending on this agreement to go through. He felt that this would help MiLB stay in Vero Beach. If this does not go through, it is going to make it difficult for MiLB. He said that he would like to see this happen.

Mr. White said that he liked the land swap.

Mr. Heady asked Mr. Daige if he had any idea of the dollar amount that was set aside.

Mr. Daige said that he did not have that figure.

Mayor Sawnick said that it was clear that they don't have the dollar amount. He noted that the County would have that information.

Mr. Heady asked Mr. Daige if he knows what the number is.

Mr. Daige said it is on file at the County.

Mr. Heady felt that it was outrageous when the Council is going to decide on something and one Councilmember says that there is money set aside, but won't tell the rest of the Council how many taxdollars are involved. He said that before they make any decision or any vote they should at least know how many dollars are involved.

The motion passed 4-1 with Mr. Heady voting no.

Mr. Falls publically thanked Mr. Polackwich for all of his hard work and noted that he was a pleasure to work with.

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

### **A) Update on Brian Heady Federal Lawsuit**

This item was heard before City Manager's Matters.

\*\*Please note: This section of the minutes were done verbatim at the request of Councilmember Heady.

Mr. Vitunac reported that Council hired an outside Attorney, Mr. Randy Brennan, because of the Florida Conflict rules. Mr. Brennan defended the City of Vero Beach in the Federal Law Suit that was filed by Mr. Heady. Within the past week a judgment was issued in favor of the City of Vero Beach thanks to Mr. Brennan's offices' legal work. He reported that Mr. Brennan was present for today's meeting to give an update and a report on the implications of that ruling.

Mr. Randy Brennan, Attorney, reported that he was the Attorney representing the City with regard to Mr. Heady's Federal Lawsuit. Mr. Heady's initial complaint was dismissed a few months ago. He explained that Judge Moore allowed Mr. Heady to file an amended complaint, which he did. The City, through his office, filed a motion to dismiss the amended complaint. He reported that Judge Moore ruled in favor of the City last week to dismiss the amended complaint. He reported that the dismissal was "with prejudice," which means that the lawsuit cannot be amended again. In fact, the Judge instructed the Clerk at the U.S. District Court to close the case. He reported that they had asked the Court to make a decision on Attorney's fees, which the Judge did not make a decision in the order. Therefore, they are currently looking to see if that issue is pending or if they should ask for Attorney's fees.

Mr. White asked Mr. Brennan, are they allowed to collect attorney fees. He said the taxpayers are out about \$25,000 to \$30,000 for this case.

Mr. Brennan said that's about rights.

Mr. White said you mentioned something about we can petition the Court and ask for reimbursement of these Attorney's fees from Mr. Heady.

Mr. Brennan said that's a possibility and that's what we need to look into further before he could give them a definitive opinion.

Mr. White told Mr. Vitunac that this needs to be looked at. He thinks they should go back and try to recoup the money that Mr. Heady took from the City taxpayer's coffers.

Mayor Sawnick said at a future Council meeting they will put that on the agenda and it can be discussed. We don't want to take any action right now because it was a late addition to the agenda.

Mr. White asked Mr. Vitunac if he could take any action on this.

Mr. Heady said make a motion that he absolutely could.

Mr. Vitunac explained that their normal procedure is that if there is going to be an action item that backup is provided so the Council can be informed. He suggested letting Mr. Brennan do the research and come back in two weeks with a recommendation whether to pursue the taxable interest against Mr. Heady or to give up on that issue and let the case die. He didn't want Council to take action today because Mr. Brennan is not ready.

Mr. White said okay, but he really did not want this pushed aside.

Mr. Brennan said that he would give Council an opinion about whether or not there is a basis for fees and what their likelihood of success is.

Mr. White said this isn't the first time. The City has spent a lot of money over the years on these lawsuits and complaints and they should start trying to recoup some of the money.

Mayor Sawnick asked if there were any further comments from Council.

Mr. Heady said yes sir, Mr. Mayor. It can't be amended, but can it be appealed. Is that an accurate statement?

Mr. Brennan said that he was not going to get into the procedural aspects of the lawsuit.

Mr. Heady said well you're telling the Council that it can't be amended and leading the Council to believe that it's an absolute end. You're Counsel on this case. You should know the simple answer to the question, can this be appealed?

Mr. Brennan said Mr. Heady, I know the answer to your question.

Mr. Heady said okay, and the answer is so the Council knows?

Mr. Brennan said the answer is, you are the litigant and I'm not going to answer that question.

Mr. Heady felt that the Council had the right to know. He told Mr. Brennan that he could not stand before City Council and lead them to believe something when it's not accurate. This case can be appealed. Isn't that accurate? He asked the City Attorney, can the decision be appealed? There is an appellate court. He asked can this be brought before the appellate court? So that Council understands and knows.

Mr. Vitunac felt that everyone understands that appeals are always mentioned after a case is lost. Whether you can appeal or not, that is between you and your legal advisor.

Mayor Sawnick thought that what Mr. Heady was asking is that if he wanted to, could he. Anyone can appeal anything.

Mr. Vitunac said anybody can appeal anything. He told Mr. Heady that he could try to appeal if he wanted to.

Mr. Heady thanked Mr. Vitunac for providing that information. The second comment he had is Mr. White said that he (Mr. Heady) took money from the City. He felt that those

were pretty strong words. He asked Mr. White was he saying that as a Councilmember or was he saying that personally.

Mr. White answered both. I'm saying that over the last 13 years being on this City Council you have filed frivolous lawsuit after lawsuit over those 13 years against the City of Vero Beach. You have lost every one of them. You caused an expense against me after the hurricanes, which total owed was \$6,000.

Mr. Heady said because you were stealing from the City.

Mr. White said woe, woe, woe. I ...

Mr. Heady said you were taking plywood from the City and you were not reimbursing the City for it.

Mr. White said to Mr. Heady, if you use the word "steal" one more time I will see you in court.

Mayor Sawnick said that Mr. White stated earlier, literally he did not steal money or take money.

Mr. Heady said that is not what he (Mr. White) said.

Mr. White said Mr. Heady.

Mr. Heady said that the Mayor can bang that gavel until hell freezes over. That's not what he said Mr. Mayor. That's what you're saying.

Mayor Sawnick said I know.

Mr. White said I said ...

Mayor Sawnick said spoken as a generalization and I don't want to get into back and forth of whose done what in the past and whatever, we need to move forward. So, at this time, and if there's a question ...

Mr. Heady said I still have a comment.

Mayor Sawnick said okay ...

Mr. Heady said your characterization of ...

Mayor Sawnick said Mr. Heady I'm not finished, but what I'd like to do, if you have a question of Mr. Brennan, not Mr. White at this time, unless Mr. White would like to respond in a way where it's appropriate. He said to make sure not to make accusations,

things that happened in the past or whatever. Let's be professional and courteous. Mr. Heady, you may continue.

Mr. Heady said Mr. White's comments are not less than professional. He gave his opinion that I took money from the City. He answered my question as to whether or not he was saying that in his personal capacity and/or in his capacity of a City Councilman and his answer to that was both. So you can categorize it any way you want. That doesn't change what the record is and the record speaks for itself.

Mr. White said and if you say the whole quote, I said from the City taxpayers and that's what I said. The taxpayers' money has to be used ...

Mr. Heady said you can have the City Clerk put verbatim in the minutes and I would ask the City Clerk ...

Mr. White said whatever your little heart desires.

Mayor Sawnick said okay, let's continue. I don't think there's any other questions from the Council for Mr. Brennan. We appreciate it and we will get back ...

Mr. White said good job by the way Randy. Thank you.

Mr. Brennan said thank you.

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

None.

### **B. New Business**

None.

## **10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

### **A. Mayor Kevin Sawnick's Matters**

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

Mayor Sawnick reported that he spoke at Imagine School last Friday and he attended the Mayor's Clean Up two Sunday's ago.

### **B. Vice Mayor Sabin Abell's Matters**

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

**3. Comments**

Mr. Abell reported that he attended the Recreation Department's Halloween Parade and was the one who Emceed the winners of the costume contest. He thanked the Recreation Department for putting this on and noted that it was very well organized.

**C. Councilmember Tom White's Matters**

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

Mr. White gave an update on the Beach and Shores Commission meeting. He reported that there was a blog on TCPalm.com that was submitted by Mr. Larry Reisman regarding the City of Sarasota voting on whether or not to renew their franchise agreement with FP&L and Mr. David Letterman's ten reasons not to sign another 30-year contract with FP&L (on file in the City Clerk's office).

Mr. White commented that this was his last meeting and he was going to miss everyone. He said that 13 years is a long time and this has been his passion and desire over the years to do what he could for this community. He went over some things that have occurred over the years and some of the many Committees that he has served on. He mentioned the hurricanes that occurred in their City and the hard work done to bring back their City to normal operation. He said that the City has the most dedicated people working here. He reported that while on Council he worked hard in purchasing the Lost Tree Islands. He thanked the citizens of Vero Beach for allowing him to serve on the City Council.

**D. Councilmember Brian Heady's Matters**

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

Mr. Heady said that Mr. White made some comments regarding the City of Sarasota and possibly engaging and operating their own Power Plant because they could beat FP&L. Mr. Heady said it was his understanding that FP&L was the lowest utility provider in the State. He wished Sarasota a lot of luck and stated that maybe he should go and speak to their Council before they embark on such an endeavor. Regarding the City of Gainesville saving one-third on taxes, they haven't saved one-third on taxes, but rather they charged their City residents that tax in the electric bill. He said there is a difference between saving taxes and sticking it someplace else. The only way they can save taxes is by cutting their spending.

**E. Councilmember Ken Daige's Matters**

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

Mr. Daige read a prepared report on his activities (please see attached).

**11. ADJOURNMENT**

Mayor Sawnick made a motion to adjourn today's meeting at 11:51 a.m. Mr. Abell seconded the motion and it passed unanimously.

/tv