

**CITY OF VERO BEACH, FLORIDA
APRIL 6, 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, 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

Reverend John Kerry of Asbury United Methodist Church 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

Mayor Sawnick pulled items 9-A) 1, 2, & 3, off of the agenda and asked that they be heard at their next City Council meeting.

Mr. Heady requested that under his items two items be added. The items are discussion of pain clinics and the A-1-A sidewalk project.

Mayor Sawnick made a motion to adopt the agenda as amended. Mr. Daige seconded the motion and it passed 4-0.

B. Proclamations

- 1. Proclamation to be given to Heather McCarty for obtaining her certification as a Certified Records Manager**
- 2. Certification of Completion of the Institute for Elected Municipal Officials Training to be given to Councilmember Brian Heady**
- 3. Child Abuse Prevention Month – April 2010**
- 4. National Telecommunicators Week – April 11-17, 2010**
- 5. Hibiscus Festival Weekend – April 16-17, 2010**

Mayor Sawnick read and presented all of the proclamations.

C. Public Comment

Mr. Charlie Wilson stated that his Committee has completed the petition and it is ready to go to the printer. He noted that the website for the Committee known as Operation Clean Sweep has been completed. He then read to Council what the legal language of the petition is (on file in the City Clerk's office).

Mayor Sawnick told Mr. Wilson that his three minutes was up and that he needed to finish with his comments.

Mr. Heady asked for a Point of Order. He said that since Mayor Sawnick has been Mayor he has been allowing people to speak without any time limits. He asked Mayor Sawnick if this was going to be the new way he was going to be conducting business. He said it seems that at every meeting he changes things. He has a problem with these constant changes and he always has a problem when citizens are not allowed to speak.

Mayor Sawnick stated that the Council could appeal his decision.

Mr. Daige commented that as far as he knows they are allowing public input and the time limit was lifted. He asked that Mr. Wilson be allowed to continue.

Mr. Wilson continued by saying that the City Council gives direction to their Charter Officers and they (Charter Officers) work at the direction of the Council. He asked the question, what is Council's direction here. He requested a meeting with the City Attorney for the purpose of making sure that the petition progresses in a legal and acceptable way. The object of this was to try to avoid what happened earlier (speaking of the Election where he was removed from office). He asked City Council if it was their direction to the City Attorney to assist in making sure that they have a legal election or to block a legal election.

Mr. White answered neither.

Mr. Heady agreed with Mr. White that was the correct answer.

Mr. Wilson stated that he talked to Mr. Frank Zorc and was told that the same thing happened with the referendum for the beach renourishment program. Mr. Wilson continued by saying that what they will do is get the 1,060 required signatures, and present them knowing you will disqualify them and then they will go and get them again.

Mr. Heady requested to address the comments just made by Mr. Wilson.

Mayor Sawnick asked him if he would mind waiting until after everyone from the public who wishes to speak has had a chance to speak.

Mr. Heady said that he would rather not wait. He asked if he could address the issue at this time.

Mayor Sawnick answered no, not at this time.

Mr. Heady said that he would appeal that decision to the Council.

Mayor Sawnick noted that appeal of a decision does not require a second. He told Council if they voted in favor it would mean that they are voting in favor of his decision.

Mayor White asked to speak under discussion before they voted. He felt that response after a person speaks is probably more in line. He would rather that Mr. Heady be given permission to make his comments now, than waiting until later and bringing the matter up again and having it drawn out.

Mr. Daige had no problem with the procedure as just outlined by Mr. White. He said that they have done it that way in the past.

Mr. Heady told Mr. Wilson that he does not think that the City Council wants the City Attorney to obstruct anything. He agreed with Mr. White's comments that the Council's position is neither. He doesn't think that the City Attorney should be checking the legal wording on his petition. He said that if Mr. Wilson wants to bring a petition before the voters, that is fine, but he (Mr. Wilson) has an obligation to make sure that the petition meets the legal requirements. He said that what he would like to see happen is that the City Attorney have less work load and not more work load. He does not want to see the City Attorney or the City Manager obstruct this. He said that if Mr. Wilson gets the required signatures from the voters then it is their job to put the referendum on the ballot.

Mr. J. Rock Tonkel stated that at the recent Special Call City Council meeting that was held, in reporting the results of the Enterprise Fund, the Finance Director said that the Electric Fund had a five million dollar surplus year to date and the available cash was twelve million dollars. He asked what would be the projection of both of those figures by year end. He asked staff if they could get that information to him. He continued by saying that it is apparent that there is going to be surplus and an enormous amount of valuable cash. He said that once he receives this information, he will comment on it in the future. He then mentioned that he has watched Mayor Sawnick for the last four months and he is surprised at some of his declarations and decisions. He felt that it was a huge mistake to allot a certain amount of time to the public who is speaking, as well as the City Councilmembers. He told the Mayor to think about the oath that he has taken and the constitution to the State of Florida.

Mr. Joseph Guffanti commented that he has been coming to the City Council meetings for about twenty years now and has observed the facial expressions of the City Council. He said that things have changed since Mr. Heady became a City Councilmember and he detects the face of fear on Council and it is a fear of getting caught. He said getting caught at what, he was not quite sure. The items pulled from the agenda this morning are

aimed at Mr. Heady's effort in coming to the truth on the electric contract. He said that this is an abomination on the part of the Mayor. Mr. Heady was elected by the people, as all of you have and he is representing the people.

Mr. Glen Heran said as they go forward this year and approach elections in November that people are going to have to take sides this year to either stay with the City or to go with selling the utilities. He has his own opinion on how the City Council will vote on that. However, he didn't know how Mr. Daige was going to vote. He asked Mr. Daige if FP&L presented them with an offer and he had this deal on the table what would he do? Would he stay with Vero Beach utilities or go with FP&L.

Mr. Daige felt that was not a yes or no question. All the options and facts need to be on the table so they can be presented to the ratepayers and City taxpayers.

Mr. Heady said that he could answer the question. He has seen the model and knows what \$150,000,000 would mean to this community. It would pay their bonds. However, before he voted yes to having FP&L take over their utilities he would want to make sure that they would be absorbing the present employees.

Mr. Heran felt that the employees would be picked up by FP&L.

Mr. White wanted to look at this from a business standpoint. He did not believe that FP&L intends to absorb all of the costs. He also mentioned that FP&L is going to get approval to raise their rates and that increase will probably be this year.

Mr. Heran said FP&L will offer a price such as the rates that are existing in the State of Florida and it will give them a rate of return on equity.

Mr. Charles Vitunac, City Attorney, asked Mr. Heran if he was an agent for FP&L today.

Mr. Heran stated that he was in no way financially connected with FP&L.

Mr. Vitunac then asked him if everything that he said today has been approved by FP&L.

Mr. Heran answered no.

Mayor Sawnick felt that the City was moving in the right direction and probably will be talking with FP&L in the future.

Mr. Heady commented on the questions that the City Attorney asked Mr. Heran. He said that he could care a less who comes to the podium and who they are an agent of. If someone comes to the podium and what they say makes sense, he will not make his decision as to who they are an agent for.

D. Adoption of Consent Agenda

Mr. Heady pulled items 2D-2), 3), and 4), off of the consent agenda.

Mr. White pulled item 2D-1) off of the consent agenda.

Mr. Daige asked if they were going to address these items now or under City Manager's Matters. He was told that the items were going to be addressed at this time.

Mr. Heady felt that the appropriate way to handle items pulled from the consent agenda are to address them right after they are pulled.

Mr. Daige asked Mr. Vitunac when would be the appropriate time to do a written policy change on this matter.

Mayor Sawnick mentioned that he had this item to vote on under Old Business, but he pulled it off of the agenda because they did not have a full Council present for today's meeting.

Mr. Vitunac said that they could vote on it at their next meeting or they could vote on it at today's meeting.

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

Mr. Daige made a motion to consider the items pulled from the consent agenda at this time and to make this a formal policy for all future meetings. Mayor Sawnick seconded the motion.

Mr. Heady felt that rather than have the City Attorney do a whole lot of work, that Mr. Daige's motion is clear and that it will be in the minutes that this is the way they are operating their meetings. He felt that wasting legal time is wasting taxpayer's money.

The motion passed unanimously.

1. Regular City Council Minutes – March 16, 2010

Mr. White asked that on page 26 of the minutes that the word "not" be inserted and that the whole sentence will now read "He said that the only thing Ranger Construction is responsible for is for the damage that they do from A-1-A to the beach and not anything that happens on the roadway."

The minutes passed unanimously with this correction made.

2. Rotary Nautical Flea Market

Mr. Heady referred to the backup material where it stated that the President of the Rotary Club arranged interviews with the Council. He wanted to know if any of the other Councilmembers met with the Rotary Club on this issue.

Mr. Pomeroy, Rotary Club President, stated that he has not talked to any of the Councilmembers concerning this event.

Mr. Heady pointed out that this meets City policy and there always seems to be a concern about the length of their meetings. He asked if this meets City policy then why can't the City Manager just sign off on this.

Mr. Vitunac explained that beer and wine issues are always brought to the Council for permission.

Mr. Heady said that in the future if they give the City Manager approval to grant these permits without bringing them to the Council they could save some time. He asked the City Attorney if it would be appropriate to make that motion now.

Mr. Vitunac answered yes.

Mr. Heady made a motion that the City Manager take care of these items in the future.

Mr. Vitunac added that he would need to bring back a written policy on this and then they could vote on it at that time.

Mr. White commented that there is another item on the agenda that involves alcohol so maybe they should wait until after that item is heard.

Mr. Heady withdrew his motion.

Mr. White made a motion to approve the request. Mr. Daige seconded the motion and it passed unanimously.

3. Final Payment Request – Substation #11 (South Beach) Rip Rap Wall – Custom Built Marine Construction, Inc.

Mr. Heady commented that this is a \$5,000 payment and he did not see why it needed to come before Council. He said that the City Manager is allowed to authorize this final payment.

Mayor Sawnick could understand the point that Mr. Heady was making, but he felt that Council needed to be advised as to what is taking place.

Mr. Daige agreed with the comments just made by the Mayor. He said that the items don't need to be pulled from the consent agenda, but it is good for the Council to know

about these things because of budget purposes and he would prefer to keep it this way for them and the public.

Mr. Heady explained that the only way the public knows about it, is if the item is pulled off of the consent agenda.

Mr. Daige noted that all of the items that are on the agenda can be found on the City website and in the agenda package located in the lobby.

Mayor Sawnick made a motion to approve the final payment request. Mr. White seconded the motion and it passed unanimously.

4. River Crossing – Emergency Purchase Order

Mr. James Gabbard, City Manager, reported that this item was for an emergency purchase order costing approximately \$7,000.

Mr. Heady said that his comments were the same as he made earlier. He said it was necessary to make this expenditure so he does not feel that Council needed to have it on their agenda.

Mr. White said that what this does is make Council aware of what is going on.

Mr. Daige recalled that the City Manager has the authorization to spend up to \$50,000, but on items that have not been budgeted for he needs to let Council know that the money is being spent. He felt it was important for Council to know when money is being spent.

Mayor Sawnick made a motion to approve the River Crossing Emergency Purchase order. Mr. Daige seconded the motion and it passed unanimously.

At this time, Council took a break a ten-minute break and the meeting reconvened at 10:30 a.m.

3. PUBLIC HEARINGS

- 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 decreasing the Water & Sewer Fund by \$888,642 from Revised Revenue and Transfer Estimates and by Decreasing the Water & Sewer R & R Fund by \$4,388,642 from Revised Proposed Borrowing, Transfer and Expenditure Estimates.**

Mayor Sawnick read the Ordinance by title only.

Mr. Steve Maillet, Finance Director, reported that this is the second and final hearing on this Ordinance. It includes all of the items that they (staff and City Council) recently discussed.

Mayor Sawnick opened and closed the public hearing at 10:34 a.m., with no one wishing to be heard.

Mr. Heady commented that recently there has been a lot of public concerns about the number of employees there are in the City. The Ordinance that they are discussing has taken staff time to prepare and since it is a deduction in the amount that a department head is going to spend it seems to him that they don't need to be discussing this.

Mr. Heady 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.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

None

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

- A) An Ordinance amending Chapter 2, Article VIII (Purchasing and Contracts) of the Code of Ordinances of the City of Vero Beach to replace Section 2-351(7), "Local Bidders," with a New Section 2-352, "Local Preference in Purchasing or Contracting," to provide for an expanded Local Preference Policy and Procedure for Local Businesses in City Purchases or Contracts; including Brevard, Indian River, Martin, Okeechobee, and St. Lucie Counties in the definition of "Local Business;" Providing for severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mayor Sawnick suggested adding Polk County and Osceola County to the Ordinance.

Mr. White asked if they do business with anyone from Polk County.

Mr. John O'Brien, Purchasing Manager, stated that they haven't tracked where their business comes from.

Mr. White thought that a local preference Ordinance was for local preference, but it doesn't say that they can't hire someone from one of these other counties.

Mr. O'Brien explained that this Ordinance reads that anyone that submits a bid to them would be given preference from any of the outlining areas. If their bid is within 5% and

anyone that is not local would have an opportunity to reduce their price down to the lowest bid. The Ordinance mentions Okeechobee and Brevard and he found that Brevard does not use the same criteria (5%) as they do and he was not sure about Okeechobee County. However the other counties mentioned are pretty much identical to Indian River County.

Mr. Daige would like to have the Ordinance before them adopted as it stands. He asked for full support of the Council in moving this forward. He said that this is the way that they can help their local businesses.

Mr. Daige made a motion to approve the Ordinance on first reading and that the public hearing be held on April 20, 2010. Mayor Sawnick seconded the motion.

Mr. Heady felt that the point that this was for the general contractor and not for the subcontractors was a pretty significant point because the general contractor can be nothing more than a broker. He said in the real sense, every bit of the work under this Ordinance could go somewhere else. He referred to the Ordinance and read some of the existing law that they were striking out and then adding five more pages of different things. He said once again this is just one more example where they add work for the City Attorney and spend more time at their meetings discussing something that they already have. He felt that what they have on their books now is fine; they just need to give clear direction to staff to consider local bidders.

The Clerk polled the Council on the motion and it passed 3-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, and Mayor Sawnick yes.

B) An Ordinance of the City of Vero Beach, Florida, renumbering and amending Chapter 30, Alcoholic Beverages, of the Land Development Regulations of the City of Vero Beach, providing for restrictions as to the Location of Establishments dealing with or in Alcoholic Beverages; providing for exceptions; providing for consistency with Section 562.45(2) of Florida Statutes; Providing for Method of Measurement of separation distances from Schools and Places of Worship; providing for conflict and severability; and providing for an Effective Date.

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, explained that this Ordinance amends Chapter 30, Alcoholic Beverages, as Section 60.16, General Provisions; makes the City's separation requirements from schools and places of worship and establishments licensed to sell alcoholic beverages consistent with Section 562.45(2), Florida Statutes and provides for a standard measurement of separation distances of establishments licensed under the Florida Beverage Law from schools and places of worship. He said that the Planning and Zoning Board held a public hearing to consider the Ordinance and unanimously recommended it be approved by the City Council.

Mr. White asked if they would be issuing any more liquor licenses.

Mr. McGarry explained that the licenses are issued by the State.

Mr. White had a couple of problems with this Ordinance. He referred to page 2, Section 60.16 (b) where it reads separation of licensed premises from schools and places of worship. No licensed premises shall be authorized by the Planning Director within 500 feet of any established place of worship, or public or private elementary, middle, or secondary school, with the following exceptions:... He felt by doing this they would be losing the charm that they have in the City of Vero Beach.

Mr. McGarry made it clear that Florida Statutes already allows this and the intent of the Ordinance is for them to be in compliance with Florida Statutes.

Mr. White felt that instead of just having the Planning Director be able to give this authorization, he would rather make it so that it requires two people such as the Planning Director and the City Manager. He said no matter what happens, if staff makes a decision and people are not in favor of it the Council gets blamed.

Mr. Daige agreed with the comments made by Mr. White and felt that Council needs to be informed when authorization is given. He has some concerns with schools and said that they have home rule and they can take care of their City. He asked if this does pass, how will they regulate it if there are problems and how many people approached him for this change.

Mr. McGarry said that he had two or three people who talked to him about passing this Ordinance. He said that one of the places interested in having this change is a restaurant located on 14th Avenue, near the Freshmen Learning Center. They are not allowed to serve beer and wine because of the existing Ordinance, however the restaurants right across the street from them are allowed (because they are further away from the school).

Mr. McGarry made it clear that this Ordinance preempts home rule. He didn't have any problems with adding the City Manager's name and saying that no licensed premises shall be authorized by the Planning Director and City Manager within...

Mr. Vitunac suggested having the Chairman of the Planning and Zoning Board sign off on application.

Mr. Sawnick asked Mr. McGarry to provide them with a map showing the 500 feet radius.

Mr. Daige commented that with these restaurants that once they are open and they are licensed to serve beer and wine they are watched and controlled by Federal agencies.

Mr. McGarry told him that was correct.

Mr. White still had some problems with allowing alcohol to be served within a close distance of schools.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for May 4, 2010. He also wanted to talk with the School Board and find out how they feel about the Ordinance. Mr. White seconded the motion.

Mr. Heady commented that any laws that they pass in the State of Florida need to be in compliance with the constitution of the United States. Any laws that they pass in the City need to be in compliance with the constitution of the State of Florida. He said that the State law takes precedence and this brings them into compliance with State law. He thought that this was just another exercise in adding more work for staff and to the legal staff. He didn't know why this particular restaurant in question could not apply for a variance.

Mr. White asked if they could put a time limit saying that the restaurant would not be allowed to serve alcohol during school hours.

Mr. McGarry will find out what kind of restrictions that they can place. He also will add the City Manager's name for authorization and provide Council with the map.

The Clerk polled the Council on the motion and it passed 3-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, and Mayor Sawnick yes.

C) An Ordinance of the City of Vero Beach, Florida, amending Chapter 73, Article II, Drainage and Article III, Stormwater Management of the City of Vero Beach Code; deleting existing Article II, Drainage and replacing it with New Article II, Stormwater Management; deleting existing Article III, Stormwater Management and replacing it with New Article III, Construction Site Erosion and Sediment Control; creating New Article IV, Municipal Separate Storm Sewer System; providing for requirements; standards and review procedures for Stormwater Management Plans for Single Family/Duplex, Nonresidential, Multiple Family, and New Subdivision Development; providing for Requirements, Standards, and Review Procedures for Erosion and Sediment Control Plans for Construction Activity; providing for Florida Department of Environmental Protection Generic Permits for Certain Land Disturbing Activities; providing for Regulations for Discharges to the Municipal Separate Storm Sewer System; providing for Conflict and Severability; and providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry reported that the Planning and Development Department, in conjunction with the Public Works staff, prepared this Ordinance. The Ordinance amends Chapter 73 by eliminating Article II, Drainage, and replacing it with a revised existing Article II, Stormwater Management; and creating a new Article III, Construction Site Erosion and

Sediment Control and Article IV, Municipal Separate Storm Sewer System. The Ordinance will bring the City's stormwater regulations in consistency with the water quality provisions of Policy 20.5 and 20.6 of the Drainage section of the Comprehensive Plan that requires the onsite retention or detention of the first inch of rainfall for new single family development. The Ordinance will require that all new or improved non-single family developments meet or exceed the minimum design standards required by St. John's Water Management District, it will revise the stormwater management plan and facilities, design requirements to make them more practical and cost effective and consistent with the St. Johns Water Management District design standards and policies of the Comprehensive Plan. The Ordinance also incorporates regulations managing erosion and sedimentation during construction and discharges to the City's municipal separate storm sewer system as required by the City's National Pollution Discharge Elimination System (NPDES).

Mr. Daige commented that Mr. McGarry made reference to the Engineering Department and working with area developers. He asked who the developers were that the Engineering Department worked with.

Mr. McGarry said that they did not mention any names. He said that this is for long term knowing that the City is going to have to deal with discharges from storm systems into the lagoon.

Mr. Heady expressed that this document is 23 pages and part of what it addresses is new single family residences and the City is 99% built out. He said that if they are really concerned with the discharge into the lagoon then they should stop dumping into the lagoon. He felt by adopting this Ordinance it just adds another layer of more government and more regulations. He would like to enact a law that states the only new law that can be enacted is one that says no new laws be enacted.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for May 4, 2010. Mr. White seconded the motion and it passed 3-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, and Mayor Sawnick yes.

6. CITY CLERK'S MATTERS

A) Update on United Way Campaign

Mrs. Vock informed Council that the City was recently recognized as one of the top ten workplace campaigns, as well as receiving an award as being a torchbearer once again this year.

B) Meeting with the School Board

Mrs. Vock reported that the School Board would like to hold a joint meeting with the City Council on June 10th from 9:00 a.m. to 11:00 a.m. They would like this meeting to be very informal and do not plan on televising it.

Mr. Heady made a motion to request to the School Board that the meeting be televised. Mr. Daige seconded the motion. The motion passed 3-1 with Mr. White voting no.

C) Live Video Streaming

Mrs. Vock explained that in researching the live video streaming she has presented Council with three different options. She also noted that the televising equipment will need to be replaced soon and she will be bringing this up at budget time in July. It would be her recommendation to hold off on the video streaming and discussing it along with replacing the equipment at budget time this July.

Mr. Heady felt that they could have the live video streaming done at a cost of about \$1,000.

Mrs. Vock said the cost she obtained was around \$1,800 which would not include a monthly fee.

Mr. Daige made a motion to hold off implementing the Live Video Streaming until after they have reviewed the bids received for replacing the television equipment at budget time this July. Mr. White seconded the motion. The motion passed 3-1 with Mr. Heady voting no.

7. CITY MANAGER'S MATTERS

A) Airport Obstruction Survey

Mr. Eric Menger, Airport Director, presented Council with a presentation prepared by URS Corporation, the Airport's General Consultant, to present their findings from the FAA Part 77 Obstruction Survey. This is the same Power Point presentation that was presented to the Airport Commission (on file with the City Clerk's office).

Mr. Menger recommended that City Council review Phase 1 and authorize staff to proceed to Phase II of this project.

Mayor Sawnick asked Mr. Menger if they don't go forward with this, what would happen.

Mr. Menger explained that if there was an accident that the City could bear the liability. He said they are required by Federal regulations to keep their runways clear. They will be looking at each and every object. In many cases the trees can be trimmed and cut back and are good for ten years. The answer to his question is that they do have to do something.

Mr. White asked how they were going to handle property outside of the City (privately owned property).

Mr. Menger explained that they will handle each property on a one on one basis. If they end up with a situation where an Oak Tree has to be trimmed back or removed then they will make a plan for mitigation. There are some government powers that they would have to enforce if it became a safety issue.

Mr. Daige asked if ten feet was the minimum.

Mr. Menger said not necessarily. He said that it would have to be determined by an Arborist and City staff.

Mr. Daige asked in giving approval to move forward with Phase II, were they also giving the Airport permission to do the tree trimming.

Mr. Menger explained that they have hired an Engineer to proceed with Phase II. When they are ready to award a contract to a tree trimming contractor then they will come back to Council.

Mr. Daige felt that it was important for Council to be provided with a list of the number of trees that are being trimmed and having to be removed. He also wants to be informed if there are property owners who have problems with the removal of a tree from their property.

Mr. Menger explained that there will be areas that they recommend be clear cut. The recommendation would only be because there are no main specimen of trees in that area and it is more cost effective.

Mr. Heady made a motion to authorize staff to proceed with Phase II of the Airport Obstruction Survey. Mr. White seconded the motion and it passed unanimously.

B) Award of Contract to Ranger Construction Industries to Rehabilitate Runway 11L/29R, Taxiway F and Connectors (Bid No. 440-09/CSS)

Mr. Menger reported that this is a rehabilitation project that will improve the surface condition of the runway and taxiway system using a mix in place process in order to recycle the existing asphalt. The project is funded by State grants and Airport revenue. It was also approved in the Airport budget. He requested that the Award of Bid be given to the low bidder who is Ranger Construction in the amount of \$1,938,527.82. He said that most of the work will be done locally.

Mr. Heady made a motion to approve the Award of Bid 440-09/CSS for the Rehabilitation of Runway 11L/29R, Taxiway F and Connectors, to Ranger Construction Industries. Mr. White seconded the motion and it passed unanimously.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

- 1. Councilmember's time allotment under his/her matters – Requested by Mayor Sawnick**
- 2. Items pulled from consent agenda – Requested by Mayor Sawnick**
- 3. Items on agenda under new business and old business – Requested by Mayor Sawnick**

These items were pulled off of the agenda and will be discussed at the next City Council meeting.

B. New Business

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters

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

Mayor Sawnick reported that he met with Mainstreet Vero Beach, attended Legislative Action Day in Tallahassee, the Mayor's beach cleanup held at Humiston Park, and the Special Call Council meeting where they discussed the quarterly budget. Mayor Sawnick briefly went through some upcoming events.

Mayor Sawnick mentioned that they received a letter from a concerned citizen on the new route that Go Line busses are taking. He said that he also lives in that area and there are a lot of buses going through the neighborhood.

Mr. Gabbard mentioned that he has talked to the concerned neighbors as well as Karen Diegel at Senior Resources and they are looking at coming up with some different bus routes.

Mayor Sawnick did not feel that the City's website was as updated as it should be. He suggested that each Councilperson have their picture on the website along with a short bio.

Mayor Sawnick mentioned that the Beach Cleanup Committee would like permission to post their clean up dates on the web and maybe on Channel 13. He will bring this issue back to Council.

Mayor Sawnick reported that he spoke to one of their area residents, Ms. Hayes, who felt that they should be looking at having a quarterly newsletter printed to update the public on what the City is doing and plans on doing. He said that the newsletter could be emailed out to the people who would like to receive it.

Mayor Sawnick commented that in regards to Old Business, if Council has items that need to be voted on then the items should be either under New Business or Old Business. He explained that Council Matters is on the agenda to give them an opportunity to report on the meetings that they have attended. As far as limiting Councilmembers time, being a teacher himself, he wanted to make sure that Council is productive and all the main points have been stated. Other cities around the State have done this. He said that the ten minute rule that he is requesting was brought up by someone in the public. If Council decides not to implement it, it is their choice.

3. Comments

B. Vice Mayor Sabin Abell's Matters

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

C. Councilmember Tom White's Matters

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

Mr. White reported that he attended a Municipal Insurance meeting in Tampa and also the Special Call meeting where Council discussed the budget.

Mr. White also brought up Go Line buses and asked staff to look at the new stop that has been installed on Aviation Boulevard right past the light. He felt that was not a good location because of accidents.

3. Comments

D. Councilmember Brain Heady's Matters

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

Mr. Heady agreed with the Mayor that Channel 13 would be a good place for advertising (referring to the beach cleanup).

Mayor Sawnick wanted to make it clear that the beach cleanup was not a City function.

Mr. Heady told the Mayor that he didn't agree with placing time limits on people speaking. He said that if you put into place the three minute time limit then the person

speaking will use it up, which in most cases someone would not even speak for the entire three minutes. The Mayor mentioned that no Councilmember would be cut off and he told the Mayor that he cuts him off all the time. The Mayor also mentioned that the limitation of Councilmembers to ten minutes came from the public. He asked the Mayor to tell him what meeting that this occurred.

Mayor Sawnick said that the public talked to him about the ten minute limitation, but not at a Council meeting.

Mr. Heady made a motion that Councilmembers not be restricted on either the quantity or the time limits on their matters.

Mr. White reminded him that in order to vote on an item it needs to be done under Old Business.

Mr. Heady said it is a suggestion, but they don't have to have an item under Old Business in order to vote on something.

Mayor Sawnick reiterated that under Old Business and under New Business is where motions should be handled. However, at this point there is no policy in place.

The motion died for lack of a second.

Mr. Daige commented that as far as how they conduct their business under Council matters, he is in favor of allowing Councilmembers to speak and it is up to them to be mindful of the Council and taxpayer's time. As individuals they need to move through the agenda, conduct their business, and be aware of the time. He said that time is important. He is not interested in restricting any member on this Council.

Mr. Heady told Mr. Daige that if he was not in favor of any Councilmember being restricted then would he second his motion not to restrict Councilmembers.

Mr. Heady explained that one of the items that he added to his agenda was pain clinics. He thought that they should consider some restrictions of pain clinics within the City.

Mr. Gabbard agreed with Mr. Heady's comments on pain clinics. He said that staff has been discussing this and what they probably should do is something like what Stuart or Martin County has done and do a moratorium for six months. He said that the State of Florida is aware of the problems with these pain clinics and is working on it. He said that there is a pain clinic here in Vero Beach and if Council agrees, he would like to bring to them a draft moratorium for them to vote on.

Mr. Heady made a motion that they have a moratorium of six months for pain clinics until they see what the State does. Mr. Daige seconded the motion.

Mayor Sawnick commented that he knows what a pain clinic is, but there might be some Councilmember who does not, which is why providing backup material is so important.

Mr. Vitunac explained that they could not place a moratorium by quick action, (making a motion) it needs to be done by Ordinance.

Mayor Sawnick amended the motion to direct staff to prepare an Ordinance on the moratorium for pain clinics. Mr. Daige amended his second and the motion passed unanimously.

The next item that Mr. Heady added to his items was A-1-A sidewalks.

Mr. Heady reported that he was at a meeting with some residents who reside on the beach and they are concerned about some sidewalks that are being put in along A-1-A. Some of the residents have asked if he could write a letter to the State asking the State to have a meeting with the residents of A-1-A on this issue before they move forward. He was asking for Council's permission to send this letter. He made a motion that he be authorized to send this letter with Council approval. Mayor Sawnick seconded the motion.

Mayor Sawnick wanted to see more information on this.

Mr. Heady said that he could provide the names of who the letter needs to go to. What he would be asking the State for is instead of moving forward with this concept as it currently stands that the State meet with the residents of A-1-A because they feel that the real need is not to have a sidewalk on the other side of A-1-A, but to have turn lanes.

Mr. Vitunac said that if this is an MPO project, he might want to send the letter to them and have them get it to the correct people.

Mr. Daige asked if the portion that he was referring to is located in the City.

Mr. Heady answered yes. He then stated the name and address of where the letter needs to be sent.

Mayor Sawnick was still not sure what the problems were. He asked the City Manager to find out more information on the project and then they would go from there. He withdrew his second to the motion.

Mr. Daige seconded the motion for discussion. He suggested that a letter be put together and let Council look at it before it is mailed.

Mr. Heady did not have a problem doing that and said that he would give them a draft copy of the letter within the next couple of days. He feels that time is of the essence because this project is going forth. The residents who live in this area have asked to be given the opportunity to have a voice on what the State does on the road.

Mr. Daige had no problem with Mr. Heady writing the letter, but he wanted to see a copy of the draft before it is mailed. He asked the City Attorney since there is some time constraints with this, could the Clerk call and get a consensus from Council before the letter is mailed.

Mr. Vitunac did not prefer using that method. He would prefer bringing it back at a public meeting so that everyone could see the letter.

Mr. White asked their Public Work's Director to comment on this project.

Mr. Monte Falls, Public Work's Director, reported that this project is a resurfacing project and about 75% of the residents live in Indian River County and 25% reside in the City of Vero Beach. He recalled that a few meetings ago Council approved a maintenance agreement for some landscaping to go in this area. To his knowledge this did not include any roadway improvements other than resurfacing. He has not received any calls in objection to the project. The project calls for a sidewalk to be built on the east side of A-1-A.

Mayor Sawnick wanted to see that the letter to come from the whole Council.

Mr. White felt that the letter should come from the Mayor.

Mr. Daige wanted to see the letter first. In this particular case he did not have a problem with having it mailed if there were no objections from Council. In the future if something like this issue is brought up, he would like to have backup material.

Mayor Sawnick restated the motion, which is to allow Mr. Heady to prepare a letter to be given to City Council for a consensus. If there is not a consensus from Council then the letter is not to be mailed. The motion passed 3-1 with Mr. White voting no.

A. FP&L Bid Original

Mr. Heady mentioned that there was bid from FP&L when negotiations were taking place before OUC was approved as their power provider and he has a copy of it. It is the same type of issue as OUC (the original versus the copy). He asked the Attorney if it was possible for him to take home the original FP&L bid so that he can compare them side by side.

Mr. Vitunac told him that would not be possible.

B. Progress of Internet connection for meetings

Mr. Heady will get some additional information to the City Clerk concerning the internet connection.

C. Still waiting for written answers from City Manager

Mr. Heady was still waiting for the City Manager to put something in writing. He said that what he received from the City Manager was the transcript from the County meeting, which both of them attended and spoke.

D. OUC Contract

Mr. Heady referred to the OUC contract that they are operating under. He said that the City Manager and the City Attorney both made some comments about him having seen what he asked for and he would like to point out that what he asked for was the original document that was on the table for City Council to discuss and debate on April 7, 2008. He said that if the original document that was on the desk is the original document that is on file, then could he ask the City Manager and the City Attorney to both certify that it is in fact the original that was on the desk.

Mr. Vitunac said that the only one who could certify to that would be Sue Hersey. He said that she has certified it. Mr. Heady made a public records request for that certification.

E. 50MM penalty

Mr. Heady asked both Mr. White and Mr. Daige if they were aware that the OUC contract has a \$50,000,000 penalty clause in it.

Mr. White said that he was told about it.

Mr. Heady then asked him if he was aware of the built-in increases that are in the contract.

Mr. White answered yes. He said that there are built-in increases in every contract, including the one that they had with FMPA.

Mr. Heady asked Mr. Daige the same questions that he asked Mr. White.

Mayor Sawnick did not feel that it was fair for Mr. Heady to be asking these questions when Council did not know that they would be asked these questions. He suggested to Mr. Heady that he put the questions in writing. He also said that it would be more productive if he would provide backup material on his items.

Mr. Daige requested that they move forward.

F. November Elections

Mr. Heady commented that the November elections are coming up and everyone on this Council, except for him, is up for reelection. He thought that an appropriate use of the

television (Channel 13) would be to have a debate on both sides of the referendum issue. He said what was interesting was that he was being asked to put his questions in writing, but he has not been able to get the City Manager to put his questions in writing.

Mr. White excused himself from the meeting at 12:28 p.m.

G) Debate on Sale of Electric

H) 8/12/08

Mr. Heady stated that at the August 12, 2008 County Commission meeting, the City Manager made a presentation to the County Commission on the value of the Power Plant. One of the things that he has been trying to do is establish in his own mind what the value of the Plant is and he has had a hard time as far as the financial documents identifying that value. Someone brought this meeting to his attention and said that the City Manager was putting value on the Plant. He thinks having this information would be helpful to the Council and to the citizens. He said especially if the referendum goes through and in order for him to make an informed decision he needs to know what the value of the Plant is. The City Manager at that time valued the Plant at being 300,000,000 and this is good information for them to have. The City Manager mentioned at that meeting evaluations that he had. Mr. Heady made a public records request for all evaluations made to support the August 12, 2008 meeting. The other item that the City Manager brought up was the whole debate about the electric issue and the concern that the City Manager had was that debates cause bonding companies to get nervous. He told the County Commission at that meeting that one of the bonding companies called the bonds that they had and asked that the bonds be paid off in full. He was not aware of this, but the video was clear as to what happened. He has since made a public records request and he received nothing back. He asked the City Manager if he could tell them what bonds were called and paid off.

Mr. Gabbard told Mr. Heady that as usual he comes to a meeting with these issues and he (Mr. Gabbard) has no idea what he is talking about. He will review the video and will do his best to answer the Council's inquiries. If there is a public document then he will get it to Mr. Heady.

Mr. Heady requested that the showing of this video be put back on the agenda for their next meeting and hopefully it will work.

I) Limiting effectiveness of Council Members

Mr. Heady mentioned that their meetings would be more effective if the Mayor didn't interrupt so much.

J) Direction City Manager selection process

Mr. Heady felt that there needed to be some debate and discussion about the replacement of the Finance Director.

Mr. Heady also mentioned that Mr. Abell recently talked to him about effectiveness of Councilmembers and he appreciated the comments that he made to him at that time. It was an honest effort to help him understand the rules and how things happen around here. Mr. Abell told him that he should go and talk to staff members before Council meetings if he has questions. He appreciated Mr. Abell's willingness to help him. He said that it is not that he does not understand some of the rules it is just that he has a very different opinion on how he feels that public business should be done. He feels that public business needs to be done in the public eye. He said that when he looks through the agenda package and has questions about different things he can only assume that when the public is looking at the agenda they have the same questions. He said when he pulls things off of the consent agenda it is his effort in trying to make sure that public business is done in the public eye.

E. Councilmember Ken Daige's Matters

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

Mr. Daige went through his Committee Reports (please see attached).

- 3. Comments**

11. ADJOURNMENT

Mayor Sawnick made a motion to adjourn today's meeting at 12:43 p.m. Mr. Daige seconded the motion and it passed unanimously.

/tv