

**CITY OF VERO BEACH, FLORIDA  
MAY 18, 2010 6:00 P.M.  
REGULAR CITY COUNCIL MINUTES  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**1. CALL TO ORDER**

**A. Roll Call**

Mayor Kevin Sawnick, present; Vice Mayor Sabin Abell, present; Councilmember Tom White, present; Councilmember Brian Heady (arrived at 6:03 p.m.), present and Councilmember Ken Daige, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

**B. Invocation**

The invocation was given by Father Richard Murphy of Holy Cross Catholic 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**

The City Clerk requested that item 7-A) “Award of RFP No. 170-10/PJW – Unit 5 Heat Recovery Steam Generator Superheater Retrofit” be pulled off of the agenda and she asked that item 7-E) “Discussion of CCNAC Meeting held on May 17, 2010” be added to the agenda.

Mr. White asked that before they adopt the agenda that comments be made from their newly hired Attorney concerning the civil lawsuit that Mr. Heady has filed, in case there are items on the agenda that he advises them not to talk about.

Mr. Charles Vitunac, City Attorney, stated that their newly hired Attorney, Mr. Randy Brennan, is scheduled to talk under Matters by the Public. However, he said that if it is Council’s wishes he will ask Mr. Brennan to speak at this time.

Mr. Vitunac continued by saying that the City was served with a Federal lawsuit by Mr. Brian Heady about ten days ago. There is a twenty-one day period given to answer the complaint and they have retained Randy Brennan to file a defense for the City. He has been told by the Florida Bar Ethics Hotline that his office cannot be the office representing them since it is a Councilmember suing them and most of the witnesses will be employees from his office.

Mr. Randy Brennan, Attorney, stated that he has been retained by the City to represent them concerning the lawsuit that has been filed by Mr. Heady. He is a licensed attorney in Florida and has been practicing law for twenty six years. He is a Board Certified Civil Trial Attorney, as well as a Certified Mediator. He has taken a look at the lawsuit that Mr. Vitunac provided to him and his firm is preparing a response, which will be filed in the appropriate time. He feels that the City has a very good defense concerning the case. He told Council that his thoughts, as the Attorney, regarding this matter would be not to discuss any of the matters that are subject to the lawsuit unless it is at the appropriate time. The matter is in litigation now and the City has not yet responded to the lawsuit. He would not want the City to compromise their position in any way by making inappropriate comments without at least having the advice of Counsel. He said if Council has any questions concerning the lawsuit his point of contact will be through the City Attorney's office. He asked Council if they had any questions concerning the case of his representation for the City.

Mr. White asked if they defend this lawsuit and the City should prevail will they be requesting that their legal fees be paid by the plaintiff.

Mr. Brennan felt that was an issue that should be pursued.

Mr. Heady said that they could make this whole thing easy and save the taxpayers money if the City Council will answer his questions. He said then the lawsuit will go away.

Mayor Sawnick returned to the adoption of the agenda and asked if there were any more changes to the agenda.

Mr. Abell made a motion to delete items 9A-2), 3), 4), 5), 6), 7), 8), 9), 10), 11) and 9B-2) and 3) from the agenda. The reason is because some of them are repetitive, previously addressed, there is no backup material, and as their Attorney Randy Brennan just said some of these items may have something to do with the lawsuit. Mr. White seconded the motion.

Mr. Heady stated that the reason for the removal as stated by Mr. Abell was because the items had been discussed before. Mr. Abell said that he gave several reasons. Mr. Heady asked if that was one of them.

Mayor Sawnick asked Mr. Heady to state if he was in favor or not in favor of the motion.

Mr. Heady told the Mayor that he wanted to make sure that he heard Mr. Abell correctly.

Mr. Abell repeated his reasons for removing the items off of the agenda.

Mr. Heady stated that the reason he would be against removal on the basis that the items have been discussed before or been before the Council is because sometimes in this City he has brought things up in front of the Council and has received an answer and then when he checked the answer was not accurate. He can give them a list of things if they

wanted to hear them. He said for an example, in the aftermath of the hurricanes he brought something up at the podium, received an answer that didn't sound to be true and when he checked slowly the truth evolved. He said after the hurricanes some City Councilmembers received City property, which they didn't pay for. They also had City employees doing their private work, which they didn't pay for.

Mr. White called for a Point of Order. He said that this matter has been going on for five years now with Mr. Heady. He said everything that was done (referring to the hurricanes) was done truthfully and to help people who were nonessential to go out and work and fix employees homes so that the employees could work on getting the electric power turned back on. He told Mr. Heady that he was reaching for straws. Mr. White then brought up the ethics complaint that Mr. Heady filed against him (same time period). He went up to Tallahassee where the hearing was taking place and by the time they got to his case five hours later one of the Committee members asked why is this even before them. His Point of Order is that Mr. Heady is out of order.

Mayor Sawnick asked Mr. Heady to speak to the issue on the items being pulled from the agenda.

Mr. Heady stated that the reasons why his items need to be discussed is because the public doesn't get truthful answers in the first place. The reason for the reconsideration of date for presentation by Dr. Faherty and Glen Heran is because they are making these presentations throughout the community and it is prudent for this Council to listen to them.

Mayor Sawnick told Mr. Heady that he could not go through every one of his items as to why he wants them heard. He said the reason why they are being pulled is because there is no backup information provided.

Mr. Heady wanted to finish his remarks. Mayor Sawnick said that he would come back to him. Mr. Heady called for a Point of Order. Mayor Sawnick asked him what was his Point of Order. Mr. Heady told Mayor Sawnick that he doesn't interrupt other Councilmembers when they have something to say and lets them finish their comments. Mayor Sawnick told Mr. Heady that he would allow him to finish with his comments if he does them in a concise way. He then asked Mr. Daige for his comments.

Mr. Daige concurred with Mr. Brennan that anything that is electric related he is in agreement of having it taken off of the agenda.

Mayor Sawnick referred to Mr. Heady's items and said that some of the items have been voted on and other items they have talked about for months. There is a way to provide a clear and concise agenda that is proper. He is in favor of removing these items. He knows that people are willing to meet with Mr. Heady to make sure that he gets these items on the agenda in a way that they can be voted on.

Mr. Heady asked the Mayor if he wanted to meet with him outside of their meeting.

Mayor Sawnick told Mr. Heady that he could meet with the City Clerk and she could explain to him the process of getting the items on the agenda.

Mr. Heady said that he had no problem with getting the items on the agenda, the problem is they keep getting taken off of the agenda, which has nothing to do with the City Clerk, it is this Council.

Mr. White called the question.

Mayor Sawnick asked Mr. Heady to please explain concisely why he wanted to keep these items on the agenda.

Mr. Heady referred to number 9D-3) "Still waiting for written answers from City Manager." He said that he is still waiting for answers from the City Manager. The City Manager reported to the County Commission that there were things that he said that were not correct and he wants to know what he said that were incorrect.

Mayor Sawnick told Mr. Heady that he could not go through all of his agenda items at this time.

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

The City Clerk asked Council to add item 7-E) to the agenda, which was to discuss the CCNA meeting that was held on May 17, 2010.

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

Mr. Heady asked that they add to the agenda the reappointments to the Finance Commission. He made that in form of a motion and it was seconded by Mayor Sawnick. He was told that even though the reappointment date for these members has expired, the members remain on the Commission until Council decides to reappoint them or not reappoint them. The Clerk has advertised for more applications for the Commission and will be bringing it back before Council on June 15, 2010.

Mayor Sawnick withdrew his second to the motion and the motion died for lack of a second.

Mayor Sawnick made a motion to adopt the agenda as amended. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

## **B. Proclamations**

- 1. Proclamation to be given to Mr. James Sammons – Requested by Councilmember Ken Daige**

## **2. Memorial Day – May 31, 2010**

Mayor Sawnick read and presented both proclamations.

### **C. Public Comment**

Mr. Bob Solari, Indian River County Commissioner, reported that two Commission meetings ago, the Commission discussed the consultant's report (GAI Consultants, Inc. study for optimization of water and wastewater utility services) and after this discussion they felt that there was a big expense of about \$40,000, which would be for a series of interviews to discuss the political will of the Commission and Councilmembers to move forward. The County Commission could not understand the reasoning for this and felt that a joint meeting could save the taxpayers up to \$40,000. Therefore the County Commission is requesting a joint workshop on June 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> to discuss the charge to the consultants. He said that at their first joint meeting, Mr. Abell made a motion to participate in the process of obtaining an independent consultant to investigate the consolidation cooperation of partnership. This is the reason the Commissioners' did not understand the reason for this portion of the consultant's report and which is why they would like to have this workshop meeting to discuss the will of the Commission and Councilmembers.

Mr. Heady made a motion to have a joint meeting with the County Commission on June 2, 2010.

Mayor Sawnick said that Mr. Heady's motion was not in order at this time. He said that when they discuss this under City Manager's Matters, he would be more than willing to put this item on their June 1, 2010 agenda so that the public has proper notice on what they would be voting on.

Mr. Heady asked why his motion was not appropriate at this time.

Mayor Sawnick said they were under Public Comments on their agenda and the public should have proper notice of the meeting therefore he would not recognize the motion at this time.

Mr. Heady asked is this a rule of the Council.

Mayor Sawnick explained that he is the Presiding Officer and Council has to ask permission to make a motion and any Councilmember could be denied.

Mr. Heady took exception to the rule. He made a motion to appeal the Mayor's decision. The motion died for lack of a second.

Mr. Gabbard said at the Consultants Competitive Negotiation Act Committee (CCNAC) meeting held on Monday, Mr. Jason Brown and Mr. Eric Olson (CCNAC members) said that they were unclear as to the scope of the work that the Consultant has been asked to

do and they were going to meet with the Consultant and report back to the County Commission.

Mr. Solari said that Mr. Peter O'Bryan, Indian River County Commission Chairman, planned to come and speak to the Council prior to the CCNAC meeting, which is why he is before them tonight.

Mr. Gabbard said that the two CCNAC members from the County were going to speak with the Consultant and then report their findings to the County Commission. He asked if this has occurred.

Mr. Solari suggested that they go ahead and vote on holding the joint workshop meeting. He said that they would be happy to hold the workshop meeting in Room B-101 of the County Administration Building.

Mr. Abell said that he spoke with Commissioner Gary Wheeler a few weeks ago. He asked if it would be possible to ask the Consultant to come forward with the questions that they were thinking of asking individually to the individual Councilmembers prior to any meeting that they have and to also address economic concerns.

Mr. Solari said before the Consultant has discussions with the elected officials they should have the financial information and have the Consultant report on it.

Mr. Abell felt that the Consultants could come up with questions to submit prior to any joint meeting.

Mr. Solari said the Commission feels that it would not make any sense for them to answer any questions until they have more specific financial information that the Consultants were suppose to generate. They did not feel there would be a benefit in answering the Consultant's questions prior to receiving information.

Mr. Gabbard said there was a motion made at the CCNAC meeting to proceed, which passed 4-2. He asked does that have any weight with the Commissioners or do they want to throw out all the work that has been done by the Committee.

Mr. Solari answered no. He said that the Committee could have taken the wrong path.

Mr. Gabbard said that the Committee has met about ten times and he attended the joint meeting when the Committee was formed and he understood their charge. He noted that four members voted to proceed and two voted against it, which were County employees.

Mr. Solari read the request for qualifications (RFQ) and he did not see anything about interviewing elected officials. When they voted to go ahead with the RFQ, they thought they were asking for a certain body of information, interviews with elected officials was not included in that information. They thought that the motion made was the expression of political will, which was more than sufficient for the Consultant.

Mayor Sawnick said that the City Council would discuss this and would continue to work with the County.

Mr. Don Jennings, 4601 A1A, said that he has been watching City Council meetings and there is a disaccord. He said that things need to be out in the open. He said that they put things on the agenda and then take them off. He felt that there is a City Councilmember who is for the people and tries to lower costs, to cut excessive paperwork and a lot of red tape in government. He said that West Palm Beach is selling houses as underwater sales, which is where they sell for more than what is owed. Forty-four percent of their homes that were sold were underwater sales, Martin County had 43% and St. Lucie County had 66%. He did not have any information on Indian River County. He said that it is not like it used to be. It costs more now to live then it did last year. He stated that he called Mr. Heady on Friday, April 30, 2010, to give him an encouraging word on what he is trying to do for the people. He received a return telephone call from Mr. Heady on Sunday. He felt that Mr. Heady was the one who was fighting for the people. He reported that in July, Gainesville, Florida would be looking at a 25% reduction of City employees. He felt that the City of Vero Beach needed to tighten their belts.

Dr. Harold Cordner, 12635 North A1A, said that he was here representing himself as well as the Florida Society of Interventional Pain Physicians. He felt that a temporary moratorium was a good idea. He reported that there were over 107 pain clinics in Broward County and they are starting to head up here. He encouraged the Council to consider passing the Ordinance on Pain Clinics (under Public Hearing on tonight's agenda). He felt that they were doing the right things and applauded them.

Mr. M.J. Wicker, 1036 29<sup>th</sup> Street, wanted Council to know that he was serious about what he wants to do with the golf course. He read a letter in support of reopening the Dodgertown golf course into the record (please see attached). He mentioned that it was indicated in a recent telephone conversation with Mr. Gabbard that rent was an issue. In a letter that he submitted to Council earlier, which stated that he was told by Mr. Gabbard that the property would be leased for \$1.00 a month. He said that he did a lot of work based on that comment and he hoped that he was not wasting his time and Council's time. He felt that this community needed this golf course.

Mr. Gabbard reported that they received a letter that was sent to the County Administrator several days ago regarding the golf course. He reported that when the County leased the City the nine acres it was under the understanding that the City would be using it to redo the golf course. The City put out an RFP in 2007 and one of the things that Council decided was that they would entertain proposals at \$1.00 per year. He showed on the screen the lease property and stated that since MiLB leased the property that property was not under control of the County. He did not think this property could be leased to anyone until they clarify whether or not they would be allowed to use it because it does take a big portion of the number one fairway. He noted that they were trying to resolve this issue with the County. He reported that there is at least one other organization who is also interested in restoring the golf course. He reported that the

County Administrator expressed an interest in putting softball fields there to enhance the situation with MiLB. The City is not dragging their feet in trying to get these issues resolved.

Mr. Heady said the City Manager reported that the County was interested in putting softball fields out there. He asked doesn't the City have a 45 year lease on the property.

Mr. Gabbard answered yes, there is a lease for the nine acres.

Mr. Heady said if the City has a lease on the land, then the County cannot do anything without the City's permission.

Mr. Gabbard explained that the nine acres are leased to the City until 2045. But, the other piece of property is the area under lease with MiLB, which crosses the number one fairway. Therefore, they do have something to say about it. There also is a drainage issue. He reported that there were a number of issues that they need to resolve before they can send out a request for proposal.

Mr. Heady asked has the other interested party sent any written notification.

Mr. Gabbard reported that he provided Council with that information. They have been on site and have analyzed what it would take to revitalize the golf course and are very serious.

Mr. Heady said the information that was provided to Council was basic corporate information and not anything specifically pertaining to this golf course. He asked is there anything in writing from this organization that pertains to this old Dodgertown golf course.

Mr. Gabbard answered no.

Mr. Heady said the only thing the City has at this time is what they received from Mr. Wicker. He said that Mr. Wicker's concern was not with the City or the County, but his concern and negotiations would be with MiLB because they lease the property. The portion of the fairway in question could be made innovative. He said that he spoke with Mr. Craig Callan about this and was told that he would love to cooperate with them. Mr. Callan told him that he would be more than happy to have the golf course brought back. Mr. Heady said that Mr. Wicker and his investors would be restoring the golf course and the property would be placed back on the tax roll. He said that this is a recreational opportunity and it seemed to him that Mr. Wicker was the only investor group that is willing to put anything in writing and they should at least listen to what he is presenting to the City.

Mr. Gabbard said Mr. Heady has made some very valid points. But, the issue is that MiLB's deal with the County is for five years. Mr. Wicker would have to spend money

for a five year lease. He did not think anyone would sign a contract like that if they thought that in five years their investment would go away.

Mr. Heady said the only thing Mr. Wicker would need to do is negotiate a deal with Mr. Callan to use the small portion of the first fairway for five years and after that if the golf course is restored and in play for the public then the property reverts back to the County. He did not see a problem.

Mayor Sawnick asked Mr. Gabbard to get information on the golf course together for the next Council meeting.

Mr. Daige said there are a number of details with this lease and with this property. He would like to have a Special Call meeting to discuss just this issue. He felt that it would be prudent for them to set a meeting aside after staff has all the materials together and then discuss it. After they discuss this, he would ask that the agenda has room for public input.

Mr. Wicker asked if MiLB has this lease just for five more years and they choose to go elsewhere then why would they consider building ballparks and soccer fields on a 50 year old historical site.

Mr. Heady asked are there any answers to Mr. Wicker's question.

Mayor Sawnick agreed with Mr. Daige that they should have a Special Call meeting to discuss this.

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

Mr. Daige pulled item 2D-4) off of the consent agenda.

Mr. Heady first pulled item 2D-2) off of the consent agenda and then realized that he wanted item 2D-1) pulled off of the consent agenda.

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

#### **1. Regular City Council Minutes – May 4, 2010**

Mr. Heady referred to page 1, last paragraph, where Mr. Vitunac states that "their rules do require that there be some type of backup provided so that the public, staff and Council are aware as to what is going to be discussed and can be prepared for the item." He asked Mr. Vitunac to provide him with a copy of those rules.

Mr. Heady referred to page 3, where the Mayor was in favor of removing his items because there was no backup material provided. He asked the Mayor to provide him with

backup on different cities that incorporate time limits where the City Council has imposed rules on their City Council members that he said exists.

Mr. Heady asked that on page 16, second paragraph, it should read that the increase was an increase to the 5% portion of the total cost. And on page 29, the first sentence should say Mr. Daige instead of Mr. Heady asked the City Attorney if an individual Councilmember could take the City to court. He also referred to page 28, where it states that Mr. Daige requested to the City Manager to put in writing his comments and thoughts that were made to the County Commission at their 8/12/08 meeting to get it on the record once and for all so that they can put this issue to bed. Mr. Heady said that he still has not received those comments from the City Manager.

Mr. Daige made a motion to approve the minutes as corrected. Mayor Sawnick seconded the motion and it passed unanimously.

2. **Regular City Council Minutes – April 20, 2010**
3. **Fuel Oil Storage Tanks/Plant Stack Painting – Final Payment**

These items were approved under the consent agenda.

#### 4. **Monthly Capital Projects' Status Reports**

Mr. Daige had some comments to make about the capital improvements being made at the Airport. He wanted to make it clear that he was not recommending any funding or approval for cutting or removal of trees until he sees all the paperwork with details. He said that there may be some grant money available to do this work. He read the paragraph of the memo having to do with the Obstruction Survey and he asked before any approval that an addition be added to the paragraph. He wanted the City Council to approve the studies first to make sure that they wanted to move forward with the cutting of the trees. With that addition to the paragraph he has no problem with moving this forward.

Mayor Sawnick made a motion to accept the monthly project report with this amended language. Mr. Abell seconded the motion and it passed unanimously.

### 3. **PUBLIC HEARINGS**

- A) **An Ordinance of the City of Vero Beach, Florida, instituting a one hundred eighty (180) day moratorium on the issuance of development orders to establish "Pain Clinics" or "Pain Management Clinics" within the City of Vero Beach to allow time for the City staff to further review regulatory options and formulate and adopt regulations for these Clinics; providing for severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, reported that this was the first of two public hearings on this Ordinance.

Mayor Sawnick opened the public hearing at 7:11 p.m.

Mr. Bob Solari commented that after listening to the Doctor who spoke earlier and stated that there are 107 Pain Clinics in Broward County, he asked Council that as they go through this and generate information if the County could get the Council's authorization to have City staff speak with County staff in order to get them up to speed on this as fast as possible. He felt that a unified approach would probably be the best.

Mayor Sawnick agreed.

Mayor Sawnick closed the public hearing at 7:13 p.m., with no one else wishing to be heard.

Mayor Sawnick made a motion to set the second public hearing for June 1, 2010. Mr. Daise seconded the motion.

Mr. White said that he read in the newspaper that there was a Pain Clinic on US1. He asked how did this Pain Clinic get permission to open.

Mr. McGarry reported that they came in before the moratorium was discussed.

Mr. White said that this was discussed months ago. He said that Council was not notified of any Pain Clinic coming into Vero Beach. He was upset when he picked up the newspaper and read that there was a new Pain Clinic in the City of Vero Beach when the Council said that they did not want to have any in this area.

Mr. McGarry said that it was already in the pipeline and approval had been given for a change of use. He said that legally it is very difficult to stop something that is already in the system.

Mr. White expressed to the City Manager that he did not want to read something in the newspaper that he didn't know anything about.

Mr. Gabbard explained that he did not know there was a Pain Clinic going in and he was not sure if Mr. McGarry even knew there was a Pain Clinic going in. They (applicant) came in and applied for a business license to operate a clinic. He said that he was following what was going on in Stuart and received a copy of their Ordinance and they are aggressively going after this. There was another Pain Clinic that had been operating for awhile, but has since closed. He said there is one Pain Clinic in the County and two or three in Sebastian. He said that they were aggressively pursuing this and they have to pass this Ordinance.

Mr. White agreed that they need to pass the Ordinance. His problem was that he was not informed.

Mr. Gabbard said that he would have informed Council if he had known about it. He said that they would get this under control and would not allow this to continue.

Mr. White said that they have to be aggressive on this. He wanted them to be proactive.

Mr. Daige said that when this came before Council at their last meeting, he was under the impression that they had to get this Ordinance through and that they did not know of any Pain Clinics that were going to open. He was not told that there was a Pain Clinic already in the pipeline. He said that this Ordinance speaks to not allowing these types of Clinics to operate. It was his understanding that this entity applied for a business license to operate. It sounds to him like there were some gray areas when this came before staff. He asked the City Attorney to check into how they applied for the license and what type of paperwork was filled out to see if there were some gray areas that they could renege on issuing the license. He felt that the City Council has the right to renege a license if they have a problem with any business that operates in this City and if they feel it would have an adverse effect on their citizenry. He would like to get those answers so that they could backtrack and pull that business license. What he was hearing from Mr. McGarry was that they did not know it was a Pain Clinic and it slipped in. He would like to know how this slipped in.

Mr. Vitunac said that a request was made to pay a business tax. The use at the time it came in was legal and it is still legal. The State has passed a law, which makes severe regulations that go into effect on October 1<sup>st</sup>. If the Pain Clinic is operating illegally now then the Police Department could take criminal action.

Mr. Daige said the guidelines coming down from the State are guidelines that they could institute into this Ordinance. This company that has already applied for their occupational license tax would fall under those guidelines and not be grandfathered in as they are now.

Mr. Heady said that Mr. White was correct and justified in his outrage. It is clear that this Council was not in favor of this and they were told by staff not to worry about this because they had this under control. He said that he requested an emergency moratorium and staff talked Council out of it stating that it was not needed. If they had done this moratorium they would be in better shape than they are now. He said the comments with respect that they were asked if they came in asking for a business license, the operative word was that they asked. This was not something that they had the right to do, if they had to ask. If they had the right, they would just go and do it. The City should have passed the moratorium. He asked for a 10-minute break in order to give Mr. McGarry time to pull the file so he could see the date that this came into the pipeline.

Mr. Daige said it is in the City Code that as a City Council, if they see that a particular business is having an adverse effect on the citizenry, they have every right to put a stop to

this now. For some reason the information did not get to Council the way it should have, but he wants this stopped now.

Mr. Heady made a motion to take a break while Mr. McGarry gets the documents. Mr. White seconded the motion.

Mayor Sawnick asked could the Council do something about this right now.

Mr. Vitunac said that if they do it would be his recommendation that it is not legal. No one said that it was not necessary to do an emergency moratorium. He said that he stated that it was not legal. He said that his office has been reviewing this for the past month and are giving the Council a proper legal way that would go into effect. To do anything other than that and it is challenged in court they would lose. If Council wants to protect the people then they would do it legally, which means adopting this land use Ordinance at a public hearing on June 1<sup>st</sup>. He said that there is no way to do an emergency moratorium on land use issues.

Mr. Daige said to make this work with the adverse affect that he feels it would have on the citizenry, he hoped to get Council's full support because when they have full support of the Council it would be hard to overturn the decision if it does go to court.

The motion to take a break passed unanimously.

Mayor Sawnick said there was a motion on the floor to set the public hearing for June 1<sup>st</sup>.

Mr. Heady said that Dr. Cordner would like to speak.

Mayor Sawnick explained that the public hearing has been closed.

Mr. Heady felt that Dr. Cordner had something valuable to say and it might have an impact on his vote.

Mayor Sawnick said that they were not voting to institute the Ordinance, they were voting to move it to a public hearing.

Mr. Heady asked if Councilmembers did not have a problem with listening to the Doctor, that they listen to the Doctor.

Mr. Daige and Mr. White did not have a problem with letting Dr. Cordner speak.

Mayor Sawnick reopened the public hearing at 7:27 p.m.

Dr. Cordner said that he has been a Board Certified Pain Management Specialist in Vero Beach for 16 years. He has been watching this progress and has seen everything as far as what the Pain Clinics are doing now. He cautioned Council as far as limiting this to Pain Management Clinics because what they are doing now is opening urgent care centers or

going under different names. The Legislation that just passed has a grandfathering period and would not take effect in October. It would take effect on July of 2011.

Mayor Sawnick said that they need to move the Ordinance to public hearing and are not deciding anything at this time. He asked for a vote on moving the Ordinance to public hearing.

Mr. Heady asked before they vote on this, could they have discussion.

Mayor Sawnick answered no; discussion is over at this time.

Mr. Heady called for a Point of Order. He said that it is so hard doing anything with him (Mayor). He said that he just had a little discussion. He said that they were going to vote on something that is important to the community. He asked do you mind a little discussion.

At this time, Mayor Sawnick called for a vote on the motion.

Mr. Heady again called for a Point of Order. He felt that they needed discussion on this.

Mr. White suggested that they vote on the motion after the break.

Mr. Daige said if any Councilmember had more discussion on this he did not have a problem hearing it. He would still like to bring up what he said about their Ordinance as far as that he feels it would have an adverse effect.

Mayor Sawnick asked Mr. Heady when he makes a Point of Order to make sure that he states what rule is not being followed and then he would address that issue.

Mr. Heady asked Dr. Cordner if it was possible for him to get with the City Manager to add something in the Ordinance so that when they vote at their next meeting that something is included that covers what Dr. Cordner was talking about. He said they could work with the City Attorney to add the language to the Ordinance. It would not be a major change.

Mr. Vitunac said that he would be happy to work with Dr. Cordner.

Mayor Sawnick asked the Clerk to poll the Council on the motion to move the Ordinance to a second public hearing on June 1, 2010.

Mr. White asked are they going to wait to vote until Mr. McGarry brings back the information on the clinic.

Mr. Heady agreed with Mr. White that they should wait until after the break to vote because then they could see when the clinic came into the pipeline.

Mr. McGarry could not guarantee that he would be able to find the information because his staff was not present tonight.

Mayor Sawnick said the information would not change anything with the vote.

The Clerk polled the Council and the motion on moving the Ordinance to public hearing on June 1, 2010 passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes and Mayor Sawnick yes.

The Council took a 10-minute break at 7:35 p.m.

Mayor Sawnick said that the information requested could not be found at this time. He suggested that this is advertised well.

Mr. Vitunac wanted to wait and have their public hearing on June 1<sup>st</sup>, which would give him time to meet with Dr. Cordner for guidance on the Ordinance. He felt by acting tonight without sufficient information could put them at risk.

Mr. McGarry reported that it was approximately two months ago when they approved the change of use for the new Pain Clinic and business tax was paid.

Mr. Heady made a public records request for all applications for pain clinics that have been made with the dates on them. He wanted to track this one to see when it started and who is involved.

Mr. Daige heard what the City Attorney was saying. But felt that the City Council was charged with the general safety of their citizenry and if they feel they can do it then it needs to be done tonight. He hopes to have the full support of the Council.

Mr. Daige made a motion to revoke all licenses and permits issued for a Pain Clinic located at 1146 21<sup>st</sup> Street, Vero Beach, Florida.

Mr. McGarry reiterated that a change of use was approved and the business tax has been paid.

Mr. Daige restated the motion. He said that his motion was to revoke all licenses and permits for the Pain Clinic in question and that this be brought up at their June 1, 2010 meeting.

Mr. Heady suggested having a moratorium put in place on any further action.

Mr. Heady seconded the motion made by Mr. Daige.

Mr. Heady stated rather than revoke what has already been done, place a moratorium for 90 days.

Mr. Daige amended his motion to place a moratorium for 30 days in accepting applications relating to Pain Clinics. Mayor Sawnick seconded the motion and it passed unanimously.

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

- A) A Resolution of the City Council of the City of Vero Beach, Florida, expressing its opposition to Offshore Oil Drilling in Florida Waters as having a deleterious impact on Florida's Environmental and Economic Resources; directing the City Clerk to transmit a copy of this Resolution to various State and Federal Officials; providing for an Effective Date.**

Mayor Sawnick read the Resolution by title only.

Mayor Sawnick reported that this is a similar Resolution that Ft. Lauderdale has passed and even though this is a State and National issue, he thought that this would be a good time to bring this up. He expressed that they need to stand together with their sister cities whether they are on the East or West Coast. He noted the negative impact that they are seeing in the Gulf, which possibly could impact them sometime in the future. They need to let their State officials know what their stance on this is. He said that the Governor is looking at putting an item on the November ballot to let the voters decide if there should be offshore drilling.

Mayor Sawnick made a motion to accept the Resolution. Mr. Daige seconded the motion.

Mr. White commented that BP (British Petroleum) is not a U.S. owned oil company. Also, the most that they can do to make this Resolution work is add to the Resolution that they express opposition to offshore oil drilling within the three mile limit in Florida waters. He explained that they have no control over anything beyond three miles. He said that he would approve the Resolution if the three mile limit is inserted.

Mayor Sawnick had no problem with that change.

Mr. Heady thought that if three miles is the legal limitation then there is no reason why they have to put that in the Resolution.

Mr. White commented that this is a "feel good Resolution" and the three mile limit is letting people know we are allowed to go out three miles.

Mayor Sawnick and Mr. Daige amended the Resolution to add the three mile limit to the Resolution.

The Clerk polled the Council and the motion passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

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

- A) An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Comprehensive Plan Future Land Use Map by Changing the Land Use Designation from C, Commercial (up to 15 Dwelling Units/Acre) to RH, Residential High (up to 15 Dwelling Units/Acre) for the property generally located East of the Northeast corner of the Intersection of 21<sup>st</sup> Street (US Highway 1) and 10<sup>th</sup> Avenue, including all of the replat of Henning's Subdivision that lies North of 21<sup>st</sup> Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more or less, and providing for an Effective Date.**

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry explained that both 5-A) and 5-B) are companion Ordinances and he recommended that both Ordinances be approved and a public hearing for both Ordinances to be heard on June 15, 2010.

Mr. White referred to page 2, under existing land use designation. He wanted to know why there was a difference between 15 dwelling units per acre and then zero acres.

Mr. McGarry explained that there are different zoning districts in the commercial district and some don't allow any density.

Mr. White said by approving this Ordinance they would be allowing 15 units per acre and right now there is zero. Mr. McGarry said that was correct under the current zoning.

Mr. White noted that it said in the Ordinance that a traffic study would not be needed.

Mr. McGarry explained that they (the applicant) will need a traffic study when they come in for development review.

Mr. White then referred to page 5, Article V, (which he read) and said that they were going from 0 to 15 dwelling units per acre. He thought that would be an increase in density.

Mr. McGarry said no because the request to zoning would be to 12 acres. It does not preclude them from rezoning property to a different density, but it precludes them from coming up with another density.

Mr. White referred to the letter from Kimley Horn confirming that no traffic impact analysis or statement is required. He asked if they are approving RM-15 or RM-10/12 zoning. Mr. McGarry said that they are approving RM-10/12, unless there is a typo in the Ordinance. He explained that the land use map has a different density. He expressed to Council that because this is a quasi judicial hearing and the applicant is not here for the

hearing they should not be discussing this. He asked Council to call him if they have any questions.

Mr. Heady wanted to know why it was alright for them to call him and ask questions, but they cannot ask the questions here at this meeting.

Mr. McGarry explained that a Councilperson could talk to staff out of the quasi judicial process.

Mr. Daige stated that this entity approached the City do something at this location and he would like to know what they are proposing. The applicant has talked to staff and staff has given them the impression that the City Council will pass this or it wouldn't have gone this far. He wanted to know some of these answers before it goes to a quasi judicial hearing.

Mr. Vitunac explained that with the future land use plan, an applicant could come in and ask to change the plan without giving any particular use. He said what the Council has to judge is all the uses that could go into the land use plan that the person wants is allowed. You could ask an applicant what he proposes to do and he could tell you one thing and then change his mind once the approval is given.

Mr. Daige brought up their current Vision Plan and said that at the neighborhood meetings these are some of the concerns that the citizenry ask when they do the land use changes. The Vision Plan indicates that there are master plans drawn up for different areas. He felt that the surrounding neighborhoods would like to know what is going on. He recalled at the Vision workshops that were held that this is what the people wanted to see and why they asked for Master Plans. He said that a lot of these plans have not been put into place. He asked with this land use change, is it just for this property. Mr. McGarry answered yes. Mr. Daige said obviously from what the Planning and Development Director said earlier, he is not going to tell them what the plans are for this property. He asked while they are talking about the entity, is the company out of State. Mr. McGarry said that if there is an out of State address on the application then the company must be out of State. Mr. Daige then said it refers to Indian River School District and has a builder's name. He asked if they are the licensed contractor for the site. Mr. McGarry was not sure.

Mr. McGarry pointed out that the applicant wishes to expand their convalescence center. He said the problem is that Council, as the decision makers, cannot have that enter into their decisions.

Mr. Daige understood that and said that was not part of his decision.

Mr. White said when this does go to public hearing that he would like to see notices sent to the surrounding neighbors within 500 feet of the property. He felt that the neighborhood should be informed that there is going to be some changes.

Mr. Daige was in agreement with Mr. White and would like this incorporated in the event that this moves forward.

Mr. McGarry stated that the property owners within 500 feet were already notified prior to the Planning and Zoning Board hearing. He said at that meeting there were not too many questions asked. He said that they did receive some calls from people who were interested on what the applicant was going to do.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for June 15, 2010. Mr. Abell seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

- B) An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Official Zoning Map by Changing the Zoning Designation from C-1, Highway Oriented Commercial to RM-10/12 Medium and High Density Multiple-Family Residential District for the property generally located East of the Northeast corner of the Intersection of 21<sup>st</sup> Street (US Highway 1) and 10<sup>th</sup> Avenue, including all of the replat of Henning's Subdivision that lies North of 21<sup>st</sup> Street (US Highway 1) and a portion of Block 1, Citrus park, containing 1.76 acres, more or less, and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. White made a motion to approve the Ordinance for first reading and set the public hearing for June 15, 2010. Mr. Abell seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes and Mayor Sawnick yes.

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

None

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

- A) Award of RFP No. 170-10/PJW – Unit 5 Heat Recovery Steam Generator Superheater Retrofit**

This item was pulled off of the agenda.

- B) Strategic Land Purchase**

Mr. Eric Menger, Airport Director, said this property is currently owned by Sandler at Pinecrest, LLC. He stated that recently the listing Broker indicated that they would be interested in selling a portion of the property. He said that staff looked into funding opportunities from the Federal Aviation Administration (FAA) and the Florida

Department of Transportation (FDOT). He noted that FDOT indicated that a potential grant in the amount of \$1.6 million dollars may become available for aviation use. He pointed out on the doc cam the property they were talking about (on file in the City Clerk's office). He then showed a potential concept plan for the property. He said that they could use a portion of the grant money to purchase the property in order to create a mixed use facility. He noted that FDOT was willing to transfer funds for this project, which would take about three months. If Council is not willing to do this then staff would back off. He said it would be nice to have an "Eco-Research Park," which could serve the community well. He said that the Airport would lease the property to private developers. He noted that he would like to have an increase to the terms of the lease. He explained that currently 30 years is the maximum allowed for aviation leases, but for non-aviation parcels, such as this, they could look at longer term leases. He said that this property would be adjacent to the Enterprise Zone and they could include this in the Enterprise Zone, which gives businesses in the area tax advantages.

Mr. White said that he has been contacted by a few people who live on the other side of 26<sup>th</sup> Street who are worried about what is going to occur on this property. He wanted assurance that if they decide to move forward with this, that there is a buffer for the residents on the 26<sup>th</sup> Street side.

Mr. Menger did not want to get too far ahead because at this point they were only looking at the first step, which is to get Council's direction to proceed to the next phase. He noted that the next phase would be to look at getting an appraisal and to negotiate purchase price, which they would then bring back to Council. He said that at some point a site plan would need to be put together. He noted that the concept plan that he showed on the doc cam was to give some ideas for the property.

Mr. White said in essence they would be taking out five holes of the old Dodger Pines Golf Course and the Clubhouse.

Mr. Menger said that was correct.

Mayor Sawnick said there was a member of the audience who would like to speak on this item. Council agreed to allow the public to speak at this time in the meeting.

Mr. Jeff Thompson, Local Developer, said that he developed a 14 to 15 acre Industrial Park on 41<sup>st</sup> Street and he spent a lot of energy and money developing it. He did not feel that they needed to spend taxpayers' dollars on this. He said that this is kind of like using funds against the private sector. He said did not feel it is right for the City to own the property and lease it out. If the City is going to develop it then they should develop it and sell it outright. He noted that there was a lot of empty property along 41<sup>st</sup> Street. He did not feel it was right for him to have to compete against the City, County or the State. He noted that he was all for the Enterprise Zone, but could not support this proposal at all. He did not feel that the City should spend any money in moving forward on this project.

Mr. Toby Hill, 685 Lake Drive, asked Council to consider that this is an inappropriate role for government. He said that it was not government's business to get into development. He said that the City would be competing head to head with commercial developers. Governmental entities do not come under the same premarket forces that commercial developers do. He was opposed to this. He said that there were things the City could do to spur development in order to help the economy, such as passing Ordinances, provide tax abatement, etc., to provide incentives that would drive developers to look at land and to take the risk. He encouraged Council not to spend another dollar on this and not to compete with private industry.

Mr. Danny Delisle (spelling may be incorrect), 63 27<sup>th</sup> Place, felt that they should know how much land is available to develop at the Airport and how many years that build-out would take before they add more square footage to that build-out. The big problem they have is that legacy costs are killing every industry in the County and all they would be doing is adding more legacy costs. He asked who is going to pay for this operation facility later when all this money is used to purchase this land. As far as jobs, there are no jobs in this County now. He said that he has a group of volunteer business leaders who would love to put a conceptual plan together for this property at no cost to the City.

Mr. Daige said the three men who just spoke were in the development community and are local citizens. He said that the way he found out about this was that he received a telephone call from the City Manager who discussed with him (Mr. Daige) the possibility of purchasing this property and that they would have an open discussion at the City Council meeting. Then in newspaper a reporter interviewed Mr. Menger and there were a number of things that appeared in that article that he was not in agreement with. He was not aware that the Airport Director would be giving all his input to the news media first. He read a portion of the article, which stated "before the housing market slump that killed many planned housing developments in the State. The 336 acres that once made up the golf course was to be developed as Heritage Reserve Subdivision." Mr. Daige said that he attended the meeting a few years ago and the reason this project was killed was because the development entity at the time wanted a special taxing district there and Council did not want to do that. He said that he was not in agreement with the Airport Director's plan. He said that he spoke with local developers who asked him to really think about this. He said that there is a lot of open inventory in this County and they would be adding more to it. As a City, they might be able to purchase the property later on down the road at a better price. He noted that the City leases a lot of property at the Airport and their lease payments are hefty. In the future the City might be able to purchase property at a good price and pay on the loan and not have to pay to the Airport Enterprise Fund. He was not in favor of moving forward with this. He felt that they would be putting a burden on the private enterprise.

Mayor Sawnick was in favor of the idea. He could see Mr. Daige's point as well as the three gentlemen who spoke tonight. He asked is there a time frame of when the State money would be available.

Mr. Menger said the money would go back to be used for a previously approved project.

Mr. Vitunac asked Mr. Menger if he was required to develop this in a commercial manner or could they keep it as open space.

Mr. Menger said that they would not be required, but FDOT would be giving them the grant money with the idea that it would ultimately become a revenue producing property. He said that the Airport's purpose is to try to make sure they operate in the profit so they don't have to use tax dollars.

Mr. Vitunac asked what about the idea of protecting the perimeter of the Airport as a buffer.

Mr. Menger said that would be a benefit. He understood and respected the opinions that were given today. But, the Airport would not be a developer. They would simply be a facilitator.

Mr. Heady said regardless of the final outcome of Council's position on this, he had some questions that he would like to have the answers to. He said that during World War II, some of the Airport property was purchased by the government under eminent domain. After the War, the FAA turned the property over to the City and it was his understanding that there were some deed restrictions. He asked for a copy of a map so that the Council could see the total land that was involved in the transfer to the City. He also would like to see if this parcel of land was included. He would like the document that had the land use restrictions. He requested the total vacant land available now at the Airport and if there were any projections with respect to when that build-out would occur. He requested to receive this information before their next meeting. He said that he would like to have this information regardless of what Council decides. He said that it was interesting that one of the selling points for doing this was that it was not a good location for 750 homes. He said that he was not on Council when they approved the 750 homes, but it was interesting that staff now states that the development that was approved was not a good location.

Mr. White asked to allow Ms. Helen Castletine, from the Chamber of Commerce, speak regarding the Enterprise Zone.

Mrs. Helene Castletine, Economical Development Director with the Indian River County Chamber of Commerce, said that she had mentioned to Mr. Menger when they heard about this proposal that it does fit in with the Enterprise Zone Development Agencies Strategic Plan. There were a couple objectives that talk about creating a favorable environment for new business creation and existing business expansion. She said that she respects the comments that were made tonight. She felt that the concept was good and it does fit in with the Enterprise Zone Strategic Plan.

Mr. Abell felt that it was worth investigating since nothing is happening on the property.

Mr. Menger showed the steps that would follow if Council gave him instructions to move forward on this (please see attached). He said that his only concern with not moving ahead now is they might not be able to do this in the future.

Mr. White asked who approached who about this property.

Mr. Menger said that he approached the listing broker.

Mr. White asked if they decide not to look at this right now, is he correct that they would not lose the grant funding.

Mr. Menger said that was correct. He said that the opportunity is now. He said that even if this is not approved by Council, the concept is out there for someone to take and possibility to make something happen.

Mayor Sawnick asked if Council was to approve this right now, how much staff time is going to be taken with this project.

Mr. Menger said they would need 30 to 60 days. He explained that he would first send out a letter of intent and then get appraisals for the property, which would cost about \$4,000. Then they would come back to Council in July.

Mr. White made a motion to have a 30 to 45 day moratorium on this decision in order to investigate this further. Mr. Sawnick seconded the motion.

Mr. Daige said that noise issues would be coming up again. He said that there is a possibility to look at other grants to purchase this property for just noise abatements. He said that they could put in bike paths and greenways.

Mr. Menger said that was not possible.

Mr. Daige said that he would like the City to have control of the land and not the Airport. He was in favor of Mr. White's motion. He felt that they should not be adding any more inventory or industrial parks at this time. He had a problem with the lobbying that was done for this.

Mr. Menger said that he was not lobbying, he was just answering questions from the Press.

The motion passed 3-2 with Mr. Heady and Mr. Abell voting no.

### **C) Request for Council Approval – Electric T&D Reorganization**

Mr. John Lee, Acting Electric Utility Director, explained that when Mr. Sloan was with the City they knew that there would be some people retiring in the T&D department and when that happened they would look at reorganizing the Department. He said that those

retirements have occurred and what Council has in front of them is the proposed reorganization.

Mayor Sawnick asked what would be the actual cost savings for the City once this reorganization occurs.

Mr. Randall McCamish, T&D Director, said that they would be looking at between a \$300,000 to \$500,000 savings in next year's budget.

Mayor Sawnick made a motion to approve the T&D reorganization as proposed. Mr. Daige seconded the motion and it passed unanimously.

#### **D) Internship Program Policy**

Mr. Robert Anderson, Human Resource Director, read the Internship Program Policy statement (attached to the original minutes). He explained that if Council adopts the policy it would be an amendment to their Personnel Rules.

Mayor Sawnick made a motion to adopt the Internship Program Policy. Mr. Daige seconded the motion.

Mr. Heady asked who requested the policy.

Mr. Anderson explained that the City Manager asked him to draft a policy. He said that there are currently two people working in GIS as intern students and there is more interests from students in doing this, so that they felt that they should have a formal policy in place.

The motion passed 5-0.

#### **E) Report from CCNAC – Meeting held on May 17, 2010**

Mr. Rob Bolton, Water & Sewer Director, reported that the CCNAC met yesterday and there was a discussion on what the Councils' and County Commission's votes were regarding the contract. He told the Committee that there was a 5-0 vote from the City of Vero Beach City Council to move forward with the proposal. He said that Mr. Cadden reported that the Town of Indian River Shores also voted 5-0 in favor of moving forward with the proposal. Then the County gave their update and said that the County Commission did not vote in favor of the proposal. The discussions that came out of the meeting on Monday was that the two representatives sitting on the Committee from the County were going to go back and meet with the Consultant to find out if there were some items in the proposal that they had missed. He agreed that after reading the proposal that there may be some clarification issues on the County's part. However, at the meeting that they held on April 15<sup>th</sup> the whole Committee agreed with what was in the proposal, which is why he brought it to Council. The intent of what they wanted in the proposal was to collect the data, review the data, come up with some different

scenarios and then sit down with staff and discuss certain aspects on how the systems operate and then sit down with the political entities one on one and discuss with them the different options that the Consultant found and once this is done they would come up with a report. At that point if there is no continuity then it would die. There would be no reason to spend this type of money on a proposal.

Mr. Bolton commented that Mr. Solari had mentioned earlier that he did not read anything in the proposal that discussed interviews with the elected officials. Mr. Bolton agreed originally in the scope that clause was not in there. However, during the interview process it was brought up by the Consultant who was selected that what worked well with other communities was the interview process. Mr. Cadden picked up on that and reiterated it a couple of times in the beginning when they were selecting a consultant. He said that the Consultants were rushed to write the proposal and on top of that they were asked to phase the proposal into Phase 1-A and Phase 1-B) (discussed at the last Council meeting). Mr. Bolton said that it was not his recommendation to move forward with meeting with the other entities while they are still waiting to see what the County Committee members find out from the Consultants. The Town of Indian River Shores will meet on May 27<sup>th</sup> and he didn't know if someone from the County Commission was going to appear at their meeting or not. He reiterated that he did not feel they will accomplish anything by meeting with the County. He will call the Consultant at the end of the week for an update.

It was the consensus of the Council that the City Manager telephone Mr. Solari and relay to him their thoughts on the matter.

Mr. Heady made a motion that the City Council meet with the County Commission. The motion died for lack of a second.

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

None

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

#### **1. Times of City Council Meetings – Requested by Vice Mayor Abell**

Mr. Abell commented that part of his reason for bringing up the time of their meetings is because their meetings seem to be getting longer and longer. He felt that they needed to look at the times that they are holding their meetings and felt that all their meetings should be held at 9:30 a.m., unless for some reason they needed to be held after 5:00 p.m. He referred to his memo (please see attached) and read parts of it.

Mr. Abell made a motion that future City Council meetings be held at 9:30 a.m. Mr. White seconded the motion.

Mayor Sawnick concurred with a lot of the things that Mr. Abell has just said, but still felt that one of their meetings should be held at night.

Mr. Daige also agreed that some good points have been brought up. However, with whatever times that they decide to hold the meetings he feels that they should have one meeting in the morning at 9:30 a.m. and the second of their regularly scheduled meetings should be held at night. He said that for consistency he would like to see all of their Special Call meetings held at 9:30 a.m. He said that they just need to settle on the time for their night meeting. As far as staff being here for long meetings, their dollar salary reflects the time that they have to spend at these meetings. Again, he asked that they consider having a morning meeting and an evening meeting. If they are going to continue meeting at 6:00 p.m. then they should talk about if the meeting goes over a certain time that they adjourn for the night and reconvene the meeting the next day.

Mr. White felt that they are more productive at day meetings. He mentioned how many staff members were at the meeting tonight and that some staff members are getting comp time or overtime for having to be at a night meeting. He feels strongly that they should hold their meetings at 9:30 a.m., the first and third Tuesday of the month. This way they would be consistent. He also noticed that during their day meetings, they have more people in attendance.

Mr. Heady said that as far as staff goes, if they check their pay checks they are getting paid for having to be at a night meeting. It troubles him that a Department Head could not get into a computer to get information (referring to an incident that occurred earlier in the meeting). He said that when staff is done with their items, then why not let staff go home. He felt that the day time and night time meetings were a good compromise and he would be opposed to any changes. He recommended that they keep the meetings the way that they are.

Mr. Daige agreed with having one morning meeting and one night meeting. He then asked the City Manager if any of the staff attending this meeting was getting paid time and a half.

Mr. Gabbard said that none of the employees were getting paid overtime or were entitled to comp time. He said that they were all exempt employees.

Mr. Daige added that their Special Call meetings should be held at 9:30 a.m.

The motion failed 3-2 with Mr. Daige, Mr. Heady and Mayor Sawnick voting no.

At the next City Council meeting they will discuss the time of the meetings.

At this time, Mr. Abell excused himself from the meeting.

2. **Reconsideration of date for presentation by Dr. Faherty and Glenn Heran – Requested by Councilmember Heady**
3. **Still waiting for written answers from City Manager – Requested by Councilmember Heady**
4. **OUC Contract – Requested by Councilmember Heady**
5. **50MM penalty – Requested by Councilmember Heady**
6. **November Elections – Requested by Councilmember Heady**
7. **Debate on Sale of Electric – Requested by Councilmember Heady**
8. **8/12/08 to be played and discussion to follow – Requested by Councilmember Heady**
9. **Federal Lawsuit – Requested by Councilmember Heady**
10. **Honest Services Fraud – Requested by Councilmember Heady**
11. **Golf Course – Requested by Councilmember Heady**

These items were removed from the agenda.

**B. New Business**

1. **Wreath Placement Ceremony – Requested by Councilmember Daige**

Mr. Daige asked for a consensus from Council that when the Wreath Placement Ceremony occurs at the Courthouse that the Airport Director be instructed to ask FAA to reroute planes for this short period while the event is taking place. Council concurred with this request.

Mr. Heady asked Mr. Menger if the Courthouse was in the direct flight path.

Mr. Menger answered no.

2. **Settlement of Lawsuit – Requested by Councilmember Heady**
3. **Water and Sewer Discussion – Requested by Councilmember Heady**

These items were pulled off of the agenda.

4. **Policy for “Old Business” and “New Business” on Agenda – Requested by Councilmember Daige**

Mr. Vitunac recalled that at the May 4<sup>th</sup> City Council meeting, Councilmember Daige asked what types of items should go under “New Business” and “Old Business” on their meeting agendas. He has provided a memo that outlines this.

Mr. Daige made a motion that the memo be put in policy form and put in the policy book held in the City Clerk’s office. Mayor Sawnick seconded the motion.

Mr. Heady commented that it was mind boggling to him the extent that Councilmembers will go through to tie their own hands. He said that their meetings should be a lot freer and he would like to see a rule made that there are no new rules.

The motion passed 3-1 with Mr. Heady voting no.

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

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

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

Mayor Sawnick reported that he attended Law Week at a local high school, he attended National Day of Prayer and took a tour of Harbor Branch.

Mayor Sawnick reported on some future events. He said that on May 20<sup>th</sup> there will be a public meeting concerning the Amtrak train, then on May 21<sup>st</sup> they will be having Coffee with the Council, on May 23<sup>rd</sup> there will be Bridge Dedication at Pelican Island, and on May 23<sup>rd</sup> this month's Mayor's Beach Cleanup will be held at Waldo's.

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

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

There was no report given by Mr. Abell.

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

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

Mr. White reported on the Beach and Shore Preservation Commission meeting. He said that tomorrow he would be attending a Treasure Coast League of Cities meeting at the FP&L Encounter Center. He then read a letter that the Council received from the City Manager stating that the Mayor along and some staff members would be attending a meeting with FP&L on June 3<sup>rd</sup>. Mr. White continued with his Committee report saying that on Sunday he attended a Treasure Coast Women's banquet for their 30<sup>th</sup> Anniversary and he also presented a Key to the City to a 103 year old woman.

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

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

Mr. Heady asked if he could attend the meeting with staff and FP&L and he was told that he could not attend (Sunshine Law).

- A) **Public Business in the public eye**
- B) **Liars, Cheats and Thieves**
- C) **Bad info, bad decisions, being prepared**
- D) **Correspondence**

Mr. Heady stated that he did file a lawsuit in Federal Court because he has told Council on numerous occasions that if they continued to stonewall and staff did not answer pertinent questions he would file a Federal case. He has put the City on notice several times about that and he has gone through with that promise. The City Attorney and City Manager saw fit last week to hire a \$300.00 an hour attorney to fight the lawsuit, which if the answers were to be answered then the lawsuit would go away. The questions that he has with respect to the OUC contract is that there were numerous changes to the signed document, which the Council was never aware of. He said that former Mayor White has admitted that he was not aware of any of those changes. He said rather than fight this whole thing in court, if they think that it is a good contract then bring the contract back that has all the changes in front of the Council and let them approve all of the changes. He said this really is not all that difficult. Instead what they do is make things difficult and if they were really interested in saving tax payers dollars then they would debate the issues publically and if it is a good contract then it will probably pass considering that three of the sitting Councilmembers voted for the contract in the first place. If the contract passes then you have a legally enforceable contract and they are not caught some place down the road with questions as to the enforceability.

Mr. Heady expressed that public business needs to be conducted in the public eye. He said that it was unfortunate that Councilmembers are not allowed to sit in on the meeting with FP&L.

Mr. Heady recalled that at a recent meeting the Mayor was discussing an item on how to “muzzle” this Councilmember and there was a motion before the Council to vote on it. He knew that the policy was strictly written for him. When he asked the Mayor if there was anyone else involved the Mayor said no and admitted that it was written for him. He then asked the Mayor if they do this in any other cities and the Mayor assured him that they do it all over the Country and the State. He then asked him where and for the Mayor to provide him with information on some cities that enforce this. He still has not received this information. The only name of any town that the Mayor has been given is Hillsprings, Montana, which he has not been able to find that it exists at all.

Mayor Sawnick told Mr. Heady that he misspoke on that issue.

Mr. Heady then asked the Mayor to give him a couple of examples (different cities) that do this.

Mayor Sawnick told Mr. Heady that he has done his research and Mr. Heady can do his if he wants to.

Mr. Heady said that the Mayor talks about him not providing backup and then when he asks him for the names of some different cities he says he has done his research and I should do mine. Mr. Heady asked Mayor Sawnick if that really was going to be his answer.

Mayor Sawnick asked Mr. Heady to move on. Mr. Heady asked the Mayor again if that really was his answer.

Mayor Sawnick explained that backup material is to inform the public what is going on. He said that there are a lot of things that Mr. Heady talks about and he has not seen any backup.

Mr. Heady told the Mayor that what they are talking about now is that he (Mayor Sawnick) said that there are cities all over the Country and State doing this and you had the list of cities. He asked him if he would provide this information and now the Mayor is telling him that he can do his own research.

Mayor Sawnick told Mr. Heady that he could type in "Google" to find this information. He said that he was over this issue.

Mr. Heady said that the Mayor might be over this issue, but he (Mr. Heady) still has questions. He then asked the Mayor again if he could provide him with the cities that he used for his determination on this issue. He asked the Mayor will he or can he provide that information. He asked him could he do what he said that he was going to do.

Mayor Sawnick told Mr. Heady if it will make him happy then sure he will give him a list of a few cities that he has. He said that he would send out a memo.

Mr. Heady mentioned that there is a video dated 8/12/08 in which the City Manager addressed the County Commission. He has asked before and he will ask again can we put that DVD up for the public to see and then he has some questions in regard to that DVD.

Mayor Sawnick told Mr. Heady that he could put that item on the next agenda under Old Business with an explanation on why he wants it shown. He could make a motion to show the video and then they will go from there.

Mr. Heady made the request that this be added to the agenda in the appropriate spot and then they can show the video during that portion of the meeting.

Mayor Sawnick stated that it could be done if a motion passes to show it.

Mr. Heady felt it was important that the public be aware of some serious issues and it has relevant information that the Council should discuss when they discuss the sale of their utilities.

Mr. White called for Point of Order. He said that this video was at a public meeting, minutes have been transcribed, and Mr. Heady has received a copy of the minutes, which were done verbatim as to what Mr. Gabbard stated at that meeting.

Mr. Heady did not believe the comments just made by Mr. White were true. He also mentioned that at a previous Council meeting, Mr. Daige asked Mr. Gabbard if he could put in writing his response to the questions on that video. He said that we have not received that memo from Mr. Gabbard. He once again asked that this item be put on the agenda and that the written comments that Mr. Daige asked for be provided to Council by the City Manager. He said that they shouldn't have to file Federal lawsuits to discuss public business in the public eye. He said that Councilmembers should not be running interference when a staff member tells them something or another entity something on an important issue, they should be able to see the backup on it. He went on to say that it is a shame that a Federal lawsuit has to be filed in order to get questions answered. He said that it is a terrible waste of taxpayers' money and it is not him wasting taxpayers' money, it is their refusal to answer public questions in the public eye.

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

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

Mr. Daige asked the City Manager to report back to the Council on the meeting that they have with FP&L. He said if there is information discussed at the meeting that cannot be made public he would like to know that they are restricted on some of the things that they can report back on.

Mr. Gabbard explained that FP&L has made it clear that this meeting is just to review some analysis and that no negotiations will be taking place.

Mr. Daige went through his Committee report (please see attached). He then asked about the fence going around the Vero Man Site.

Mr. Menger reported that the fence for the Vero Man Site is being installed and should be completed within the week.

**11. ADJOURNMENT**

Mayor Sawnick made a motion to adjourn tonight's meeting at 10:02 p.m. Mr. Daige seconded the motion and it passed unanimously.

/tv