

CITY OF VERO BEACH, FLORIDA
JUNE 15, 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, 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 Pastor Jim Gallagher of Calvary Chapel of Vero Beach.

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 requested that item 9B-1) "Request for Funding from the Tree and Beautification Commission" be moved up on the agenda and heard before items under Resolutions for Adoption without Public Hearing are discussed.

Mr. Heady did not have a problem with moving that item up on the agenda, but suggested that as soon as Mr. Zimmermann arrives for the meeting that his matter be heard. Council had no problems with that.

Mr. Abell made a motion that they delete the proposed presentation by Dr. Stephen Faherty and Mr. Glen Heran. He said that it would normally go before the Utilities Commission and he thinks that it is inappropriate that it comes before Council before being presented to the Utilities Commission. Also, in the backup material provided by Dr. Faherty, electric is mentioned and the Council cannot discuss that because of the "Heady lawsuit." Mr. White seconded the motion.

Mr. Heady asked if the presentation that was going to be given by Dr. Faherty and Mr. Heran was printed on the agenda. He could see that it was not. He was surprised that Mr. Abell wanted to remove an item from Public Comment. He said that it is the public that wants to comment.

Mayor Sawnick said there is a motion and second on the floor. He noted that they have received a copy of the presentation that Dr. Faherty and Mr. Heran would like to present tonight. However, their request to be on the agenda was received after the deadline for the agenda had closed. So Council is aware of the presentation being made, but it is not on the agenda. He suggested limiting the presentation to five minutes. He asked Mr. Abell and Mr. White if they would accept that as part of the motion.

Mr. White stated that if Mr. Abell would amend his motion to allow the presentation to be made, but limiting it to five minutes, that he would second the amendment.

Mr. Abell explained that if they make the presentation then they have to use different rates because the rates are inaccurate. He reiterated that this item needs to go before the Utilities Commission.

Mr. Heady stated that under Public Comment that Dr. Faherty and Mr. Heran are allowed to make their presentation. The fact that some Councilmembers don't like them making it is unfortunate. He said that with respect to limitations, you can't have one meeting and decide that what you want to do is place time limits on certain citizens who wish to speak. Another thing was that Mr. Abell said that the presentation was about water and sewer rates and there is an item on tonight's agenda about water and sewer rates. He thought that it made sense if citizens of this community had some information for this Council that they (Council) listen to the information that they have to present. He knows in the past that staff has given him information that was not totally accurate and it seems to him that they are going down the wrong path and they need to allow the citizens to speak. They cannot treat one person different from how they treat someone else or they are setting themselves up for another lawsuit.

Mr. Daige understood that they received a copy of the presentation and Dr. Faherty sent an email to the City Clerk after the agenda had already been posted. He reviewed the presentation and believes that they can stay within the time frame. It is public comment and he hoped that Dr. Faherty and Mr. Heran could do their presentation within a timely fashion.

Mr. Heady asked Dr. Faherty and Mr. Heran how long they thought that their presentation would take.

Mayor Sawnick would not allow Dr. Faherty or Mr. Heran to answer.

Mayor Sawnick called the question.

Mr. White withdrew his second to the motion. The motion died for lack of a second.

Mr. White commented that after reviewing the agenda package he knows that they have a large business meeting. He thinks that it would be important for them to get their business out of the way first. He noted that over the last couple of meetings that Public

Comment has taken two to three hours and he would suggest either moving Public Comment to the end of the agenda or place a time limit on people wishing to speak under Public Comment if they (Council) wish to keep it where it is.

Mayor Sawnick expressed that it is his discretion to limit someone and Council can always override his decision.

Mr. White thought that it was important for them to make this decision so anyone in the audience wishing to speak will know if they will be heard in the beginning or at the end of the meeting.

Mr. Daige felt that Dr. Faherty and Mr. Heran would be respectful of the time.

Mr. Heady asked Dr. Faherty or Glenn Heran to shake their heads if presentation would be under 10 minutes. Dr. Faherty and Mr. Heran both agreed that their presentation would take no longer than ten minutes.

Mr. Heady stated that the Council had now discussed limiting this presentation by citizens for an amount of time longer than the citizens want to be allowed to speak.

Mr. White made a motion to remove Mr. Heady's items 9A-1, 2, 4, 5, 6, 7, and 8 off of the agenda. Mayor Sawnick seconded the motion. The motion passed 4-1 with Mr. Heady voting no.

Mr. Daige made a motion to remove Mr. Heady's items 9A-3, and 9A-9 off of the agenda. Mayor Sawnick seconded the motion and it passed 4-1 with Mr. Heady voting no.

Mr. Abell made a motion to pull Mr. Heady's item 9B-5) off of the agenda. Mayor Sawnick seconded the motion.

Mr. Heady stated under discussion that all of the items that he put on the agenda have been removed.

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

The City Clerk removed items 3-A) and 3-B) off of the agenda. They will be heard at the July 20, 2010 City Council meeting.

Mr. Heady made a motion to add under New Business discussion of the memo that they received on some upcoming meeting dates. Mr. Daige seconded the motion and it passed unanimously.

Mayor Sawnick made a motion to adopt the agenda as amended. Mr. White seconded the motion and it passed 5-0.

B. Proclamations

1. Korean War Veterans Day – June 25, 2010

Mayor Sawnick read and presented the proclamation.

C. Public Comment

Mr. Joseph Cantarella (spelling may not be correct), Mr. Lee Cantarella, and Miss Meredith Hickman all asked to speak about shark fishing.

Mr. Joseph Cantarella explained that fisherman do fish for sharks from the beach. He wanted to clear up some of the misconceptions that he has heard so much about. There never has been use of chum when they shark fish. This is a red heron to pass a blanket law on this. He said that the beach is not just for swimmers, but also for fishermen. There are facts according to the Florida Museum History that the shark attacks that occur are not related to fishermen.

Mr. Lee Cantarella went over the shark tournament that they hold every year and have done so for the last five years. He has read some articles in TCPalm about chumming the waters and it was directed at them. He said for the five years that they have held their tournaments, they have never chummed the waters. One thing they do is tag over 100 sharks to determine their age growth, etc, and send it to NOAH and have all the facts to see where the sharks are moving to and what they are eating.

Miss Meredith Hickman commented that she has grown up in Vero Beach and there are minimal things for young people to do in this community and fishing is one of the honest activities that they enjoy. She said that it is part of Florida culture. She asked Council to look objectively at the facts and to educate themselves about shark fishing.

Dr. Guy Hickman explained that the reason why there are shark fishermen at the beach is because there are sharks at the beach. There is a shark tournament held every year and something for young people to do in Vero Beach is to go fishing. They don't want anyone to get hurt, but shark fishing on the beach is not bringing sharks to the beach. They are already there. They do not chum. There are very few things for young people to do in Vero Beach and this is something they get excited about. If laws want to be put in to keep people from chumming that is fine. But don't take fishing away.

Mr. White asked how close to guarded beaches do they fish.

Mr. Cantarella explained that they fish at peak fishing hours, which is early in the morning and late in the evening. They do not fish in guarded beaches.

Mr. Abell asked how far away from the beach are you fishing (guarded beach). Mr. Cantarella said that they fish at Turtle Beach, which has no lifeguards.

Mr. Heady thanked these individuals for bringing the other side of this issue up. He agreed that they were there because the fish are there. He said that maybe they could work on doing away with chumming.

Mrs. Olska Forbes, owner and operator of Greenhouse Café, explained that she was at tonight's meeting because she was visited at the restaurant last week by an inspector who told her that in order to serve people with pets that she would have to have the City pass a dog friendly ordinance for dining. She asked the City Council to consider adopting a dog friendly ordinance for their community. She noted that that there are a lot of other cities who have this ordinance already in place.

Mr. Vitunac explained to Mrs. Forbes that this item has come up twice in the past and has not passed. He invited her to his office to look at the documents that they have.

Mrs. Forbes said that she has seen some of those documents and understands what is required of the restaurant owner who operates under the ordinance. She felt that most of the guidelines were common sense.

Mr. Daige made it clear that if this ordinance passes it is up to each individual restaurant owner as to whether they want to operate under it or not. He wants to help people promote their businesses. He will work with staff and Mrs. Forbes on this matter.

Mayor Sawnick told Mrs. Forbes that they would get back with her concerning the ordinance.

Mr. White noted that Mrs. Forbes approached him about this and Council and staff did discuss it. He asked Mr. Vitunac to provide Council with a copy of the documents that he has.

Mr. Heady made a motion to bring the ordinance to their next meeting for first reading. Mr. White seconded the motion and it passed 5-0.

Mrs. Kim Delaney, Treasure Coast Regional Planning Council, gave a brief update on the Amtrak project. She said that the project continues to move forward. She also noted that at their Special Call meeting to be held next week she will be asking Council to pass a Resolution in support of the project. At that meeting she will give a brief Power Point presentation to accompany the Resolution. She said that there has been some great input from the public and the train stop location chosen for this area was the Old Train Station.

Mr. Heady asked if there would have to be any road closed in order to put the station there. Mrs. Delaney said that they would need to close one lane coming in from US1.

Ms. Florence Licata thanked Council for scheduling the Special Call meeting on August 23rd to discuss Airport matters. She hoped because of the importance of this meeting that it would be televised and replayed. She wants everyone to see what their concerns are. She said that they (concerned neighbors) will have their questions ready and submit them

hopefully one month in advance. She also welcomed Mrs. Barbara Drndak, Chairman of the Airport Commission, to help educate them about practices of the Airport. They are grateful and accept her offer and plan on meeting with her sometime in July.

Mr. Daige made a motion to grant Ms. Licata's wish that the Special Call meeting is played on the loop. He was told that no motion was needed and that there was no problem from staff with granting this request.

Mr. Heady hoped that the meeting date could be moved because he is unable to make the meeting on that date.

Mrs. Linda Hillman started off by saying that liars, cheats and thieves should not be allowed to represent their citizens. She then read a prepared speech (please see attached).

Dr. Faherty and Glen Heran gave a Power Point presentation (please see attached).

Mr. Daige asked when the Utility Commission last met. He was told last week.

Ms. Lenore Mustapick, 611 Holly Road, recalled that on July 4, 2007, she took her family to Turtle Beach and they noticed some gentlemen fishing. She watched them and witnessed them bringing in a huge Tiger Shark. She said that they cut up a Bonita Fish and used that as bait and hooked the shark then brought it up on the beach. She expressed that her children like to surf and go to the beach. The group fishing at the beach on the day that she witnessed the shark said that this was their second year of having a fishing tournament in this area. She said that they stopped talking to her once they realized she was taking photos and what her concerns were. Since then there have been three organized groups. She took her photos to the Indian River Shores Police Department and they told her that she needed to go before the Indian River County Commission, which she did. There was only one Commissioner who took notice and this has taken three years for her to get this far. She explained that the County posted a sign for three months saying no small boats were allowed. She asked the County if they would put up a sign saying "no chumming," but was told that they could not do that because of legal reasons. She expressed that for the past three years these groups have gotten so organized that they have an application on line and they will tell you where you can fish for sharks. She begged Council to please do an ordinance to protect the citizens who live here and have lived here for years. She said let these other people buy boats and go out in the deep waters where sharks should be.

Mrs. Pilar Turner commended Mr. Abell for asking that the presentation given by Dr. Faherty and Mr. Heran be also given to the Utilities and Finance Commission. She said that financial information should also be made available to the Utilities Commission so that they can see the total picture and then ask them (Utilities Commission) to make a recommendation to Council as to whether or not they felt the water and sewer rates should be reduced at this time.

Mr. Al Benkert stated that he has met with the County concerning shark fishing and they have no intention in doing anything against shark fishing. He said that personal liberty is fine until people start infringing on someone else's personal liberty. He said that shark fishermen are impinging on personal liberty. He asked how much of the beach do the fishermen want. He passed out a handout entitled "Shorebound Shark Fishing in Vero Beach" (please see attached). He would like to see a shark fishing ordinance passed in Vero Beach. He noted that Indian River Shores and Orchid are looking at doing the same thing in their area. It is not safe for their citizens and it is bad business. He again urged Council to pass a very strong no shark fishing ordinance in Vero Beach. If the City passes this, it will have a great affect in our community. It will keep the tournaments out of the area and the kids can still go fishing.

Mr. Heady asked where the City limits end at the ocean line. Mr. Vitunac answered three miles. Mr. Heady asked if there was any reason why they could not adopt an ordinance that would prevent chumming for sharks within the City limits. Mr. Vitunac explained that the State may have preempted the whole field of salt water fishing. If that is the case, he would like to get with County, and if they are not interested, have the City sponsor a special act in front of the legislature to get rid of it. If they are allowed to do an ordinance, then they will do one very quickly. He said part of their research would be to see if the State has preempted the field. They have found two cities so far in the State of Florida who have outlawed chum fishing and did it by special act because they found out that they didn't have the power to do it by Ordinance.

Mr. Heady commented that if they enact an Ordinance that says that there is no chumming within the City limits and put up signs on their beaches that say there are no chumming within their limits, they can enforce the Ordinance and just the fact that they enacted the ordinance will probably stop 99.9% of the chumming. He said as a legal matter whether or not they would prevail in Court on this issue is a different question. He felt that if they had an ordinance, it would stop chumming. There were shark fishermen speaking at tonight's meeting who said that they do not do that.

Mayor Sawnick reminded Council that they will be discussing this later on in the meeting under New Business.

Mr. Benkert pointed out that Volusia County has an ordinance and their ordinance works well. The County Attorney did some research and came up with an ordinance that basically says that the City and the County do have the right to legislate against shark fishing coming within their limits (three miles).

Mr. Vitunac felt that they could make it clear to the State that this has nothing to do with fishing, just outlawing chumming.

Mr. Benkert told Mr. Vitunac that he can use the word shark and in fact what they really are looking for is no shark fishing. The reason they are looking for that is because it sends a very clear simple message. He said that Volusia does have that in their ordinance, which has not been challenged in Court and is effective.

Mr. Daige made sure that Council was provided with the Volusia County Ordinance. He asked the City Attorney to bring up these ideas again when they discuss this matter under New Business.

9B-1) Request for Funding from the Tree and Beautification Commission – This item is moved up on the agenda.

Mr. Karl Zimmermann, Chairman of the Tree and Beautification Commission, explained that the Commission would like permission to expend funds from their account in the amount of up to \$225.00 to purchase Hibiscus Plants. The Hibiscus Plants will be used for a beautification project to replace the old plants and soil in the already existing large planters in Downtown Vero Beach. He said that the Downtown Association will be responsible for maintaining the plants and the Commission would make some suggestions on the proper care for the plants. Mr. Zimmermann made it clear that this money does not come from tax revenue, it comes from funds for beautification.

Mayor Sawnick made a motion to approve the request to allow the Tree and Beautification Commission to expend funds from their account to purchase Hibiscus Plants. Mr. White seconded the motion and it passed unanimously.

D. Adoption of Consent Agenda

Mr. Daige requested that item 2D-3) be pulled from the consent agenda.

Mr. Heady requested that items 2D1), 3) and 4) be pulled from the consent agenda.

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

1. Regular City Council Minutes – June 1, 2010

Mr. Heady pulled this item off of the consent agenda. He had some corrections that he wanted made to the minutes. He will ask that the Clerk make those corrections and then put the minutes back on the next agenda for approval.

2. Regular City Council Minutes – May 18, 2010

This item was approved under the consent agenda.

2. Monthly Capital Projects Status Reports

Mr. Daige referred to the Capital Projects Report for the Airport and wanted to know from the City Attorney if by approving the second paragraph, obstruction removal, are they approving to remove structures and land clearing or are they just approving moving to the next phase of the project.

Mr. Vitunac explained they are not approving anything. They are just accepting the monthly status report. If any department needs approval on something then they would have to come before Council and ask for it.

Mr. Daige made a motion to approve the Monthly Capital Projects Report. Mr. Sawnick seconded the motion and it passed unanimously.

4. SR A1A Landscape Median – Recommendation of Acceptance and Final Payment

Mr. Monte Falls, Public Work's Director, reported that this issue is not with the landscaping dying it is with the lack of maintenance. He said what they have done to remedy the situation is they have a contract with H&D Construction to do the work and install the landscaping. During the contract term, this contractor filed for bankruptcy. The provision of the contract provided with the City is a surety bond of 125% of the contract amount to protect the City if the contractor failed to produce. They have contacted the surety company and are working with them. This item before them is for final payment and one of the contract requirements. They have advised the surety company informally about two weeks ago that the contractor was not performing the work and asked them how they wanted to remedy that. Mr. Falls said that in conformance with the contract, that last Friday he sent the surety company by certified mail a written notice that if they don't perform the duties as set out in the contract they (the City) have a right to do the work that still needs to be done and then bill them. In the letter they were given until next week to respond and get the work done and if that does not happen then they would have the work done starting June 21st (by City employees) and bill them the cost incurred by the City.

Mr. Heady commented that what this is asking for is a recommendation and acceptance of final payment when clearly this company has not completed the job. He would have a problem paying out, even to the surety company a final payment.

Mr. Falls explained that all the work set out in the contract has been performed except for the maintenance. He said that if the contractor does not perform the work, they always have the option to go back to the surety company and they are responsible to pay all outstanding debts. He said because the contractor has filed for bankruptcy, the surety company is involved for final payment.

Mr. Heady understood that the surety company was going to be held responsible to all debts of the contract, but the surety company does not want to be responsible right now for taking care of the maintenance problem.

Mr. Vitunac said that in this case there are two separate issues, the final payment owed and the maintenance. He said if they failed to pay the final payment that is due it would jeopardize the performance of the payment bond. Mr. Heady said that it is not due until the terms of the contract are met and at this point those terms are not being met. Mr.

Vitunac explained that completion of the contract has to be done before the maintenance of what was completed can be undertaken. They were given a three day notice as of Friday and the City has not received a response back yet. They have a financially secured surety bond with a lot of money and this will be resolved. He said that there is no self-help provision.

Mr. Daige commented that right now this area is not being maintained at all. He asked why they should issue a final payment when the work is not done.

Mr. Falls stated that the location of this project is on State Road A1A between Causeway Boulevard and Riomar Drive. He said that final payment is made when the work is done. He said that there always is a one year maintenance period. The surety bond of 125% of the contract amount runs from the one year maintenance period. He wanted it made clear that all of the contract items have been completed and this money is owed for the work that was done.

Mayor Sawnick made a motion to accept the final payment. Mr. Abell seconded the motion.

Mr. Daige commented that what he just heard from Mr. Falls is that the work is completed, and the contractor is due final payment (bond company receives the money). He asked as this rolls forward the contractor goes out of business, so who pays for the maintenance.

Mr. Falls said that it will be paid by the surety bond. The surety bond gives the City the right to collect the money from the surety company. He wanted to make sure that in the motion they approve Change Order No. 2, for an increase of \$2,224.30, which results in a final contract amount of \$323,989.54; assess liquidated damages in the amount of \$18,903.28 (or a net amount of \$21,313.28 if Council approves the liquidated damages). Mayor Sawnick acknowledged that was part of his motion.

Mr. Heady did not mind taking the \$18,903.28 out because he believes that is due to the City, but he also thinks that what they bought is an acceptable product and right now it is not acceptable. Before he approves a final payment he wants to see that the property is acceptable, which it is not at this time.

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

At 7:30 p.m., Council took a five-minute break.

3. PUBLIC HEARINGS

- 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 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st 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.

The public hearing for this Ordinance will be heard on July 20, 2010.

- 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 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more of less; and providing for an effective date.**

The public hearing for this Ordinance will be heard on July 20, 2010.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Joint Participation Agreement with the State of Florida, Department of Transportation, for Obstructions Removal (FDOT#420769-1-94-01)**

Mayor Sawnick read the Resolution by title only.

Mr. Eric Menger, Airport Director, reported that this project was originally approved by Council in the Airport's FY07 capital budget. It was proposed as one phase, but was broken into two phases due to reduced Federal and State funding. Phase 1 was the survey portion of this project and is now complete. Phase 2 will be the actual obstruction removal and/or mitigation of natural and man-made obstructions to runway approaches as requested by the Federal Aviation Administration. He recommended that Council authorize staff to proceed to Phase 2 of this project. The attached Joint Participation Agreement (JPA) is the first piece of the funding in the amount of \$25,000, which funds only 2.5% of the total estimated project cost. He said that another \$25,000 will come from the Airport, but no cost will be expended from the City's General Fund.

Mayor Sawnick made a motion to approve the Resolution and acceptance of the grant from FDOT. Mr. Abell seconded the motion.

Mr. White told Mr. Menger to work hard in getting Federal grant money to cover this project because this is a lot of money.

Mr. Menger said that 90% of the trees that they are looking at removing will be on Airport property. He will be talking to all of the property owners who will have to have trees removed from their property and there are about ten different property owners that will have to be notified. At this time he has not notified all of the property owners.

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.

B) A Resolution of the City of Vero Beach, Florida, repealing the Rate Increases for Fiscal Year 2010, 2011, 2012, and 2013 Water and Sewer as described in Attachment "A" and "B" of Resolution 2009-31; providing for an effective date.

Mayor Sawnick read the Resolution by title only.

Mr. Rob Bolton, Water and Sewer Director, gave a Power Point presentation (please see attached) of his budget. He explained that they have passed rate increases that would have occurred over a five year period. Some Councilmembers were not happy about the rate increases and asked how they could be reduced or eliminated. He came before them with some capital projects that were not needed or were being put off, which has enabled him to lower the rates. He modified his capital plan and in modifying his capital plan and eliminating the proposed administration building the rates were able to be lowered. He said that the operating budget that he is showing them now is what he will be bringing before Council at their July budget hearings. He said that there are seven employees that will not be funded in this year's budget and they also were able to cut expenditures. He said that at the end of next year there will be an additional \$817,000 in his budget. He then briefly went through the budget.

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

Mr. Daige mentioned that he worked hard along with staff to get these rates down. He asked the City Manager by doing this, will it have any negative effects on their water and sewer system. Mr. Gabbard answered no and that they will have a cash surplus for the next five years.

Mayor Sawnick added that they are always looking at ways to reduce costs, but still be able to maintain equipment. He is satisfied as to what staff has done.

Mr. White commended Mr. Bolton on ways to cut the budget to meet demands from City Council who have requested this. They were trying to lower rates because of the economy and Mr. Bolton has met the challenge. He then read an email from Mr. Bolton concerning repealing the rate increases (on file in the City Clerk's office).

Mr. Heady stated that this was the first time that he has seen any type of financial backup. He knows that they did spend a lot of money on consultants and the consultants brought

the study forward and everyone agreed that raising rates was what they needed to do in order to make ends meet. He said that with the projected revenues given to them, those revenues include the continuation of Indian River Shores and the County as their customers. He said one of the things that they all need to recognize is that Indian River Shores and the County are going to leave. He said that they are going to leave for various reasons and one of the reasons is because they refuse to meet with them, which he thinks is ridiculous. He asked Mr. Bolton if they borrowed money in March for the water and sewer.

Mr. Bolton answered no. He said that the last time they did any borrowing was for the SRF funds, which was around last August.

Mr. Heady explained that with borrowing this money there is debt to be repaid. He said if they continue with these decreases in the rates, that what they are going to do when Indian River County and Indian River Shores customers leave. He said that City residents are going to be left to pay a debt that has been incurred by the last Councils'. He said if you project out what these increases amount to and the decrease in revenues, he thinks they are in the \$13 million dollar range. If they keep these increases they can use this \$13 million dollars to decrease the debt so that when Indian River Shores and the County customers do leave, which they are going to do, the City taxpayers are not left with that debt. He noted that there have been no recommendations from the Utilities Commission or the Finance Commission on this. Mr. Heady continued by saying that the surpluses are down and there has been no consideration for the loss of customers. He mentioned cash reserves and said that they are not going to build up cash reserves. If they had the cash reserves available and the money in the bank he might think differently. He said at the end of five years, without the rate increase, they will probably be around fifty days in cash reserves. If they had to go to a bonding company they would be looking at 90 days cash reserves, so over the next five years they are not going to be able to accomplish what they need to accomplish in regards to cash reserves. The total amount of revenues that will be missing from the City is approximately \$13 million dollars and that is many years of surplus that they are throwing down the sewer. He understands there is an election coming up and he is the only one that doesn't have to run, but he also understands that financially there are responsible ways to act and eliminating this increase is financially irresponsible.

Mr. Abell wished Mr. Heady would catch up on his homework and meet with the City Manager and staff like everyone else does to find out what is going on.

Mr. Heady asked Mr. Abell to point out what he said that was incorrect.

Mr. Daige stated that it is their job to provide water and sewer to their customers and deliver a quality service, which they do. The City has to be competitive. He thinks the City Manager has met the challenge to not increase the rates and the Water & Sewer Director has made it clear where he was able to trim back his budget so these increases were not necessary. He was hoping that he had the votes from the rest of the Councilmembers to move this through.

Mr. White recalled that last year they started having discussions on all of these rate increases and he voted against the rate increase from the start. He noted that every Councilmember here is a City resident and has to pay electric, water, sewer, and garbage. He has talked to a lot of people who had concerns with them raising the electric and water and sewer rates so they did something about it. He asked Mr. Heady if he honestly thought that the County would come in and change their lines to what is being run now. Does he think that the County is going to pay to put a pipe underneath the Indian River Lagoon in order to feed those lines? He said after the County puts in this new infrastructure to handle the County residents and Indian River Shores, the rates will have to go up. He said that the whole picture needs to be looked at before decisions are made. He didn't understand why they were even having this discussion.

Mayor Sawnick made a motion to call the question. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

The Clerk polled the Council on the motion and it passed 4-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

C) A Resolution of the City of Vero Beach, Florida, authorizing the City Manager to execute a Time Extension to the Local Agency Program Agreement dated 5/02/2005 with the State of Florida Department of Transportation relative to the State Road A1A Landscaping Enhancement Project; and providing for an Effective Date.

Mayor Sawnick read the Resolution by title only.

Mr. Falls explained that this was a bookkeeping matter that needs to be taken care of. He hopes to be finished with all the paperwork on this project by June 30th, but in the event they are not finished they will have to do an extension to the LAP agreement and since the Council will not be meeting again until July 20th, this will give authorization for the City Manager to sign the agreement.

Mr. Abell made a motion to approve the Resolution. Mr. White seconded the motion.

Mr. Heady asked if this covers the entire City limits.

Mr. Falls explained that this only covers the area that they discussed earlier under item 2D-4) on the agenda.

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, amending Chapter 76, Historic Preservation, of the City of Vero Beach Code by revising or Creating New Definitions in Section 76.02; creating new Article VI, and Ad Valorem Tax Exemptions for Improvements to Historic Properties pursuant to Sections 196.1997 and 196.1998, Florida Statutes; providing for authorization; providing for eligibility and procedures for obtaining exemptions; providing for revocation of Tax Exemption; 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 will enable the City Council to authorize ad valorem tax exemptions for improvements to historic properties. The Historic Preservation Commission (HPC) and the Planning and Zoning Board (PZB), both have recommended approval. The Planning and Zoning Board recommended that the City pursue obtaining a Certified Local Government designation by the Florida Division of Historic Resources to be eligible for historic preservation grants. He said that this may be something for them to look at in the future. The Ordinance would have two specific types of exemptions. They would be for 100 percent of the assessed value of all improvements to eligible historic properties for a period of ten years and 100 percent of the assessed value, as improved, for ten years, where the assessed value of the improvements to a historic property open to the public is equal to at least 50 percent of the total assessed value of the property as improved. The Florida Statutes allow local governing bodies to grant a tax exemption of up to 100 percent and for a period of up to ten years. Only properties designated as an historic site pursuant to Chapter 76, Historic Preservation, would be eligible for the tax exemption. Only improvements made on or after the date of the Ordinance and improvements approved under a development permit and, if required, a certificate of appropriateness, are eligible for tax exemption. Mr. McGarry briefly went over the process for seeking a tax exemption. Subsequent to the approval of the development permit and issuance of "certificate of appropriateness" the applicant may then file a "pre-construction application" to the Planning and Development Department, which after reviewed for eligibility and completeness, is submitted to the Division of Historical Resources of the Florida Department of State. After the Division has completed its review and forwarded its comments and recommendations to the Planning Director, a public hearing before the City Council will be scheduled. He said City Council is not bound by the recommendations from the Division. If granted, the applicant and City Council will execute the Historic Preservation Property Tax Exemption Covenant, which will be filed with the deed for the property in the official records of Indian River County prior to the effective date of the exemption.

Mr. White asked if the County has a similar ordinance. Mr. McGarry explained that now that the City is working on this Ordinance, he will write a letter for the Mayor's signature asking the County to look into doing something similar to the City's Ordinance. Mr. White then wondered if they should put a minimum expenditure on this. Mr. McGarry did not see the need to do that. Mr. White said he was talking about a low threshold and

not a high threshold. Mr. McGarry said that he would take a look at that and he will bring it up at the public hearing.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for July 20, 2010. Mr. Daige seconded the motion.

Mayor Sawnick commented that if the Downtown Theater gets reopened it could possibly fall into this category.

Mr. Daige thought that this will be a big help for their community and he thanked Mr. McGarry for all of his hard work in developing this Ordinance.

Mr. Heady asked if there was a way to provide for a tax exemption for many more people than this would cover or there should be exemptions for improvements.

Mr. McGarry explained that this is only for historic properties. He said that the State Statues govern what they are allowed and not allowed to do.

Mr. Heady commented that it seems to him that a tax exemption or improvements to property is something that would be desirable, but it would be much better if they provided for tax exemptions for anyone that wanted to go to any downtown property and renovate it, they should be given a tax exemption for ten years. He said let's see what we can do to really encourage some renovation downtown.

Mayor Sawnick agreed one-hundred percent with Mr. Heady and the comments he just made. He said it would be taken to the extreme, but he definitely will be looking into that and thanked him for his support.

The Clerk performed the roll call on 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

A) Reappointments to Commission/Boards

Board of Building Appeals

Both Mr. Dean Luethje and Peter Robinson's terms on the Board of Building Appeals expire on June 15, 2010. Both members would like to be reappointed.

Mr. White made a motion to reappoint both Mr. Luethje and Mr. Robinson to the Board of Building Appeals. Mr. Abell seconded the motion and it passed unanimously.

Code Enforcement Board

There is a full member position open on the Code Enforcement Board.

Mr. White made a motion to appoint Mr. Rhett Wilson as the full member on the Code Enforcement Board. Mayor Sawnick seconded the motion and it passed unanimously.

Finance Commission

Mr. Tom Nason's term on the Finance Commission expired on May 5, 2010 and he would like to be reappointed.

Mr. White made a motion to reappoint Mr. Nason to the Finance Commission. Mr. Daige seconded the motion and it passed unanimously.

Mrs. Pilar Turner and Mr. Dan Snellings have resigned from the Finance Commission, which leaves a full and alternate position open.

Mr. White made a motion to nominate Mr. Bill Fish as the full member and Miss Laura Torres as the alternate member on the Finance Commission.

Mayor Sawnick disclosed that Miss Torres was his fiancé, but he has checked with the City Attorney who has told him that he still must vote on this issue.

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

Tree & Beautification Commission

Mr. Daniel Downey's term on the Tree & Beautification Commission expires on June 15, 2010. He would like to be reappointed to the Commission.

Mr. Abell made a motion to reappoint Mr. Downey to the Tree and Beautification Commission. Mr. White seconded the motion and it passed unanimously.

Utilities Commission

Both Mr. Don Hawkins and Mr. Jason Fykes terms on the Utilities Commission expire on June 15, 2010. Both members wish to be reappointed.

Mr. Abell made a motion to reappoint both Mr. Hawkins and Mr. Fykes to the Utilities Commission. Mr. White seconded the motion and it passed unanimously.

Veterans Memorial Island Sanctuary Advisory Committee

Mr. Joel Herman's term on the Veterans Memorial Island Sanctuary Advisory Committee expires on June 15, 2010. He would like to be reappointed to the Committee.

Mr. White made a motion to reappoint Mr. Joel Herman to the Veterans Memorial Island Sanctuary Advisory Committee. Mr. Daige seconded the motion and it passed unanimously.

Mr. White mentioned that they needed to look at a couple of other Commissions. One in particular was the Recreation Commission. It was noted that there are more County residents serving on that Commission than there are City residents. The Clerk was instructed to try to get some applications for the Recreation Commission and then bring the item back to Council.

7. CITY MANAGER'S MATTERS

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

Mr. Jim Stevens, Power Resources Director, reported that there have been two studies done on the Unit 5 Heat Recovery Steam Generator Superheater Retrofit and both recommended replacement.

Mayor Sawnick made a motion to approve the Award of RFP No. 170/10/PJW, for Unit 5 Heat Recovery Steam Generator, to Vogt Power International. Mr. White seconded the motion.

Mr. Heady referred to Unit 5 and asked how it was being used. Mr. Stevens said it is used just about every day. Mr. Heady then asked what is the cost per KWh on that Unit is to produce electric. Mr. Stevens wanted to know if he was asking for the cost to produce or the cost to sell. Mr. Stevens said that the production cost for Unit 5 is right around \$68.00 per mega-watt hour. Mr. Heady asked what does it cost to purchase under their bulk power agreement. Mr. Stevens explained that it depends on the need and demand for the purchase of power. Mr. Stevens said that the cost for last month, under the OUC contract, was \$49.00. Mr. Heady asked if this Unit was not available, then they would have to purchase power. Mr. Stevens said to serve their load they would have to put on Unit 4, which is much more expensive to run. Mr. Heady then asked what if Unit 4 was not available. Mr. Stevens said that they would have to put Unit 3 on. Mr. Heady asked what if no Units at the Plant were available. Mr. Stevens said then they would have to purchase power from the open market. Mr. Heady asked is there no contract from OUC to buy bulk power. Mr. Stevens said yes, they could buy up to 95 mega-watts. Mr. Heady then asked if in the purchase agreement that anything over 95 mega watts would be spot market prices. Mr. Stevens explained that they also have St. Lucie Stanton 1 and 2 power resources who are part of the agreement and it comes to about 145 mega watts. He said anything over 145 mega watts would be spot power.

Mayor Sawnick summarized things and said that they need to do this in order to keep their electric rates low at this time and help the needs of their customers.

Mr. Heady asked if the reason for this was because there has been a melt down on some of the tubes.

Mr. Stevens explained that there has not been a meltdown. He said that a thermal study was done and it was determined that several clips have broken and the tubes have expanded.

Mr. Daige commented in doing these repairs and updates the way they are designing the tubing systems they will actually be better for the Units. Mr. Stevens agreed. Mr. Daige said with the other Units they have he knows that there is constant upkeep to keep the generators ready to go. He asked Mr. Stevens since he has been employed with the City, has there been at any time when all the machines were down at once. Mr. Stevens answered no.

Mayor Sawnick made a motion to call the question. Mr. White seconded the motion and it passed 4-1 with Mr. Heady voting no.

Mayor Sawnick called for a vote on the motion to approve this request and it passed 4-1 with Mr. Heady voting no.

B) Award of Bid No. 230/10/JV – 19th Street Culvert Replacement at 20th Avenue Lateral E Canal

Mr. Falls explained that this project is for replacement of the failing 96” corrugated metal pipe at 19th Street where it crosses the 20th Avenue canal with a new 96” reinforced concrete pipe. The project also includes adding/upgrading sidewalks, guardrails, curbing, drainage and turning radii.

Mr. Daige made a motion to approve the Award of Bid No. 230-10/JV, for a 19th Street Culvert Replacement at 20th Avenue Lateral E Canal to SPS Contracting, Inc. Mr. White seconded the motion and it passed unanimously.

Mr. Daige expressed that this replacement is desperately needed.

Mayor Sawnick noted that on the first page under the City Manager’s recommendation that it should be SPS instead of SPC.

C) Dixon Downey Donation for Riverside Park

Mr. Falls explained that Mr. Downey was able to see Little Flower completed before he passed away. They have completed their final account of the Little Flower project with a total of \$253,239.48 being expended. This leaves a balance of \$148,864.52 from the original donation. To honor the legacy of Mr. Downey, he is recommending that the remaining \$148,864.52 be set aside in a fund preserving the capital and only making the interest available for future improvements.

Mr. White made a motion that Council establish a fund for the remainder of the Dixon Downey donation for improvements to Riverside Park, in the amount of \$148,864.52, by preserving the capital and using only the interest for future improvements to Riverside Park. Mr. Abell seconded the motion.

Mayor Sawnick noted that this was in the original contract when Mr. Downey made the donation.

Mr. Abell wanted to verify that the interest would be enough to pay for maintenance for Little Flower. Mr. Falls said that his recommendation was that they don't use the interest for maintenance, but only use it for capital improvements. He said that the maintenance needed will be covered in his budget under grounds maintenance.

Mr. White recalled that the Pavilion located at Riverside Park was also donated by Mr. Downey. He said that he still would like to see something with Mr. Downey's name on it at the Pavilion. Mr. Falls said that he would work on that and bring something back to Council.

The motion to approve this request passed 5-0.

D) Discussion of CCNA Committee Meetings (Rob Bolton)

Mr. Bolton recalled back in October that the CCNA (Consultants Competitive Negotiation Act) met roughly ten times and solicited for services. He said that there were six members appointed to the Committee. He went over the names of who the members were. He said that through the process they narrowed down who they felt the consultant should be and came before Council. They selected the firm and negotiated a contract and the Committee voted 4-2 to approve the contract. The members on the Committee that served as County representatives did not approve the contract. As a result of the County representatives not approving the contract, the Committee met again and the Chairman of the Committee asked the County representatives to call the Consultant to become more familiar with the contract. The Committee made it clear to the County representatives that while speaking with the Consultant, they were not to try to change the contract. As a result, the Chairman of the Committee called the Consultant and the Consultant informed him that he did meet with the County representatives and they were trying to change the scope of the work. The Chairman then went before the Town of Indian River Shores and recommended to them that they pull out and then a couple days later the County also pulled out. The Committee met one last time to approve the minutes and at that meeting there were four members present and the two absent members were the County representatives. The City was the only two remaining members on the Committee.

Mr. Daige attended both of those meetings and concurred with what the Water and Sewer Director just informed Council.

E) Discussion of Procedures for Processing Change of Use Applications and New Local Business Tax Applications

Mr. Gabbard explained that the new procedures for processing the change of use applications and new local business tax applications were requested by Mr. Daige.

Mr. McGarry explained that what he is going to do is first make some changes to the business tax form. He said that when they do administrative change of uses, which are generally done by the Planning Director, they will be reviewed and sent to the City Manager for his approval and with that approval there will be a three day effective review period. He will provide copies to the Council and they will have three days to review the forms before they become effective.

Mr. Daige said this is acceptable to him.

F) Discussion of Meeting with FP&L and Lakeland – John Lee

Mr. John Lee, Acting Electric Utilities Director, recalled that a letter was sent out to seven different utilities asking if they would be interested in some or all of the City's electric system. They received a response back from Florida Power and Light (FP&L) and they requested a great deal of information, which was sent to them. FP&L said that they would analyze that information and get back to the City once they have had a chance to look at all of the information. FP&L called back and invited some staff members and the Mayor to Juno Beach to talk with them. They met in FP&L's conference room at their facility. He said that there were five representatives from the City and five representatives from FP&L. He said what FP&L did was make clear that they went over all the documents sent to them, they went to the City website and looked at their budget and wanted to be sure that they understood how the City operates their system. They talked about this and everyone agreed that it was a common understanding and then the question came up as to what is the next step. FP&L said that what they needed to do was go back in their group and come up with what they thought was their next logical step and then come back before the City (City Council) and lay that step out. He said like most businesses they said that the month of June was going to be difficult because of vacations for families and those sorts of things, but they would get back to the City as soon as possible. Mr. Lee said that it was his understanding that FP&L has come back to them and they have set a July 20th date for FP&L to come before the Council and tell them what they believe the next logical step is. He said that was the essence of the meeting.

Mr. Lee informed Council that he attended another meeting in the City of Lakeland, Florida. The City Manager asked him if he would go over there with him and visit with Lakeland's Utility Committee. He said that Lakeland is similar to the City of Vero Beach because they have a large number of electric customers (a larger percentage of outside the City limit customers than they do inside the City limits). He explained that Lakeland takes a little different approach than they do. They have a Utilities Committee and all of the members of their City Commission meet with the Utilities Committee and discuss all their utility items. He said that at this meeting they were discussing their disaster preparedness plan and the cost of service study that could make a change in their rates.

They have a twelve member Committee, which consists of the City Commission and six people nominated from their customer base. They have a representative from their residential customer base, from their commercial customer base, and their industrial customer base. He said that they watched an almost two hour meeting where they discussed these two items and they were discussed at length and there was a healthy debate at the end of the meeting and then they voted on how to proceed. Mr. Lee said it was an interesting process because it was all done together. Then afterwards the City Commission meets formally to approve the items. He said only twice in history has there been a difference of opinion from the City Commission as opposed to the Utilities Committee. In both cases they went back to the Utilities Committee with new information and it was approved. Mr. Lee said that this was an interesting insight into how someone did it differently then what they did. After the meeting they were invited to meet with the Mayor, City Manager, and their Utilities Director to talk about some history and why they do it this way and to give them (Mr. Lee and Mr. Gabbard) some insight. This was a different model then he has ever seen, but he was very impressed with it. He brought back the presentations made at the meeting and copies will be provided to Council.

Mr. Gabbard added that the reason they went over to the City of Lakeland at this time was because of the actions in the Legislature this past session. He said that there were some initiatives by their local Delegation to place them under some regulations by the Public Service Commission. They were informed by FMPA and by a member of the Legislature that this is a model that might really serve the citizens well in Vero Beach because of the combined City Council and Utilities Commission. He said it was a very healthy process and they learned a great deal. He said that a House member in their District was instrumental in inviting them to come to Lakeland. He felt that if there is another Legislative initiative made that this may satisfy the Legislature that they are doing everything that they can because of this model that is working very well in Lakeland. He would give a copy of Lakeland's bylaws to the Council and they can discuss them at a future meeting.

Mr. Heady wondered where this item was on the agenda. He said that there was nothing on the agenda about this discussion. He appreciated the report, he was just trying to figure out where it was listed on the agenda. He said if they are going to discuss a particular item it would be easier to find if it was on the agenda.

Mr. White asked that the agenda be amended to include Lakeland.

Mr. Daige requested from the Clerk a tape of the last Lakeland Utilities Commission meeting and when they are scheduled to have their next meeting.

Mr. Gabbard then brought up the Resolution relating to Amtrak. He wanted to make sure that Council had a copy of it and if they have any questions to meet with him so they can be ready to vote on the Resolution at their Special Call meeting to be held on June 24th.

Mr. Heady requested that when the Clerk does the minutes that she could be fairly comprehensive of the report given by Mr. Lee on the FP&L meeting and the Lakeland meeting. He stated that there is no other written report from anyone on the FP&L meeting.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

- 1. Another reconsideration of date for presentation by Dr. Faherty and Glenn Heran – Requested by Brian Heady**
- 2. Still Waiting for written answers from City Manager – Requested by Brian Heady**
- 3. Missing report from City Manager requested by Councilmember Daige – Request from Brian Heady**
- 4. November Elections – Requested by Brian Heady**
- 5. Debate on Sale of Electric – Requested by Brian Heady**
- 6. 8/12/08 to be played and discussion to follow – Requested by Brian Heady**
- 7. Update on a Federal Lawsuit – Requested by Brian Heady**
- 8. Honest Services Fraud – Requested by Brian Heady**
- 9. Golf Course – Requested by Brian Heady**

These items were pulled off of the agenda by a 4-1 vote with Mr. Heady voting no.

10) City Manager to give update on Original Town – Requested by Ken Daige

Mr. Gabbard reported that there will be a meeting on Friday at the County Administration building to discuss the Go-Line buses. The Clerk noted that she would put a notice out for this meeting if there are two or more Councilmembers who would like to attend the meeting.

Mr. Falls wanted to bring up a couple of other items that disturbed Mrs. Hillman in her memo that was provided as backup material for this item. She had brought up speed limits and four way stops. He said that they will do the necessary traffic study and make an evaluation on the four way stops and get this information back to Council as soon as possible. In regards to the speed limits there have been requests from numerous neighborhoods around the City and the City has actually lowered the speed limit in one neighborhood already. He suggested instead of lowering the speed limit on a neighborhood by neighborhood basis, he thought it might make more sense to look at the neighborhoods Citywide and lower the speed limit on residential streets to 25 miles per hour. The current speed limit in residential areas is 30 miles per hour. If the Council is interested in doing this then he will look into it and bring something back to Council.

Mr. White made a motion to look into Citywide residential streets going down to 25 miles per hour. Mr. Abell seconded the motion.

Mayor Sawnick felt that it was good to lower the speed limits from a public safety standpoint.

Mr. Heady commented that if there is a problem with certain streets, why don't they correct the problem on these certain streets instead of changing the speed limit throughout the whole City. He said clearly there are a lot of streets in the City where 30 miles per hour is an appropriate speed limit. He said that unless they are looking to increase the revenue in the Police Department (speeding tickets), it seems to him if there is a problem with a particular street then the problem should be solved on that street.

Mayor Sawnick requested that Mr. Falls bring something back to Council and they can address the issue at that time.

Mr. Abell asked Mr. Heady if he knew what the Police Department gets for revenue for a speeding ticket. Mr. Heady was sure that Mr. Abell was going to tell him. Mr. Abell said that it was \$2.00.

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

Mr. Daige asked the City Manager if Police presence in the neighborhood has been increased. Mr. Gabbard said that it has. Mr. Daige then asked about the situation with the port-o-lets. Mr. Gabbard said that the County is looking at having a portable bathroom unit installed in this area. He said that this is one of the items that they will be discussing on Friday. He will report back to Council at their next meeting.

B. New Business

1. Request for Funding from the Tree and Beautification Commission

This item was heard earlier in the meeting.

2. Utilize the social networking site Twitter to update public regarding events, meetings – Requested by Mayor Sawnick

Mayor Sawnick put this item on the agenda for informational purposes.

Mr. White mentioned that last year or the year before, the Florida League of Cities brought up that there were some cities using Facebook and most of the cities have stopped using it because there have been some Sunshine Law violations because of it. He said that they need to get more information on this before they start utilizing the networking site Twitter.

Mayor Sawnick asked Council to look at the backup material that he provided and he will bring it back in the future.

Mr. Daige requested the City Clerk to contact the Florida League of Cities and get their thoughts on this. He was interested in knowing what is happening in the State of Florida because of the Sunshine Law. He also wanted to know how many other cities in their State were using Twitter/Facebook.

Mr. Heady asked as a City Councilmember, if he uses those kinds of websites and post comments regarding City business, does that become public record. Mr. Vitunac answered yes. Mr. Heady continued by saying that he has in his hand 176 comments that were posted on an internet site and the newspaper reports that those posts are by Councilmember Abell. He passed the editorial and remarks down to the Clerk to include with the minutes (attached to the original minutes). The remarks made by VBC6, which according to the editorial is Mr. Abell. He said that this document is now a public record because it has been given to the Clerk. He wanted to make sure that he was correct that anything that you post like this in a public forum, if you're a City Councilmember, the posts made would become a public record.

Mr. Vitunac did not think that was correct. He said that whatever correspondence that Council has with their relatives or friends is not public record.

Mr. Heady said that he was not talking about friends. He was talking about on a networking site when you post comments about the City.

Mr. Vitunac challenged Mr. Heady to prove that Mr. Abell wrote any of those things. He said the fact that Mr. Heady submitted these private emails does not make them public record.

Mr. Heady said that they are not private; they were on a public website.

Mr. Daige mentioned the pile of emails that were just given to the City Clerk claiming that the Vice Mayor made the posts. He said that there is no evidence that states that and he would like to ask the City Attorney how they can look into this legally and find out who the actual posting person is because it is a blog name.

Mr. Vitunac did not know how you would find out who a person is on a private newspaper website. He reiterated that things submitted do not automatically become public record if they do not have anything to do with public business.

Mayor Sawnick reminded Council that the item under discussion is whether or not the City should use Twitter as a tool to inform the public.

Mr. Abell commented that you cannot believe everything that you read. He said that they should see shortly a retraction from Mr. Milt Benjamin (32963 Newspaper), that he made

a serious mistake. Mr. Abell said that he does not know who this VBC6 is and he never has. He believes that anyone that uses the blog system is a coward.

Mr. Heady said that was fine. He was just pointing out some of the difficulties that could occur in using these kinds of sites for the City to put information on.

3. Request an area on City website so public can give input on upcoming budget – Requested by Mayor Sawnick

Mayor Sawnick made a motion to have an area on the website so people can post comments about the upcoming budget. This would include a person's name, address, and whether or not they are a City or County resident. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

4. Discuss Shark Fishing Ordinance – Requested by Ken Daige

Mr. Daige would like Council to approve directing the City Attorney to work on a shark ordinance for them to review at their next meeting.

Mr. White commented that they have listened to both sides of the issue and he agrees that their main asset is their beaches and there should not be shark fishing within the City limits of Vero Beach. He agrees that the City should look into having a strict ordinance to protect their beaches.

Mr. Vitunac stated that he would bring an ordinance to City Council at their next meeting which will explain the difference between chumming and shark fishing. He said that they might also submit a special bill for the next Legislature.

Mr. White made a motion directing the City Attorney to bring back for discussion a draft ordinance that includes both shark fishing and chumming. Mr. Daige seconded the motion.

Mr. Abell asked when the shark fishing tournament takes place. He was told on July 1st. Mr. Abell said that they may need to do something in a hurry. He then went over the outcome of the County Commission meeting when this item was discussed. He had a thought to use their GIS Department to help with this. He asked if they could extend it within a mile of their public beaches and parks.

Mr. Vitunac commented that there are a lot of definitions which include what defines a park and what defines the beach. Also jurisdictions must be determined and what they are allowed to regulate. He will look at this comprehensively and speak to the County Attorney about trying to come up with some sort of ordinance that they could both use. He said it might be that the July tournament will be allowed, but they will solve this problem for the long run.

Mr. Abell thought that he (Mr. Vitunac) should see what can be done about the tournament.

Mayor Sawnick agreed that they needed to protect their City limits, even if the County does not want to do anything.

Mr. White read excerpts from the Volusia County Ordinance that was provided in their backup.

Mr. Vitunac thought that whatever restrictions that they place should apply to all their Parks and any beach jurisdiction within the City limits out for three miles.

The motion passed 5-0.

5. Water and Sewer Issues – Requested by Brian Heady

This item was removed from the agenda. The vote was 4-1 to remove the item from the agenda with Mr. Heady voting no.

6. Changing time of meeting – Item added on to the agenda by Brian Heady

Mr. Heady brought up the memo that he received from the Clerk with some future meeting dates and times. He referred to the City Council meeting on July 20th and asked who changed the time of the meeting.

Mayor Sawnick said that he changed the time of the meeting from 6:00 p.m. to 9:30 a.m. He said that he had the authority to change the time but he was told that Councilmember Heady objected so he knew this was going to come up.

Mr. Heady commented that the Mayor changed the time of the meeting without checking with any of the Councilmembers. He thought that if he (the Mayor) was going to change the time of a Council meeting that he should talk to the other Councilmembers about it.

Mr. White stated that he was polled about the meeting and understood that the reason for the change was because the Council had to be at City Hall the next day at 9:00 a.m. for budget hearings. Also, there is another meeting on that same day (July 20th) at 3:00 p.m., with FP&L. He said that was going to be a full week.

Mr. Heady agreed that it is going to be a full week whether they have the meeting at 9:30 a.m. or 6:00 p.m. If he (Mr. Heady) cannot attend the meeting at 9:30 a.m., then what they are doing is scheduling a regular City Council meeting at a time when a Councilmember has already scheduled other things.

Mayor Sawnick explained that the reason for changing the time of the meeting was to make sure that everyone was rested for their budget meetings starting the next day. He didn't have a problem if Council wanted to pick another time for the meeting.

Mr. Heady felt that they needed to have a majority vote to change the time of the meeting.

Mr. Vitunac commented that their Ordinance states that their Council meetings are generally held at 7:00 p.m. He said that the Council can set other times for their meetings.

Mr. Heady said the “Council” can set the times of the meeting, not the “Mayor.” He did not want to change the time the meeting is set for, which is currently at 6:00 p.m. He wanted it to stay at that time unless the Council takes a vote and changes it. He said that if they are going to change it to 9:30 a.m., then they are changing the time to when one Councilmember has previously scheduled something else. He said that is why they schedule meetings in advance.

Mr. Abell felt that the meeting was a month away so Mr. Heady should be able to work this out.

Mayor Sawnick would like to have a full Council present for the meeting.

Mr. White made a motion that they meet at 9:30 a.m. for the July 20th City Council meeting. This would be changing the time from 6:00 p.m. to 9:30 a.m. The reason for the change is because they have a meeting with FP&L at 3:00 p.m. on that same day and then they have to be at City Hall for the next three days for budget hearings. Mr. Abell seconded the motion. The motion passed 4-1 with Mr. Heady voting no.

Mr. Heady brought up the Special Call meeting scheduled for August 23rd, which is a date that he was already committed. He can be available after 4:00 p.m. on that date or some alternate dates would be August 16th, 17th, 18th, 26th or 27th. The Clerk will poll the Council in changing the date of the Special Call meeting.

10. INDIVIDUAL COUNCILMEMBERS’ MATTERS

A. Mayor Kevin Sawnick’s Matters

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

Mayor Sawnick reported that he attended the meeting held with FP&L, Coffee with the Council that was held at Mulligans restaurant and on June 24th Council will be holding their Quarterly budget meeting. He said that the next Mayor’s beach cleanup will be on June 27th. He then asked Council if they received the memo that he provided comparing Vero Beach with surrounding counties for water services. Council said that they received the information.

Mayor Sawnick commented to Mr. Heady that he mentioned Indian River County and Indian River Shores leaving Vero Beach utilities. He asked Mr. Heady to forward to

Council any information that he has on that issue. He also mentioned that Mr. Heady talked about tax exemptions for downtown businesses. He said that is something that he would like to see and is glad that he has support on the Council for it. He would do some further research on the matter. He appreciated that Mr. Heady brought it up.

3. Comments

B. Vice Mayor Sabin Abell's Matters

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

Mr. Abell attended the first meeting concerning Amtrak, Coffee with the Council, and met with the Chairman of the Airport Commission.

3. Comments

C. Councilmember Tom White's Matters

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

Mr. White reported on the Treasure Coast Regional League of Cities meeting and the Municipal Insurance Trust meeting that he attended.

3. Comments

D. Councilmember Brian Heady's Matters

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

1. FPL, Lakeland, and public business in the public eye

Mr. Lee has given a report on the FP&L meeting and the Lakeland meeting, which is covered in the minutes under item 7-F.

2. Liars, Cheats and Thieves

3. Bad Information=bad decisions

Mr. Heady commented that this is something that he has been saying over and over. He said if they receive bad information, little information, or no information that the only thing they are going to do is make bad decisions.

4. Correspondence

E. Councilmember Ken Daige's Matters

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

Mr. Daige read a prepared statement outlining his Committee Reports (please see attached).

- 3. Comments**

- 1. Meeting with FP&L – June 3, 2010**

This item was heard earlier in the meeting.

- 11. ADJOURNMENT**

Mayor Sawnick made a motion to adjourn tonight's meeting at 9:35 p.m. Mr. White seconded the motion and it passed unanimously.

/tv