

**CITY OF VERO BEACH, FLORIDA
JANUARY 7, 2020 8:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

The invocation was given by Pastor Doug Vogt of Pathway Church.

1. CALL TO ORDER

A. Pledge of Allegiance

Mr. Graves led the Council and the audience in the Pledge of Allegiance.

B. Roll Call

Mayor Tony Young, present; Vice Mayor Laura Moss, present; Councilmember Robbie Brackett, present; Councilmember Joe Graves, present and Councilmember Rey Neville, present **Also Present:** Monte Falls, City Manager; John Turner, City Attorney and Tammy Bursick, City Clerk

2. PRELIMINARY MATTERS

A. Approval of Minutes

1. Regular City Council Minutes – December 3, 2019

Mr. Neville made a motion to approve the December 3, 2019 minutes. Vice Mayor Moss seconded the motion and it passed unanimously.

A. Agenda Additions, Deletions, and Adoption.

Vice Mayor Moss suggested that they move forward item 11D-1) if that person is present, who is Mr. Zorbaugh, to follow affordable housing, which is 6A-2). She said they are related matters. She asked Mr. Graves since this is his item, does he want to move it forward.

Mr. Graves said the two (2) items are not really related. He said that Mr. Zorbaugh is not at their meeting to speak about affordable housing.

Vice Mayor Moss was fine with leaving the item where it is if Mr. Graves did not want to move it up.

Mr. Brackett made a motion to approve the agenda as presented. Mr. Graves seconded the motion and it passed unanimously.

B. Proclamations and recognitions by Council.

None

3. **CONSENT AGENDA** (include amount of expense)
 - A) **Indian River Farms Water Control District Permits and Interlocal Agreements relating to Water and Sewer Utilities – VB-3, VB-4, VB-7, VB-8, and VB-9 – (\$3,738.07)**
 - B) **Award of Contract – Airport Security Fence (FDOT #439717-2-94-01) – (\$399,886.72)**
 - C) **Award of Bid 270-19/CSS – Recreation Department Covered Stage – (\$105,000.00)**
 - D) **Municipal Elections Agreement for 2020**
 - E) **Bid No. 220-19: Caustic Soda Solution Annual Supply Contract – Not-to-Exceed Expenditure: (\$60,000)**
 - F) **Bid No. 230-19: Compressed Liquid Chlorine Annual Supply Contract – Not-to-Exceed Expenditure: (\$15,000)**
 - G) **Lease Agreement between the City of Vero Beach and Girard Equipment, Inc.**
 - H) **Second Amendment to Lease Agreement between the City of Vero Beach and Floss-Em, Inc.**

Vice Mayor Moss pulled item 3-D) off of the consent agenda.

Mr. Graves made a motion to approve the consent agenda, with item 3-D being pulled. Vice Mayor Moss seconded the motion and it passed unanimously.

Item 3-D) Municipal Elections Agreement for 2020

Vice Mayor Moss recalled on the off year Elections there is not early voting and the turnout historically is very low on the off years. She suggested that the City Clerk come back to Council with what the additional costs would be if they had early voting on the off years. She noted that this is not an off year so it is not a consideration for this year, but wanted to make this a matter of record and this is nothing that they need to vote on now.

Mayor Young commented that the Election this year should cost the City about \$5,000.00.

Mrs. Tammy Bursick, City Clerk, explained that since this year's Election is a County Election that the City's cost will be 50 cents per voter, which amounts to around \$5,000.00.

Mr. Brackett made a motion a motion to approve item 3-D). Mr. Graves seconded the motion and it passed unanimously.

4. PUBLIC HEARINGS

A) ORDINANCES

None

B) RESOLUTIONS

1) A Resolution of the City of Vero Beach, Florida, Expressing Support for Restoring Funding for Florida Forever to its Historical Levels. – Requested by Vice Mayor Laura Moss

The City Clerk read the Resolution by title only.

Vice Mayor Moss commented that for the community if they were not present when this item was discussed, Dr. Richard Baker, President of the Audubon Society, brought this Resolution forward. She said the most pertinent points are that the citizens of Florida voted overwhelmingly in 2014 to support the Florida Water and Land Conservation Amendment (Amendment 1) to restore funding for Florida Forever. She said unfortunately that funding has not necessarily been used for that purpose. She said this Resolution is to urge the Legislators to use the money for that purpose. In other words to follow the will of the people.

Mr. Brackett commented that he met with Dr. Baker concerning this Resolution. He said in theory he is in favor of it, but suggested to Dr. Baker and he agreed to it, that they change the levels of the “historical levels.” He has not seen a new document showing this change.

Vice Mayor Moss asked the City Attorney if he was informed of that change.

Mr. John Turner, City Attorney, said that he was not.

Vice Mayor Moss asked if any other Councilmembers had any other changes that they would like to see. She said that she is fine with that change.

Mr. Neville stated that he supported the change and the initiative. He said that it is unfortunate that the State Legislature bends the will of the people when they overwhelmingly voted to use these funds to buy these lands. He is fully supportive of the passage of this Resolution.

Vice Mayor Moss withdrew the Resolution for consideration today and said that she would bring it back at their January 21st meeting with the requested change made.

Vice Mayor Moss noted that this Resolution is on the County Commission’s agenda for their meeting this morning. She said in the future everything needs to go through the City Attorney. She just wanted to make sure that everyone was aware of that.

2) A Resolution of the City Council of the City of Vero Beach, Florida, Establishing a Special Assessment Lien in the amount of \$5,205.00 for a Septic Tank Effluent Pump (STEP) System to serve the Real Property located at 1480

30th Avenue, Vero Beach, Indian River County, Florida; Providing for an Effective Date. – Requested by the Water and Sewer Department

The City Clerk read the Resolution by title only.

Mr. Monte Falls, City Manager, reported that this item and the next item are Resolutions establishing liens for people wishing to hook up to the STEP system.

Mayor Young opened and closed the public hearing at 8:40 a.m., with no one wishing to be heard.

Mr. Neville made a motion to approve the Resolution. Mr. Graves seconded the motion and it passed 5-0 with Mr. Neville voting yes, Mr. Graves yes, Mr. Brackett yes, Vice Mayor Moss yes and Mayor Young yes.

- 3) A Resolution of the City Council of the City of Vero Beach, Florida, Establishing a Special Assessment Lien in the amount of \$5,640.00, for a Septic Tank Effluent Pump (STEP) System to serve the Real Property located at 908 Coquina Lane, Vero Beach, Indian River County, Florida; Providing for an Effective Date. – Requested by the Water and Sewer Department**

The City Clerk read the Resolution by title only.

Mayor Young opened and closed the public hearing at 8:41 a.m., with no one wishing to be heard.

Mr. Neville made a motion to adopt the Resolution. Mr. Brackett seconded the motion and it passed 5-0 with Mr. Neville voting yes, Mr. Graves yes, Mr. Brackett yes, Vice Mayor Moss yes, and Mayor Young yes.

- 4) A Resolution of the City Council of the City of Vero Beach, Florida, Authorizing the City to enter into a Supplemental Joint Participation Agreement with the Florida Department of Transportation for a Project at the Vero Beach Regional Airport entitled “Apron Construction” (FDOT #442101-1-94-01); Providing for an Effective Date. – Requested by the Airport Department**

The City Clerk read the Resolution by title only.

Mr. Falls reported that the City Council accepted a Florida Department of Transportation (FDOT) grant to construct a new 35,000 square foot hangar to support increased capacity to handle large corporate jet aircraft at the Airport. At the time, it was anticipated that Elite Airways or another large user would complete a public-private partnership agreement for the 80/20 FDOT grant that would allow for the hangar construction and use. Airport staff was unable to complete negotiations with Elite Airways for a long term lease, so an RFP was advertised to find a suitable partner. Sheltair, an aviation management and

development company in Fort Lauderdale, submitted a proposal, but it was not fully responsive to the City's requirements to lease the property. Recently, a current Airport tenant, JP Aviation Investments, Inc., has indicated their interest in the property. JP Aviation already has approximately three (3) acres of Airport land under a long-term lease from the City and constructed three (3) large hangars on their leasehold. To fund this Airport infrastructure that is needed to accommodate this development, staff pursued Supplemental Joint Participation Agreement (SJPA) to the FDOT grant to allow the existing grant funding to be used for construction of infrastructure instead of the hangar. FDOT agreed with this and has issued the SJPA. JP Aviation has also indicated that they will fund the \$1 million grant match necessary to begin the construction of the apron, and will fund the entire hangar construction at their own expense. Staff recommends approval of the Resolution and acceptance of the SJPA. Mr. Falls said that staff checked with the Legal Department and the Purchasing Department and was told that it was not a legal requirement to do an RFP. He brought this to Council as they have a tenant ready to pursue this project.

Mr. Graves stated that here is his issue. There was a Resolution on August 21, 2018 to accept the grant money to build a new 35,000 square foot hangar on the north end of the Airport. Then on December 6, 2019, the Airport Commission was told by their Airport Director that Sheltair would be constructing the project. He looked at the memo, which indicated that Sheltair was unable to comply with all the terms so staff went forward with JP Aviation to build three (3) separate hangars (12,000 square feet) at the east side of the Airport. He said this decision was made some time between the Airport Commission meeting that occurred on December 6, 2019 and now, in which the City Council has not heard anything about this until now. He understands that there has not been a lot of response to the previous RFP, but the fair thing to do would be to have an RFP and open it up to see if there are any other contractors that come forward, rather than just giving it to JP Aviation.

Mayor Young asked the Airport Director if he was aware of any other firms that could provide this service.

Mr. Eric Menger, Airport Director, explained that this project came about over time because of the existing tenant, JP Aviation. He said that an RFP went out originally and at that time JP Aviation was in the middle of building their existing three (3) hangars and was not interested to do anything except complete their existing project. Then when Sheltair was non-responsive and indicated that they wanted to have a management agreement such that the million dollars that they were going to put up would have to be paid back through the lease agreement, he looked at that and said that is not really the best deal for the City so they should at least take a look at some other options. The City Council authorized staff to negotiate with Sheltair, which was what they were doing. He said at the end of the negotiations when it just wasn't going to work out is when JP Aviation said that they would like to not just build one (1) additional hangar, but would like to build another three (3) hangars along the new taxi-way echo. He said JP Aviation has shown interest to lease all the remaining property on taxi-way echo up to the line of sight limit for the air traffic control tower. He said they do not want anything back for the million dollars. They will

come up with a million dollars to do the construction of the infrastructure and the full funding to build all three (3) of the hangars at their expense. He said all they are asking for from the City is to lease them the property. The State has agreed that they would modify this grant that has been approved for the \$5 million from hangar construction to infrastructure construction. What he is asking for today is simply to accept the funding change from the hangar to infrastructure funding. He said that the Airport and the City will have no money in this because the private sector will fund the million dollars. They will also fund the hangars and pay the Airport rent for the land. He said they have to let the FBO's know that this has been available and no one has stepped up to the plate to build these facilities from their existing tenants. He feels that JP Aviation has the funding ability to do it and this would be a fantastic arrangement for the Airport. He said that the lease would have to be brought back to the Council for approval. This is just for funding and a supplemental agreement to change the scope for the existing grant from hangar construction to infrastructure construction and allowing them to move forward with the lease negotiations. He said if Council would approve the JPA today and would like him to do an RFP for a possibly better tenant they could do that. He feels like they have a really good tenant in place and could easily move forward with this, which is what he recommends.

Mr. Neville asked if the land lease that they would be receiving from JP Aviation is consistent with all of the other land leases that they currently have at the Airport. Mr. Menger answered yes. He said it would be identical to the terms of their existing lease that they currently have with them.

Mr. Graves asked Mr. Menger if this would be a change of use of funds for a different project. Mr. Menger answered yes. He said it would be a different project because they would not have any management agreement at all as part of this. They would have to manage the grant and make sure that the million dollars is received up front from the tenant before construction begins. He said that would be a part of the lease agreement, which Council would have to approve. He would like to have this lease done as soon as possible because the tenant is anxious to move forward.

Mr. Graves asked if he was correct that this was not brought before the Airport Commission.

Mr. Menger explained that he has shown the Airport Commission some conceptals of how this will be built, but has not brought the JPA change before the Airport Commission. He has talked to some of the Airport Commission members and they believe that this is a good opportunity for the City. He said that there is an Airport Commission scheduled for this Thursday and he would be happy to discuss it with the Commission at that meeting.

Mr. Graves commented that he has heard from citizens that they have an issue with the lease so that is why he is asking these questions. He felt that if it is a new project then it should go before the Airport Commission and they can give their recommendations to the City Council. The City Council appreciates the Airport Commission's guidance on these kind of issues.

Mr. Menger stated that the Airport Commission will also review the long-term lease agreement.

Mr. Falls asked Mr. Menger if there would be a problem with adding this item on to the Airport Commission's agenda for Thursday and bring it back to the City Council at their January 21st City Council meeting.

Mr. Menger stated that FDOT would be fine with that.

Mr. Graves wanted to see the recommendation of the Airport Commission regarding this item. It was the consensus of the Council to have this item reviewed by the Airport Commission and to bring it back to the City Council for their consideration at their January 21st City Council meeting.

5. PUBLIC COMMENT (3-minute time limit)

Mrs. Katherine Booth, resident of Vista Gardens in Vero Beach, talked about the value of trees to people. She provided Council with a memorandum entitled "Saving Our Live Oaks", which is attached to the original minutes. She would like for the City to redo the portion of the Landscaping and Tree Protection Ordinance to discourage the removal of Oak Trees and consider that pruning is not proven to be necessary for Southern or Live Oaks.

Mr. Johnathon Rhodeback, Attorney with the Law Firm, Dill, Evans, and Rhodeback, stated that on today's agenda under City Attorney Matters they will see a line item to give the City Council an update on a proceeding involving the property at 705 Azalea Lane. He said that he is the Attorney for the petitioners in that matter. He reported that petition specifically contests a Future Land Use Map (FLUM) amendment that was approved by the City Council in September, 2019. A few weeks ago he sent the City Attorney a letter setting forth what the petitioners would like to see the City Council do in order to fully resolve the matter. He said in looking at the City Council minutes and video of the meeting, it seemed like the City Council at that time was particularly concerned about commercial creep and other various buffering requirements associated with the project because what is proposed is a parking lot that would go into a residential area. The petitioners in the case are challenging whether it classifies as a small scale development amendment. He said that he is not concerned with the legalities today because the legalities does not get them to the final resolution the petitioners are looking for. All they are looking for is a rehearing to reconsider the FLUM amendment application and if the City Council approves the FLUM application without any text changes to the Comprehensive Plan, the petition itself goes away. If the City Council approves the FLUM amendment it must be accompanied by text change to the Comprehensive Plan, which is what he thought was the intent of the City Council. In that case it must be processed as a regular Comprehensive Plan amendment in which case there are certain State agency reviews associated with it or the City Council can deny the FLUM amendment, which he believes would be in the best interest of all parties involved including the petitioners and the City Council because it

would prevent prolonged litigation associated with this and come to an amicable resolution because at the end of the day, it is a legislative decision at the pleasure of the City Council. He said when this line item comes up he is available to answer any questions. He said that he was not trying to step on the City Attorney's shoes, he just wanted the City Council to be aware of this.

Mayor Young asked Mr. Turner if he wanted to comment on this.

Mr. John Turner, City Attorney, questioned if the City Council wants him to respond at this point or wait until they get to City Attorney's matters on today's agenda.

Mayor Young felt it would be relevant at this time.

Mr. Turner reported that this matter is scheduled to go to trial on Monday and the City is ready to proceed with their case. He said there is also a third party involved who is the applicant and owner of the property. They have indicated through their attorney that they are opposed to any settlement at this point. Their position is to let the Judge make their decision at the trial on Monday.

Mr. Graves asked Mr. Rhodeback if he represents all the petitioners. Mr. Rhodeback reported that he represents all the petitioners.

Mr. Graves asked Mr. Rhodeback if he is proposing that if the City Council votes to reconsider the zoning change then the petition will be dismissed.

Mr. Rhodeback explained that there has been an application for zoning, but it has not been approved one way or the other. All that was approved so far was a land use designation change of the City's FLUM, which went from Residential-Low to Residential-Medium, which is a higher density. There is a subsequent application for rezoning, which he assumed would be coming before the City Council at some point in time, but all this petition addresses is the land use designation change on the FLUM.

Mr. Graves said the question is if the City Council were to reconsider, would the litigation end. Mr. Rhodeback answered yes. He said they would withdraw the petition.

Mr. Graves asked would they have the ability to refile if they did not agree with the decision of the City Council after reconsideration.

Mr. Rhodeback said if the City Council approves the FLUM amendment without any text changes, the petitioners will not oppose it. If the City Council approves the FLUM amendment, it must be accompanied by the Comprehensive Plan text changes to address some of the commercial creep, it is their position that they must be processed as a regular Comprehensive Plan amendment in which case there would be a State agency review. He explained that his petition would be mute at that point because there would be no small scale development amendment for him to petition.

Mr. Graves asked is there a third party involved. Mr. Turner answered yes.

Mr. Graves said then even if City Council was to agree to review this, the litigation would still continue on Monday. Mr. Turner said it possibly could.

Mayor Young felt they have a direction they are moving in, which he feels is appropriate at this point.

Mr. Brackett said if the City Council agrees to rehear this, it would have to be noticed for another agenda and could not be done today. The final hearing is Monday morning so his opinion would be that they hear what the Judge rules.

Mr. Graves noted that they would not receive a ruling on Monday.

Mr. Turner explained that the issues will be discussed and the Judge will take the evidence and then within a very short period of time make a recommendation.

Mr. Graves asked do they have outside Counsel helping. Mr. Turner answered no.

Mr. Graves asked if they have an expert witness. Mr. Turner answered yes.

Mr. Graves asked what is the cost of bringing the expert witness to the hearing. Mr. Turner said they have a budget of \$13,000.

Mr. Graves asked how much of that \$13,000 has been spent. Mr. Turner said they have not received an invoice yet.

Mr. Graves asked what is the hourly charge. Mr. Turner said approximately \$225 an hour.

Mr. Graves asked is this for a full day. Mr. Turner said yes, the expert would be testifying for a full day.

Mr. Graves asked is the witness coming from out of town. Mr. Turner answered yes.

Mr. Graves said then there would be room and board and meals (expenses). Mr. Turner said that is correct.

Mr. Graves said it gets expensive when they have expert witnesses coming from out of town.

Mr. Turner felt that his rates were very reasonable for an expert in his field coming from out of town to give an independent testimony on the matter. Otherwise, he would not have gone with this approach.

Mr. Rhodeback explained that the point is the promise to rehear the matter, not the actual results of the rehearing that resolves the petition. He further explained that if the City

Council agrees today to rehear the matter at a later date based on that representation, they would withdraw the petition. Where it goes in that point in time is a City Council decision. He wanted the City Council to be mindful that even after the final hearing there is still an agency review, there is still an appellant process for the Fourth District Court of Appeal (DCA), and there is still the possibility of a Declaratory Judgement Action that could be filed as a separate proceeding. He said this is all in his letter to Mr. Turner. He then handed out to the City Council the letter that he sent to Mr. Turner (on file in the City Clerk's office).

Mr. Graves said litigation never ends.

Mr. Turner said that he has handled a number of these cases and this is not particularly factually intensive, although it will require a day of hearing and the Judge's ruling would be within 30-days.

Mr. Graves asked if the City loses, are they subject to attorney fees.

Mr. Turner answered no. He said they have not been asked for attorney fees. He said if the City wins, they might seek attorney fees.

Mr. Graves said the Statute states that if one (1) party can receive attorney fees, the other party can receive attorney fees.

Mr. Turner explained that under Chapter 120, either party can ask for attorney fees in a recommended order that would be filed and if the hearing officer determines that the action was brought for deliberate efforts to stall or delay or without any basis then they would be awarded attorney fees.

Mr. Graves said we could have attorney fees awarded against the City.

Mr. Turner said yes, it is a possibility.

Mr. Graves said so there is further exposure to the City.

Mr. Turner said it is possible, but he didn't think that was a reasonable application. There is always a possibility.

Mr. Graves said in his view, the reasonable thing to do is to agree to rehear it instead of exposing the City to potential attorney fees, expert witness costs, appellant fees, etc., everything that goes in line with litigation. To him, the simple solution is to agree to rehear it and have them drop the petition.

Mr. Brackett said if they agree to rehear this, there are still two (2) other parts in the process that could still come back against the City because they would have to have another designation letter, and they were not giving up their rights to petition the City if the City rezones it a second time. Then there is another process for the site plan approval. He said

then they have a third party who the City Council granted the change for that could come back against the City as well. He felt they were setting themselves up for more exposure that way.

Vice Mayor Moss agreed.

Mr. Graves disagreed stating that either way there is a long process. He asked why not give them a chance to resolve it without exposing them to more costs and fees. He said this is taxpayer's money. Litigation benefits the lawyers.

Mr. Brackett said that he agrees, but he doesn't think this resolves it. He said this just delays it.

Mayor Young said this isn't going to stem the review of the entire matter one way or the other. He said they have the precedence that has been made so he is comfortable with proceeding forward.

Mr. Graves disagreed.

Mr. Neville encouraged the City Council to make their decision based on the long view, which the long view is preservation of central beach, the way they know it now and not how this first instance could perhaps lead to a snowball that is going to grow into an avalanche. He said it worries him that they are concerned about costs. He felt they should be concerned about the neighborhoods. He felt a decision should be based on the legal prospective of protecting the neighborhoods and the people who reside there. He questioned from that point of view, is it wiser to rehear this or is it wiser to have the Judge make a judgement and then bring it back for further discussion at that time.

Vice Mayor Moss said the Mayor and herself both voted against this commercial creep at the time. If she understands the City Attorney correctly, what she is saying is that she agrees with Mr. Brackett, she is only speaking for the Mayor because this is a matter of public record, that was the vote, but if she is understanding it correctly from the City Attorney, the best way to proceed at this point is just to continue on the current path and get a decision on Monday.

Mr. Turner said yes, that would be his recommendation.

Vice Mayor Moss agreed with continuing with the hearing even though she is in Mr. Rhodeback's corner.

Mayor Young said without going into further enumerate the rational, he thinks adequate protection is there to address Mr. Neville's concern, which he has talked with Mr. Turner and with the Planning and Development Director as well, so he is comfortable with the fact that the way they are managing this is appropriate and there is enough safeguards there to allow for them to keep the character of central beach.

Mr. Graves said that he agrees with everything Mr. Neville said. He said that is the ultimate concern that everyone on the City Council should have. But, they are just not there. They have to look at this right now practically. He said if they have a chance to resolve this and have no exposure for further costs, have no exposure for attorney fees, have the opportunity to eliminate this issue without a long-term problem or appellant issue, etc., that is involved in litigation, to him, why wouldn't they try. He questioned why would they not give it a shot. He said they have a fiducial responsibility to protect the taxpayers from unnecessary costs and fees and attorney fees get out of control very quick. He said expert witnesses, fees, appellant costs, etc., there is practical aspect to as well. He said that he agrees with Mr. Neville. He said that he thinks that is the ultimate concern of the City Council, but that is for another day to consider. He said it is always better to try to resolve differences if you can. He said it might not be possible. He asked why not give it a shot. He said they are in no worse position trying to give this a shot and get it resolved than they are to just steam ahead forward on this issue.

Vice Mayor Moss said it doesn't resolve the matter.

Mr. Graves said it could.

Vice Mayor Moss continued saying if there is a third party, what about the third party. She said if there are only two (2) parties then she thinks you could say that, that it would be resolved, but with a third party, if there is a way that that is a resolution, she asked the attorney to explain that.

Mr. Turner said as to fees and costs, if there were any attorney fees being sought, he did not think the chances of recovery of attorney fees against the City in the event the City lost and a recommendation was entered against the City, he was not going to guarantee it, but the chances of that happening are not great. He said the costs to the City would primarily be for an expert witness whose fees are capped at \$13,000. He said that is a very reasonable budget for an expert witness in land planning and comprehensive planning. The time delay could be as long as three (3) months in the event of a ruling or appeal, if there was any basis on an appeal from the administrative field into a court of appeals. Then they have the third party, who is not here. He said they have a vested interest in this matter. They are the applicants and they are the ones who sought and received approval for the FLUM amendment. He said they are not here. They have expressed to him that they are opposed to this type of settlement. He would not advise the City Council to proceed unless they have their input on this matter.

Mr. Graves said the third party is the applicants. Mr. Turner said that is correct. The owner of the property is the one who sought the application and has a right and needs to be included in the discussion if there is a serious consideration of settling this. If that is the case, then the case that is scheduled Monday would have to be continued. He noted that the applicant's attorney is out of town.

Mr. Graves asked are they a party to this action. Mr. Turner answered yes. He said they are an Intervener.

Mr. Graves asked does an Intervener have the ability to go forward with a petition if the petitioner withdraws the petition. He said an Intervener is just an interested party in the litigation.

Mr. Turner said they are a party to the case.

Mr. Graves said they are an Intervener. The original complaint is filed by a petition and they are not the petitioner. His question is, if the petition is withdrawn, does the Intervener still have a case.

Mr. Turner said if the petitioner dismisses the case with prejudice, then it is over.

Mr. Graves said so the Intervener does not have a separate cause of action so the hearing does not go forward on Monday if the City Council decides to hear this with the petitioner because there is no action, therefore there is no action by the third party against the City, it is only the petition so if the petition is withdrawn there is no action. He asked is that correct.

Mr. Turner said that is correct if they dismiss with prejudice.

Mr. Graves said then the City Council has the opportunity at a subsequent hearing to have the applicants come in and be heard and reconsider this matter. He asked is that correct.

Mr. Turner said that is the procedure, but they are going to have the applicant come in stating that they had a FLUM amendment granted by the previous City Council.

Mr. Graves asked are they willing to indemnify the City for costs and fees.

Mr. Turner said that he has not asked them that.

Mr. Graves said it is always better to talk and try to resolve differences. He asked how long does it take to get an order from the Judge.

Mr. Turner said approximately 30-days.

Mr. Graves asked if there is an appeal to the Fourth DCA, which he has experience with, how long does it take to get an order from them.

Mr. Turner said that he didn't know.

Mr. Graves said his experience is that it takes a least a year and a half. So they are talking about a potential appeal by either party to the Fourth DCA and it being a year and a half down the road and having no resolution to this when they have the opportunity to sit down and resolve it now and have all parties heard and reconsider, which is all they are asking for and he doesn't think that is unreasonable.

Mr. Brackett asked Mr. Rhodeback if he is saying that if the City Council grants the rehearing and it goes the same direction as before that they are walking away and nothing is happening at any point in time down the road. They are giving up all their rights to come back against the City Council and the City.

Mr. Rhodeback said if it goes back for rehearing and there is a small scale development amendment approved changing the Residential-Low zoning to Residential-Medium for 705 Azalea Lane and that is it, then yes. He noted that this would be for this one (1) application because he doesn't know how other applications would go.

Mr. Graves said then he is saying that this litigation would be done, but if there are future applications there might be ...

Mr. Turner said there are going to be zoning applications coming forward and they are reserving the right to file additional claims in the event they feel it worthy. They are not giving up anything for future applications and actions by the City Council. It is just this case that is set for Monday.

Mr. Graves said that would be speculative to assume that future applications would be coming forward. He asked is that correct.

Mr. Brackett said when the City Council approved it, the applicant told them they had another round coming.

Mr. Graves said they can't ask another party to give up their rights if there is another application on another issue. But as far as this issue goes, this would be dismissed with prejudice and this would be over. He asked is that correct.

Mr. Rhodeback said yes. He said there are many moving parts and there could be a proposal that comes before the City Council that is permissible for everyone. But, as it stands right now, he thinks there were issues with the prior decision with the FLUM amendment that gives them legal leverage.

Mr. Graves said so this petition would be dismissed with prejudice.

Mr. Rhodeback answered yes, if they rehear the matter.

Mr. Graves felt that was a no brainer.

Mayor Young asked Mr. Turner, what is the liability for the City if they were to continue to move forward.

Mr. Turner said that he doesn't want to discuss this with all due respect. He said they have to recognize the applicant and their position, which he felt the recommendation would be

if there is interest of the City Council in pursuing a type of a resolution that they have to consult with the applicant's attorney.

Mr. Graves said so the applicants are the Intervener and if they agree to rehear, they are giving them an opportunity to be heard, as well as petition, but it gets the City out of this litigation.

Mr. Neville asked if this is reheard and it goes the other way, don't they think they would be having this same discussion with a different attorney before them.

Mr. Graves said they can guess about what might happen, but the immediate concern is what is before them now, which is this litigation.

Vice Mayor Moss said it probably will go the other way if she is understanding everyone correctly because last time they failed to stop the commercial creep. She said if she remembers it correctly, and to correct her if anyone remembers otherwise, it was a 3-2 vote and we lost that battle to stop commercial creep. This time if she is hearing everyone correctly, it would be more likely to succeed. They would be more successful in stopping what they have referred to this morning as "commercial creep." She asked the City Attorney what is the best way and the best economical way to do this.

Mr. Turner said if the City Council is interested in going in this direction that has been offered and they are discussing it at a public meeting, they need to have direction that the Intervener, the applicant who received approval, would be included. Right now the Intervener has the FLUM amendment granted from Residential-Low to Residential-Medium and to change that in the future, he does not know what they will have in mind.

Mayor Young asked if the appropriate thing to do would be to hold a Shade meeting.

Mr. Turner said this matter is set to be heard Monday and if the petitioners, Mr. Rhodeback, would agree to seek a continuance they might have enough time to have the Shade meeting. He said if they agree to jointly request a continuance and also get the Intervener's consent to offer to the Judge for consideration.

Mr. Rhodeback said that he would not be opposed to a continuance in light of the City Attorney being given the opportunity to speak to the City Council about what their intentions are with the litigation. He would not contest a continuance if the City Attorney wants to file a joint application.

Mr. Turner asked the City Council for some dates that they would like to hold the Executive Session.

The City Council took a five-minute break at 9:26 a.m. and reconvened at 9:33 a.m.

Mayor Young asked the City Clerk for the proposed date of the Shade meeting.

Mrs. Tammy Bursick, City Clerk, reported the date would be Tuesday, January 21, 2019 at 8:00 a.m., which would be prior to their regular meeting that begins at 8:30 a.m.

Mr. Turner explained that at the Executive Session, all members of the City Council will be present, a court reporter will be present, and the City Manager and City Attorney will be present. He said that he would get the notice out and arrange for the court reporter.

Mr. Graves said that he doesn't see the need for a Shade meeting. He said even if they grant this petition, they are still able to bring future petitions so nothing ever is going to prevent someone's access to being able to bring a petition in something unrelated to this petition at hand. So, the opportunity to rehear it and have all parties be heard by the City Council in exchange for a dismissal with prejudice makes all the sense in the world. He said it is just belaboring the point. He didn't know anyone who would turn that deal down.

Mayor Young thought what they want to do is have the opportunity for the City Council to be before the City Attorney to understand.

Vice Mayor Moss said you (Mr. Graves) are welcome to vote against it if you don't agree with it.

Mr. Graves made a motion that the City Council rehear the petition in exchange for the dismissal with prejudice of the petition that is currently pending and to end the litigation.

Mr. Rhodeback said their City Attorney will confirm this, if the petition challenging the FLUM amendment is successful from the petitioner's perspective, the matter gets reheard anyway. It doesn't strike down their decision to the extent that it gets reversed and the FLUM map could never come forward again. They just believe the best decision is for all parties involved to rehear the matter and it will resolve any legal issues that they believe arose during the prior hearing in September.

Mr. Ken Daige said this rezoning puts a hurting on the neighborhoods. He said that POI zoning has destroyed many parts of their different neighborhoods in the way that POI zoning is set up. He explained that there are not that many protections in there like they had years ago. He asked that the City Council keep in mind that they only have so many neighborhoods. If this goes through and they get what they want, there will be more applicants who want the same thing. They are going to set a precedence. The City Council are the fathers and mothers who watch out for their neighborhoods. They are either to stand their ground and look out for the neighborhoods or they don't. He said that he is looking for protection of the existing neighborhoods.

Mr. Brian Heady said 50% of litigants lose. Anybody that thinks this is a guarantee hasn't been watching the courts. The issue before Council is simply rescheduling another hearing. The fact that you have a City Attorney representing an Intervener to him is more than just a little troubling. The third party that keeps getting referred to is not a litigant and are not named in this case. He said all they are asking for is to have another hearing, which makes

this go away and saves them thousands of dollars. He said having a Shade meeting raises red flags for many people for many reasons. He has seen the court reporters' report of Shade meetings and it is unbelievable what happens behind closed doors. He said this is a no brainer. He asked the City Council to please grant them a rehearing. He said they are granting them a promise that sometime in the future they are going to rehear this and everyone can state what they have to say and the taxpayers save a lot of money. The Shade meeting is a waste of taxpayer's money. He said the demeaning comments directed at one (1) of the City Councilmembers, who happens to be a lawyer, should disgust the rest of the City Councilmembers and they should be concerned when any Councilmember makes such comments against another Councilmember. He said this is a no brainer. He asked the City Council to please promise a rehearing. He asked that they do a rehearing sometime in the future and save the taxpayers a lot of legal fees on something that is absolutely not a guarantee.

Mrs. Jennifer Koudla said that she has been up to this podium three (3) or four (4) times to discuss what happened on Azalea Lane. She said during the Planning and Zoning Board meeting, they had plenty of time to discuss what was going to happen and what it meant to their neighborhood. She said there were a lot of people before the Planning and Zoning Board and the Board decided not to grant the FLUM amendment. Then when the City Council was going to vote on it, a lot of people didn't attend because the Planning and Zoning Board shot it down 5-0 and they were the ones who had time to really listen about the situation. At the City Council meeting, they were not heard until about five (5) hours into the meeting and they barely had any time to speak. The City Council didn't listen at all to what the Planning and Zoning Board said. She said it just wasn't right. At the very end, it did pass, but it passed with the caveat that they do the text amendments. It wasn't a yes or a no. That is the petitioner's complaint. They are not bad guys and she doesn't think they should have been treated the way they were treated. She said the fact is that when people listen to the whole story, they don't want this commercial creep and they don't want this change. She said they are more than happy to drop the suit. All they wanted all along was for someone to take a minute and listen to what this was going to do to their block. She said there are three (3) empty lots across from her that are owned by a developer and if they change this to Residential-Medium, that developer will then have the precedence set that he can come in and do whatever he wants. If the City of Vero Beach wants this last block of Azalea Lane to go commercial, that is too bad for the residents. She said that she didn't think one (1) applicant wanting one (1) thing should take precedence over what everyone else on the block wants. What they want is for the last three (3) empty lots that are owned by a developer.

Mr. Turner said with regards to the Executive Session, he also wants Mr. Jason Jeffries, Planning and Development Director, to be present as a Representative of the City Manager's office. He said that the City Council is his client. He is here to do what is in their best interest. He is not here to represent the Intervener. They have their own attorney. The attorney for the Intervener sent him a text stating that he cannot be here and is opposed to any settlement at this point and that the City might be facing legal exposure in the event that there is a change.

Mr. Graves asked a change for what.

Mr. Turner reported what their attorney told him in that there may be a possibility of legal action brought by his client against the City.

Mr. Graves asked for what.

Mr. Turner said that he was not sure. He was just relaying the information.

Vice Mayor Moss asked that they have this conversation privately. She feels it is demeaning to the City Attorney to be conducting themselves this way.

Mr. Graves said it is not demeaning. He said that he is trying to understand what the opinion is. He wants to know what is specific. He said an Intervener is not a party. An Intervener is someone who petitions within a lawsuit to have the opportunity to be heard. The petitioners are the party; the petitioners versus the City of Vero Beach. Those are the parties to the case. An Intervener petitions to have the opportunity to be heard so they have no standing in this. He said to say there is a possibility of a lawsuit, any citizen for anything can sue the City at any time. This doesn't make any sense to him. He wants to know what the legal basis and legal exposure is to the City by the Intervener. He asked what possibly could be the legal exposure to the City by the Intervener.

Mr. Turner said there would perhaps be claims of procedure due process, possibly a taking, and Bert Harris claims. Those were what came to his mind at this point.

Mr. Graves said they are giving them due process with a new hearing.

Mr. Turner said what their claim could be is if they thought they had an interest in the property that was changed, that they would bring some action.

Mr. Graves asked how can they make a decision if they don't know what the exposure is. It was stated that there is some possible action and he doesn't understand what that would be.

Mayor Young felt they understand Mr. Grave's perspective. He asked for a second to the motion.

The motion died for lack of a second.

Mayor Young asked does a decision for a Shade meeting need to be by consensus or by a vote.

Mr. Turner said that the motion would be for direction to the City Attorney to ask for an Executive Session meeting to discuss the issues of this case that is set for trial on Monday, January 13, 2019, and as part of that he is asking for necessary authority to obtain the Intervener, the property owners, whether they object or consent to a continuance of the

matter on Monday, January 13th, and would also obtain the consent or agreement of the petitioners that they would not object to any continuance pending the Executive Session. If the matter is granted as far as the continuance is concerned, which it may not be granted. The Judge might say no, they waited too long, and now is the opportunity, they are here on Monday and they will have to proceed. Mr. Turner said if there is a continuance granted, it more than likely will be several months.

Vice Mayor Moss asked is that your motion.

Mr. Turner said that what he would like to have from the motion is that they have an Executive Session on January 21st at 8:00 a.m.

Vice Mayor Moss said it was your suggestion. She thought that the Mayor was making a motion.

Mayor Young said that he prefers not to make a motion, but was asking for input from the City Attorney. If another member of the Council would like to make the motion that would be appropriate.

Mr. Turner said the motion would be from the City Council to the City Attorney to arrange for an Executive Session on January 21st at 8:00 a.m., pursuant to Statute. He asked Mayor Young to state that for the record so that they have it. He said the Mayor is entitled to make a motion.

Mayor Young made a motion that the City Attorney proceed with an Executive Session on the date as stated and also for the request for the continuance as he provided earlier. Mr. Neville seconded the motion.

Mr. Ken Daige asked since they are going to have a court reporter at their Shade meeting, when will the transcript be open for public viewing. Mr. Turner explained that State Statute requires that the transcript be kept sealed until all the litigation is over.

The motion passed 3-2 with Mr. Neville voting yes, Mr. Graves no, Mr. Brackett no, Vice Mayor Moss yes, and Mayor Young yes.

Mr. Brian Heady stated that one (1) of the things that is their job is to represent the people and the community that is here and who are interested all asked to schedule a rehearing. No one (1) spoke against it and yet he (Mr. Graves) couldn't get a second to his motion. He questioned what is wrong with that picture. He said that he sent an email to the City Clerk's office and showed the documents that the City Clerk gave him. He said that he was given paper copies and asked that the City Clerk send him the documents in electronic form so that he will have a better record. He asked the City Clerk to do that and to include Mr. Graves in that email so that they are all on the same page.

6. CITY COUNCIL MATTERS

A) NEW BUSINESS

- 1) Brightline/Virgin Train in Indian River County for discussion by Council and Community. (Contact Vice Mayor Moss at lmoss@covb.org).**
 - a) Update by Vice Mayor Moss from “Town Hall” on the Train held by Senator Mayfield on 12/04/2019 in Melbourne City Hall.**
 - b) Senator Mayfield’s proposed Bill for Rail Safety (SB 676) attached herein.**
 - c) Key Contacts for Senator Mayfield’s Bill.**
 - d) Most recent Court Order in the ongoing lawsuit between Indian River County and the Train: United States Court of Appeals, Case #19-5012, 12/20/2019 attached herein.**
 - e) Most recent list of legal expenses incurred by Indian River County in the matter of the Train attached herein: \$3,499,324.87 in expenses processed as of 11/25/2019 with “remaining balance” of \$480,095.88 shown.**

Requested by Vice Mayor Laura Moss

Vice Mayor Moss commented that this matter is a perfect follow up to the discussion that they just had because it involves litigation, benefits lawyers, and 50% of litigants lose. She said this has to do with the Brightline/Virgin Train in Indian River County. She had the opportunity to attend the Town Hall meeting held by Senator Mayfield in Melbourne on December 4, 2019. She told the community that all related documents she is speaking of today are uploaded to the City website, which is covb.org. She encouraged everyone to go to the website and look at the backup material. At the Town Hall meeting, Senator Mayfield said that the train is coming. By that she meant that the train is coming to Indian River County and Brevard County. The majority of this Town Hall meeting included taking questions from the people attending. Vice Mayor Moss said that she asked Senator Mayfield what she thought the degree of difficulty would be with regard to getting her Railway Safety Bill passed (included on the City website). Senator Mayfield answered that she anticipated a high degree of difficulty. Vice Mayor Moss said that she provided on the website the information on the key contacts for anyone wishing to contact those people in Tallahassee who are involved with this (railway safety). Vice Mayor Moss said given Senator Mayfield’s response counting on Tallahassee to triumph if problematic. Then there is the County Commission who coincidentally has the train matter on their agenda for discussion this morning. Since the County’s legal battle and the court cases on the train began five (5) years ago, the County has spent more than \$3,500,000.00 to stop the train. This information is from the County’s website, ircgov.com and is on the City’s website for their convenience. The County has lost this battle basically every step of the way. She said that Mr. Turner has reviewed the court orders and they are available to anyone that wants to request them. There have been to her knowledge no face to face meetings between those Elected Officials and Train Representatives for years now. She expressed as stated earlier that litigation benefits the lawyers. It is hard to come up with better proof than this. She thanked Mr. Graves for stating that. She said that the problem with this is when something like this goes on for years the amount of money being spent is going up and the success rate is going down. When something goes on for a very long time it is called “ill will” and it is a losing situation. Unfortunately losing a battle does not put

you in a good position to make demands. She thanked the County Attorney, Dylan Reingold, for his assistance in supplying the legal and technical documents to her. She said that this is not an indictment of individual Commission members. As individuals, their histories regarding the train varies. The voters will decide that. The City of Vero Beach was not a party in the legal battle, nor was the City of Sebastian. The Train Representatives will meet with the City directly. She suggested that they invite them to one (1) of their future City Council meetings. The question is now that they know the train is coming, do they want it to stop in Vero Beach. The train has expressed an interest in doing so. The Vero Beach Regional Airport potentially is a location for a train stop. There are no negotiations at the current time. Any such negotiations would go through the City Manager and the City Attorney. The City Council as Elected Officials have a responsibility to thoroughly examine this situation and to do it publically as they are doing now and currently doing with the Three Corners property. She sees today as the start of a conversation about the train. She said that the City Manager reminded her last week that actually the train was here first. She asked the City Manager to repeat what he said about the train being here first.

Mr. Falls stated that he has been following this train issue since it started some five (5) to eight (8) years ago. The City formed a Committee named the High Speed Rail Commission who spent many hours discussing the train. He said for everyone's information All Aboard Florida/Bright Lines soon to be Virgin Train is going to build a two (2) track facility throughout this area. He said in the City limits there are eight (8) crossings and five (5) of those belong to the City, two (2) are under the State and one (1) belongs to the County for their responsibility. He has been told that in this area the train will operate at speeds of up to 110 miles per hour. To do that they have to construct their facilities to what the Federal Railroad Commission calls class six (6) rail. He said that class six (6) rail requires any crossing be built and designed to a sealed corridor. It doesn't mean that the whole corridor is going to be fenced and what it means is that at each crossing there has to be at a minimum of four (4) quadrant gates, which means a gate will not only be on the lane that traffic is driving in, but on the opposite lane also. There has been some discussion about having quiet zones in this community because of the increased number of trains that are proposed. What that would allow the City to do is the horns would not blow on the trains unless the train engineer saw the need to blow the horn. He said that there cannot be a quiet zone without sealed corridor improvements. He said in Martin County it is the first place where the class six stops. He said that they want quiet zones so they are having to pay for sealed corridor gates at all their intersections at their expense. The City of Vero Beach will have that included in the design and construction as they have been shown in the plans that they have reviewed to date. The last meeting they had with the Railroad Representatives was in May and they (the City) made comments and are waiting for those comments to come back. The train was here first and they developed around that track corridor. The five (5) crossings that the City is responsible for have a license agreement with the railroad and that license agreement spells out what is required of them and what they are responsible for. He said one of the things that Senator Mayfield's Bill is attempting to do is to put the costs for class six (6) on the railroad and not the licensee. He is hopeful that the Bill might have a chance, but it probably does not have a real chance because the railroad owns the land. They are also trying to get out of the railroad that as they come through fencing be

installed along Pocahontas Park because of safety reasons. A portion of the signal at 26th Street will need to be rebuilt and there are eight (8) mast arm facilities at that location and the railroad will be rebuilding three (3) of those with the project and with the remaining five (5), they have asked that those be constructed at the same time with each of the agencies paying their fair share of the cost. The City has also asked the railroad when they design the Aviation crossing to not design it for what is out there in the field today, but to design the crossing to accommodate the expanded Aviation Boulevard so at the point in time when Aviation Boulevard is built to the five (5) lanes the City does not have to come back and move the traffic signals at that location again. Last week he sent an email to Mr. Rusty Roberts, Virgin Train Coordinator, and he responded immediately and is trying to get him some information and he would attend a City Council meeting if they would like him to and inform the Council of where they are and answer any questions that they might have.

Vice Mayor Moss suggested inviting Mr. Roberts to a future meeting.

Mr. Neville agreed that he would like Mr. Roberts to come to one (1) of their meetings and give a presentation.

Mr. Graves appreciated Vice Mayor Moss bringing this matter to the City Council. He is not thrilled about the train coming, but it is going to happen. What is worst is that it is coming and they don't have a stop. He felt that this ties in with the Elite Airways discussion. He met with the Airport Commission Chairman who has some really good ideas. She expressed to him about having an intermodal terminal at the Airport. If they had the access or the ability for their citizens to get to the Orlando Airport in less than an hour, may solve the issue of having an airline in Vero Beach. He asked that staff be empowered to pursue these options. He believes there is an interest in Virgin Trains having a stop in Vero Beach and their bargaining power would be to have an intermodal station at the Airport. He also would like to see their County partners come together and work with them also because this is something that impacts the entire County. He would like to see the County Commission visiting some of the bed tax money and using it for something of this nature. They have to start somewhere and this is a good starting point, because it impacts both the County and City. He would like the City Manager to be empowered to pursue those negotiations.

Vice Mayor Moss agreed.

Mr. Falls reported that at one time there was a spur that went to the Airport located where Walking Tree Brewery is. He said a good location would be up near the Water Plant.

Mr. Graves has been told that there are a ton of grants out there to get something like this built at a low cost or maybe at no cost to the City.

Mayor Young could not see any downside in looking at the options for this.

Vice Mayor Moss said if Virgin Train has an interest in having a stop here in Vero Beach, then they should look at having it at the Airport for a variety of reasons.

Mayor Young commented that the other aspect to that is do they want to have an endorsement for Senator Mayfield's proposal. He thought that would be appropriate because Senator Mayfield is interested in the same concerns that the City Council has.

Mr. Graves hated to put them in an adversarial position with the trains at this point, especially after hearing that this Bill will probably not get passed. Their bargaining comes because they could have a potential spot that could probably be obtained through Federal grants. He felt they should pursue that. He said endorsing legislation that has no chance of passing might hinder their ability to negotiate.

Vice Mayor Moss commented that they are in this position because they have always (during her tenure since 2016) been neutral and have not been a part of the lawsuit and to maintain neutrality as far as the train goes is important.

Mayor Young commented that the important thing to remember is that they want to safeguard the residents of the City of Vero Beach and a way to proceed with that is to look at having an intermodal facility.

Mr. Neville recalled some time ago that Brightline agreed to pay for crossings and protections for non-litigants with respect to trying to prevent the train from coming through. He asked Mr. Falls if he felt because they were a non-litigant in this case that Virgin Train will share the costs.

Mr. Falls explained that because of class six (6) rails and the train will be going 110 miles per hour, they must construct those improvements at their expense. He said that maintenance going forward is the unknown. He said when the train was first talked about, All Aboard Florida brought some documents to the City and tried to get them to sign them. The City Attorney at the time recommended against doing that until they found out what was going to happen. This gave them the bargaining power to retain their strength to bargain in the future. He wanted a consensus from Council that they do want to pursue quiet zones. It was the consensus of Council to pursue quiet zones. He said one of the other things that the railroad had asked them about is what would be the City's position to close the diagonal crossing at St. Lucie Avenue. If they were to consider that they would want a right turn lane constructed on US1 to facilitate that traffic in able to turn safely at 21st Street. Staff is still pursuing this to see if it is physically possible to have that right turn lane.

Mayor Young felt that it was appropriate consideration for the airfield, but doesn't think that it is appropriate that there be a stop at Commerce Avenue.

Mr. Falls commented that they will have to meet with the Railroad Representatives and see what their parameters are and length that they need for a stop and talk about possible location areas.

Mr. Brian Heady commented that going 110 mile mph is not possible because of 4th Street. He said if they are going to have a stop that would end the 110 mph. The quiet zone gives the Train Engineer the authority to blow the horn or not. It is entirely up to him. The allegation that we have always been neutral is not true. When the County goes after someone in a legal way they (the City) are participants. He gave the difference between a lawyer and an attorney. A lawyer is a member of the Bar Association and an attorney represents matters of law and there are plenty of people who went to law school, but never pursued a law exam because that was not what they were looking for. The majority of the people that came to the High Speed Rail Commission meetings were in favor of having a stop in Vero Beach.

Mr. Ken Daige stated that he chaired the High Speed Rail Commission. He hoped going forward that discussions of the train will be open to the public and they can participate. He supports quiet zones. He said that high speed horns are louder than they have ever been on trains now. The idea of doing a stop at the Airport would be reasonable, good for the community and slow the train down. There are grant monies for that and train representatives are in agreement with that because the money is not coming out of their pockets.

Mr. Neville asked if they should reconstitute the High Speed Rail Commission.

Mayor Young was satisfied that Mr. Falls could handle things at this point.

- 2) **Affordable Housing in Indian River County for discussion by Council and Community.**
 - a) **Update by Vice Mayor Moss from Joint Regional Planning Council meeting held on 10/25/2019 in West Palm Beach.**
 - b) **Joint Resolution of the South Florida and Treasure Coast Regional Planning Councils supporting full appropriation of State and Local Housing Trust Funds for Housing adopted 10/25/2019 with related Memorandum and Attachment. All documents attached herein.**
 - c) **ALICE information for Indian River County distributed at the Joint meeting attached herein.**
 - d) **Letter dated 06/04/2019 from Vero Beach City Council urging the Governor to spend affordable housing funds on affordable housing attached herein.**

Requested by Vice Mayor Laura Moss

Vice Mayor Moss stated that all the information provided by her on this matter has been uploaded on the City's website at covb.org. She is the City's Representative on the Affordable Housing Advisory Committee, which is an Advisory Board to the County Commission on affordable housing. She is also the City's Representative on the Treasure Coast Regional Planning Council. The Treasure Coast Regional Planning Council had a joint meeting with the South Florida Regional Planning Council on October 25, 2019, which she attended. The Resolution (attached to the original minutes) that is on the City's

website was passed. She said that Mrs. Susan Adams, County Commission, is the Chairwoman of this Council. It is interesting because Florida Forever is very much a similar situation in that monies are allocated to a certain endeavor, but they don't get there. The monies are not spent the way they should be spent. Vice Mayor Moss read parts from the Resolution that is available on the City's website. She went over the definition of affordable housing as defined in the Resolution. The reason for the Resolution is because the funding is not going where it should go. During this year 2020-2021 there will be generated more than \$3 million for the State and Local Housing Trust Funds, but \$2 billion of those funds have been diverted to other programs for the past 16 years. There are several sections in the Resolution where they are urging the Florida Legislature to appropriate one-hundred percent of the monies allocated to their purpose. They are also urging the Governor to do so in Section 2 of the Resolution and Section 3 strongly urges local governments to endorse that one-hundred percent of the monies available in the Trust Fund for affordable housing go for housing. Vice Mayor Moss explained that what happened at the meeting was that original part of the Resolution was worded differently. She said there was around 40 to 50 people at this meeting, because it was a joint meeting. All of the Sections that now say "strongly urge" said "requests." She spoke up at the meeting and said that she did not think that was strong enough given that all this time has gone by and this huge amount of funding has been diverted to other purposes. She suggested that they use the word "demand." They said no, but did change it to "strongly urge." She is trying to get the minutes from this meeting and make them available to Council. She was checking the Affordable Housing Committee to get copies of their minutes in which there were five (5) meetings in 2019 and they are not on the website. She asked the City Clerk to obtain a draft copy of those minutes. She said at one (1) of those meetings, Commissioner Zorc had the exact number of the amount of dollars they are sending to Tallahassee versus the tiny trickle of dollars sent back to them. She wants to get that number for Council. She said the end goal would be to send a letter or whatever Council would like, to support this Resolution, which has already passed and been signed.

Mayor Young said it might be more beneficial if Vice Mayor Moss could look at some form of petition that particularly addresses the State funding for local efforts.

Vice Mayor Moss said that she will bring this matter back to the Council with more information.

B) OLD BUSINESS

7. PUBLIC NOTICE ITEMS FOR FUTURE PUBLIC HEARING

8. CITY CLERK MATTERS

1) Appointment to the Citizens Oversight Committee

It was the consensus of the City Council to approve the appointment of Mrs. Robin Pelensky to serve on the Citizens Oversight Committee.

**9. CITY MANAGER MATTERS (include amount of expense)
(Staff/Consultant special reports and information items)**

Mr. Falls noted that on the agenda under the consent agenda under item 3-F) the dollar amount should be \$115,000 and not \$15,000.

Mr. Neville made a motion to approve Bid No. 230-19: Compressed Liquid Chlorine Annual Supply contract not to exceed \$115,000. Vice Mayor Moss seconded the motion and it passed unanimously.

1) Captain Matt Monaco to give an update on Derelict Vessels

Captain Matt Monaco was at today's meeting to speak about their efforts along the river with their marine division. He said back on November 21, 2019 they had their marine division meet with the Florida Fish and Wildlife Commission (FWC) to receive some marine training in regards to derelict vessels and marine sanitation devices. Following the training they paired up with them and went into the river. During that endeavor they boarded six (6) vessels and inspected the marine sanitation devices on all of them. He said that all of them were in compliance, however they did find that there was one (1) vessel that failed to secure its valve properly and a warning was issued at that time. On that day they also identified two (2) derelict vessels along the river, one (1) of which had previously been on the FWC's radar and the second vessel they implemented proceedings that day to declare it a derelict vessel as well. They also identified a few other violations along the river such as infractions of where they were operating vessels without proper lighting and appropriate action was taken. After that in December they had two (2) planned events, however the first one was cancelled because of the weather and the second one was conducted on December 23, 2019. When they went out on the river they inspected four (4) vessels and all were in compliance with one (1) of the two (2) derelict vessels having been removed at that point and FWC is still moving forward with the proceedings on the one (1) derelict vessel that remains. During that endeavor they also identified 14 other vessels that were moored outside of the City mooring field and none of them appeared to be derelict vessels at that time, but they mapped them for future reference.

Mr. Neville asked with the boats that were outside the mooring field did he check their valves to make sure that they were secure.

Captain Monaco explained they were able to board four (4) of the vessels at that time because the other 10 vessels were unoccupied and those were fine at that point, but they were not able to board those additional 10 vessels. They do plan on going out at least two (2) or three (3) additional times this month and try to make contact with those vessel owners.

Mr. Neville asked if they were using tamper proof devices to make sure the valves stay closed.

Captain Monaco said it is his understanding that FWC has them inspected and they are doing that.

Mr. Neville suggested that they buy their own tamper proof devises.

Captain Monaco said that he would meet with the Marina Director on this.

Captain Monaco explained that now that they received the training, they do not have to do the inspections with FWC. They plan on making these inspections between two (2) and three (3) times a month.

Mr. Falls commented that they have really stepped up the enforcement on the river.

Mr. Neville thanked everyone for their efforts.

Mr. Keith Drewett thanked the City and Chief Currey for stepping up on this issue of Marina enforcement. It was a very neglected area and important as they think about their Marina expansion that this be taken care of. He wanted to talk to the Council a little bit about the Florida Inland Navigation District (FIND). He said that FIND has grant money for marina projects. It is their own money coming back to them in form of grants and administered by a Board of Commissioners. The Indian River County position on this Board has been vacant for at least two (2) or three (3) years. He said what that means is when the money is being handed out they don't have a seat at the table. He said this seat is still vacant. This is a Governor's appointment and those Commission appointments are imminent and will be made in early February. There is a nomination on the table and that is Mr. Mike Johansen. He encouraged the Council to consider getting behind his nomination maybe by sending a letter of support and recommendation to the Governor and any other contacts that they might have. He said the reason this is relevant is because as they look to improve the health of the Lagoon, FIND is a grantor of matching funds for the City and they have not been able to get those grants for the last few years because they didn't have matching funds and did not have a Representative from Indian River County sitting as a member of FIND. He said that FWC is the other big grantor for vessel removal and they have \$600,000 available. As they move forward with their Marina plans they would hope that FIND would be a substantial contributor financially for those plans through grant money.

Mayor Young commented that in regards to an endorsement for Mr. Johansen for a candidate of the available position, it would be very instrumental. It was the consensus of Council to send an endorsement letter to the Governor copying Senator Mayfield and Representative Grall.

10. CITY ATTORNEY MATTERS

1) Updated Public Records Policy

Mr. Turner reported that he has been working with the City Clerk's office in updating the Public Records Policy. He presented Council with a draft at today's meeting and said that he would be bringing back a formal Resolution for their consideration.

2) Update on DOAH Case of 725 Azalea LLC et al v. COVB and Vero D&M Investments

This item was discussed earlier in today's meeting.

11. COUNCILMEMBER MATTERS

A. Mayor Young's Matters

Sponsored presentation items by the public (10-minute time limit)

1) Mrs. Shotsi Lajoie to discuss Vero Beach Rowing.

Mrs. Lajoie was not at today's meeting.

Mr. Young commented that the rowing facility is coming together extremely well and his observation is that it will bring another beautiful facility to Vero that is expressive. He understands that the public will have access to the facility and it will be another landmark that the City can take pride in.

2) Ms. Laura Luetzger to speak on the Boys & Girls Club of Indian River County initiatives.

Ms. Laura Luetzger, Boys and Girls Club, reported on the new Boys and Girls Club that opened in Fellsmere. She said that the facility is open to children up to the age of 18. She said that most kids who attend the Club their parents have an average income below poverty line. Their mission is to inspire all young people and recognize their full potential. She has been employed with the Boys & Girls Club for a year now. She works with the teen programs at all three (3) Boys & Girls Clubs in Indian River County. They concentrate on helping these teenagers get into college and help them with their leadership skills. She is happy to meet with the students and their Guidance Counselor to make sure that the students graduate on time. They are pushing for an internship program this year and would like to expand that. They would like to place their internship students with different agencies. She said that Vice Mayor Moss has expressed an interest in that program. She thanked the Council for giving her the time to tell them what the Boys & Girls Club is doing.

Mayor Young commented that this morning he asked the Clerk to forward to Council a You-Tube video that speaks to leadership. One (1) of the points brought up in the video was an insight concerning organization behavior, which is reflective of its leadership.

Mayor Young reported that this coming weekend at McKee Jungle Gardens they will be presenting their children's garden. He said their winter guests are in town and this is the first day back to school from the holidays. He announced that Mr. Rob Slezak, Recreation Director, is retiring from the City and he thanked him for everything that he has done.

B. Vice Mayor Moss's Matters

- 1) Veterans Art Program at Vero Beach Museum of Art. For veterans only. No charge. "The Power of Photography" begins Tuesday, 01/07/2020.**

Vice Mayor Moss announced that starting tonight there will be a Veterans Art Program at the Vero Beach Museum that is free to all veterans. She said that the program will last five (5) weeks.

Vice Mayor Moss thanked the general membership of the Veterans Council. She said that she became the first civilian to be honored to be elected to the Board of Directors of Veterans Council of Indian River County. She is deeply honored and thanked them so much.

- 2) Pelican Island Audubon Society's third annual "Transforming Landscapes for a Sustainable Future" Conference Details attached.**

Vice Mayor Moss announced that the Pelican Island Audubon Society's third annual "Transforming Landscapes for a Sustainable Future" will be held on January 25th. She said that all the information is available on the City's website. This will be their third annual seminar and it was the inspiration for her after attending the first seminar to come up with the new Rain Garden/Lawn that appears at City Hall.

Sponsored presentation items by the public (10-minute time limit)

C. Councilmember Brackett's Matters

Sponsored presentation items by the public (10-minute time limit)

Mr. Brackett wished everyone a Happy New Year. He is happy with the progress that is being made with the Three Corners project, but wished more young people would get involved. He invited everyone to attend the Steering Committee meeting at 2:00 p.m. today at City Hall.

D. Councilmember Joe Graves's Matters

Sponsored presentation items by the public (10-minute time limit)

- 1) Mr. Anthony Zorbaugh and Mr. Wil Murphy to discuss the Panhandling and the homeless issues in the City.**

Mr. Graves stated he wanted to talk about a sensitive subject. He said it has been brought to his attention by personal observation and by citizens in the City the issue of panhandling that is occurring in the City limits. The panhandling issue is something that he urged the Council to address. He said it is affecting business owners and citizens and there are public safety issues involved. He said last Friday he drove around town between 4:00 p.m. and 5:00 p.m. and at the corners of US1 and State Road 60 there were panhandlers at every corner. He asked Mr. Zorbaugh, the Executive Director of the Source to give them some insight about this type of issue and what the solutions are. It is an issue that needs to be met with compassion by the City. He wants to know if the City is doing everything they need to do in order to make sure if there are people in need that they are meeting those needs. However, people that own businesses have the right not to have obstructions to their businesses and have the right to feel secure. He knows that this is something that cannot be cleared up by passing an Ordinance because panhandling is protected by free speech and the first amendment. There are a multitude of municipalities that have passed Ordinances and have gotten struck down. They need to understand and study this issue and do it the right way. He asked Mr. Zorbaugh to speak about the research that he has done on this issue.

Mr. Tony Zorbaugh, Executive Director of the Source, stated that panhandling is a huge issue in their community. He went over some statistics. He said there are 450 people in this community homeless and less than 5% are panhandlers. He said that 90% of these people have substance abuse problems, receive some sort of government support and possibly have mental issues. He said that 51% of their community is one (1) emergency away from getting on the street. There is no where for individuals to transfer to when they get out of programs. He is working with the County on affordable housing. These individuals panhandling and on the streets have no relatives. He said most are elderly people and 50 years old is the average age of panhandlers. The panhandler make on average \$63.00 a day, which amounts to \$440.00 a week. They take this money that they get and spend it on cigarettes, alcohol and drugs. He said one of the solutions is maybe working with the City to create a work program. They can target the panhandlers and have them assigned to a City work crew to subsidize their income that they could use for affordable housing. He said that the Source cannot do that themselves and rely on the community to help them. He commented on how much trash there is in the location that a panhandler sits.

Mr. Graves wondered if forming a work crew would help more than getting an Ordinance passed.

Mr. Zorbaugh believed so. He said that they can't continue to pass Ordinances and ask people to move because they feel safe in this community. The Source is a licensed catering company and host events all over the County. The reason they are so successful is because the community is wrapped around this. Some other things they have is an art program, mental health services, etc., to help citizens move forward. There was another issue that came up at today's meeting and that was about the train issue. He said about a year ago the Source had an issue about homeless people sleeping near the train tracks. They put up a fence, which took months to get a permit because where the Source is located, the train station needs access to that right of way road and they have hundreds of people camping

out there. Some homeless people wanted to take their life by jumping in front of a train. They were able to put a fence up and there are no more camps near where the Source is located. He said they are open to have discussions on this issue. He noted that less than 5% in the community are causing these problems.

Mr. Neville asked why do they have to get permission to open their facility at night.

Mr. Zorbaugh explained because they are not zoned to have people in the building at night. They recently did receive permission to open their facilities for one (1) night because of the cold weather. He went over a program that they have at the Source called the dignity market where individuals come in and work around the building, get source bucks and are able to purchase certain items. The people have to come in and redeem their money and purchase the things that they need. Last year the Source was able to fly 12 different individuals back to their families.

Mayor Young commented that one of the challenges is to get the word out on the streets and have these people take advantage of the programs being offered. It must be a collaborative effort amongst all the organizations in town. He said a lot of local churches reach out to these people and he has personally looked at this and tried to address it.

Mr. Zorbaugh explained that the Source is funded as a church and they are a church organization. He said when people don't come to the Source anymore they will reach out to someone else. He is open to having discussions and creating some work crews. He said when they see trash around where the panhandlers are that indicates they have some sort of mental illness and they are suffering.

Mr. Graves felt it was more of a moral issue from the City to make sure that there are facilities available. How do they move the needle on this. He would like the City Attorney to draft an Ordinance.

Mr. Zorbaugh suggested looking at what Orlando has. He said they implemented a policy this last year and Vero Beach could piggy back off what they are doing.

Vice Mayor Moss commented that some other cities to look at would be Leesburg and Mount Dora. These cities crafted an Ordinance to handle the problem of the panhandlers going back and forth between the two (2) cities.

Mr. Turner said that it was a high priority in his office to address this problem.

Mr. Neville asked what is the County's position on this.

Mr. Graves knew that Sebastian has passed an Ordinance, but he did not know about the County.

Mr. Zorbaugh said that the County has looked at it. He said that next Wednesday the Source was having an open house and he invited everyone to attend.

Mr. Zorbaugh reported that the Source has launched a capital campaign and are looking to move because their building is too small. They would like to build tiny houses on some acreage in order to have some affordable housing for people that need it. They have identified two (2) parcels of land. The first parcel is near the fairgrounds and zoned commercial and the second parcel is on Oslo Road near the IG center. They have been negotiating for the property near Oslo and the asking price has been dropped dramatically so they need to find out if there was a reason for that drop before entering into any contracts. He said if that piece of property doesn't work, then there is no where in the County for them to go that would be the correct zoning. They are looking for about 20 to 25 acres.

E. Councilmember Rey Neville's Matters

Sponsored presentation items by the public (10-minute time limit)

12. ADJOURNMENT

Today's meeting adjourned at 11:51 a.m.

/tb