

**CITY OF VERO BEACH, FLORIDA
FEBRUARY 4, 2020 8:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

The invocation was given by Pastor Larry Boan of Central Assembly of God.

1. CALL TO ORDER

A. Pledge of Allegiance

Vice Mayor Moss led the Council and the audience in the Pledge of Allegiance to the flag.

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 – January 21, 2020

Mr. Neville made a motion to approve the January 21, 2020 minutes. Vice Mayor Moss seconded the motion and it passed unanimously.

2. Special Call City Council Minutes – January 21, 2020

Mr. Neville made a motion to approve the Special Call City Council minutes of January 21, 2020. Vice Mayor Moss seconded the motion and it passed unanimously.

A. Agenda Additions, Deletions, and Adoption.

Vice Mayor Moss made a motion to adopt the agenda as presented. Mr. Neville seconded the motion and it passed unanimously.

B. Proclamations and recognitions by Council.

1. Beautification Weekend – February 8-9, 2020

Mr. Brackett read and presented the Proclamation.

2. 211 Awareness Week – February 11-17, 2020

Mr. Graves read and presented the Proclamation.

3. CONSENT AGENDA (include amount of expense)

**A) Replace Emergency Generator at Public Works Compound – COVB Project
#2019-03-BID NO. 240-19-FDOT 44544-1-94-01 PTGA - \$74,700.00**

Mr. Neville pulled item 3-A) off of the consent agenda.

Mr. Neville said this is another case where they had bids all over the place, which he did not understand. He said that he just couldn't imagine a 72% difference between the low bid and the high bid. He questioned if they are specking things correctly.

Mr. Monte Falls, City Manager, said that he has been receiving bids for about 30-years and he is never surprised when the bids come in. He said it is usually a function of having the equipment, having the knowledge to do the work, and what their current workload is. He said it could be no more than the low bidder having an open slot in their workload making his margin a little less than the others.

Mr. Neville asked is a portion of the bid more the equipment or the installation.

Mr. Falls said that he didn't have the bid in front of him, but would assume that with the generator, the largest portion is the equipment and then the installation follows from there.

Mr. Neville asked do they spec a particular piece of equipment or the size.

Mr. Falls said the size of the generator. He said this is a local company and their references checked out. He said this company has done work in and around the City for decades.

Mr. Neville asked if they called the bidders in to make sure they understood the process.

Mr. Falls said there is always a pre-bid conference. He noted that a replacement generator is not a process that is overly complicated in that you take the old one out and put a new one in. He said the City was lucky to receive the grant funding from the Florida Department of Transportation (FDOT) to offset 80% of the cost.

Mr. Neville wondered because this is a low bid if the equipment is of lesser quality than the other bidder's equipment.

Mr. Falls explained that the equipment meets the specifications listed in the bid packet.

Mr. Neville said that he trusts Mr. Falls judgement on this, but he has done a lot of contract work and when he had a variance like this they would dig into it pretty hard to find out why. He asked Mr. Falls when the City receives these wide variances on bids that they try to understand why if they can.

Mr. Falls said they will do that in the future.

Vice Mayor Moss made a motion to approve the replacement of the emergency generator at the Public Works Compound. Mr. Brackett seconded the motion and it passed unanimously.

4. PUBLIC HEARINGS

A) ORDINANCES

- 1) An Ordinance of the City of Vero Beach, Florida, amending Chapter 14, Animals, Section 14-1 Dogs and Cats Prohibited, Adding Requirements for Removal of Animal Feces; Creating a New Section 14-3 Attacks and Injury to Persons, Animals or Livestock, in Chapter 14 of Vero Beach City Code; Amending Chapter 54 Parks and Recreation, Article II Use of Parks and Recreation Areas, Section 54-51 Animal Restrictions to Clarify Animals Allowed or Prohibited in City Parks in Accordance and Conformance with City of Vero Beach Resolution 2014-07; that prohibition within Section 54-51 Animal Restrictions is amended to specify all guarded City Beaches that are City Parks by definition under City Code; Providing for Codification; Providing for Conflict and Severability; and Providing for an Effective Date. – Requested by the Police Department**

The City Clerk read the Ordinance by title only.

Mr. Falls reported that this Ordinance modification was put in place to clarify where animals are allowed and not allowed so the residents understand it a little better and are not confused.

Mr. Neville said this gives the appearance that a person can take their dog anywhere on the beach, but he thinks it is supposed to be from the water's edge, which is a narrow strip of land. He worried that they are now going to have to put up "posted" signs in front of private residences so dogs are not meandering around where they are not wanted.

Mr. David Currey, Police Chief, explained that they are trying to make things more clear. He said the guarded beaches are where they do not want to allow animals. He said there are private properties where animals are allowed, such as the Riomar access to the beach, Flamevine has access, etc.

Mr. Neville asked what is the easement from the access point to the high water mark.

Mr. Falls said the ownership of those accesses are typically 50-60 feet wide and the ownership would extend to the mean high water line.

Mr. Neville said then there is not really an easement for moving from the parking area to the mean high water mark.

Mr. Falls said that he would have to look back to see if the City owns them or if they are public rights-of-way, but the ownership would extend eastward to the mean high water line.

Mr. Neville said if you go left or right before you get the mean high water mark you are trespassing on other people's property.

Vice Mayor Moss asked are dogs allowed on the ocean beaches and by that she means, South Beach, Humiston Beach, and Jaycee Beach.

Chief Currey said that is specifically what they are referring to, the public guarded beaches. They would not be allowed at South Beach, Humiston Beach, or Jaycee Beach.

Vice Mayor Moss said so they are not allowed.

Chief Currey said they are not allowed there now.

Vice Mayor Moss asked would this allow them there.

Chief Currey answered no. He briefly went over where dogs would be allowed. He noted that they also added the "clean up after yourself" law, which they have never had and also dogs have to be on a leash whether it is private or public property.

Vice Mayor Moss asked is this allowing something that is already occurring or is it encouraging something to occur that is not currently occurring.

Chief Currey explained that they added the "clean up after yourself," that dogs have to be on a leash, and they added the "unprovoked attacks" in the Ordinance.

Vice Mayor Moss said they just had occasion last week in talking about the Three Corners property, and for those who may not have attended, they were talking about the history of the City and why that Wastewater Plant was located there and many years ago they thought it was alright because there weren't that many people and she thinks Mr. Falls even elaborated on that, that it was acceptable to flush human waste into the Lagoon and now we look at that and we know better. What she is asking with this is are they encouraging more pet waste, which she didn't think it was much better than human waste although she doesn't know the science behind it and if anyone does to enlighten her She asked are they encouraging more pet waste, which is being washed into the ocean., She asked are they going to look at this years from now and say, why did they do that.

Chief Currey said that he thinks they are discouraging it. He said by adding it to the Ordinance they are making it clear that you have to clean up after yourself.

Mr. Neville asked who polices that.

Chief Currey said they have an Animal Control Officer and Police Officers. He said they are trying to enforce this on the public beaches where there are eyes and ears (the Lifeguards) for the Officers when they are not there.

Mr. Neville said that he worked as a lifeguard years ago and their concern about the dogs at that time was disease, especially for the toddlers. Now the City has grown to the point where they have toddlers up and down the beach running perpendicular to the water and then they have people with dogs on leashes going horizontally to the water so he is wondering if they are creating an environment of conflict.

Mr. Brackett said dogs are only allowed on private property and not on the public beaches.

Mr. Neville said they are allowed in the area between the water and the high water mark, which is owned by the State.

Mayor Young said his interpretation of what this Ordinance does is that it delineates to the public that if they want to go to an area on the beach where dogs are restricted they will go to the three (3) City beaches. It also specifies the mandate that anywhere they would have to pick up their dog's feces. To his knowledge other than the beaches, the only place dogs are permitted in public Parks is at Riverside Park.

Chief Currey noted that they are only allowed in the designated areas of Riverside Park.

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

Chief Currey said that he does not know.

Mr. Graves asked how does this help the Police Officers patrolling on the beach.

Chief Currey said one (1) reason this was brought to his attention was because someone would inquire and maybe they would inquire at the Recreation Department or the City Clerk, the Police Department, etc., and unfortunately because of the Ordinance they would get a different answer, which they do not want. He said they want the clarity and understanding, which will help them as far as enforcement. He said this really streamlines their efforts with regards to the Parks.

Mr. Neville asked is it up the lifeguards to control this.

Chief Currey said yes it is up to the lifeguards, as well as the public.

Vice Mayor Moss asked what is the penalty for not picking up after an animal.

Chief Currey explained the first offence is a fine of \$50 and the fine increases if it is a repeat offense.

Vice Mayor Moss asked has anyone ever been fined for that.

Chief Currey said that he could not remember if they have or not.

Vice Mayor Moss said that she is hesitant about this. They are talking about spending \$50 million to move the Wastewater Treatment Plant off the Lagoon on one hand and on the other hand she doesn't know if they were encouraging dogs on the beach.

Mr. Brackett said they didn't have the ability to fine people before.

Chief Currey said that is correct and now they have something they can enforce.

Mr. Graves said now this requires people to pick up waste so this actually helps the environment.

Vice Mayor Moss said that she is happy to do anything that helps Chief Currey. She asked if it turns out that this doesn't help that he bring it back before Council so they can take a second look at this. She felt the Ordinance was a little vague in places. She said it is not clear on what the penalty is, it is not clear on enforcement, etc. She did not think \$50 was a high enough fine for that and she didn't know how they would enforce it anyway. She guessed that there probably hasn't been a \$50 fine for that on the beach, or very few. Her point is if he finds that this doesn't help him that he please come back before Council and let them know so they can revisit it.

Chief Currey said that he would.

Mr. Neville said that he has a language issue with Section 2, Adoption of Section 14-3 Attacks and Injury to Persons, Animals or Livestock, which he read in part, "*No owner shall allow a dog, when unprovoked, to bite, attack, endanger, ...*" He asked if a dog is provoked then it doesn't matter.

Mr. Graves said that comports with State Law, with the State Dog Bite Statute.

Mr. Neville felt that if a dog owner cannot control a provoked dog then they shouldn't have the dog in public.

Mr. Graves said that is probably is true and the City Attorney could speak to that, that this language comports with State Law.

Mr. John Turner, City Attorney, said it is in compliance with State requirements.

Chief Currey said fortunately overall they have not had too many problems with the dogs and they are going to continue to do their best to work together and make it as clean and as they can.

Mayor Young opened the public hearing at 9:03 a.m.

Mr. Brian Heady said they kept referring to the line as the high tide and that the property owners owned down to that. He asked when it is high tide then to be on public property, do you have to be walking in the water at high tide.

Mr. Falls explained by definition, the mean high water line is not the high tide line. It is an average. He explained that there could be a specific point in time when that is the line, but it is a survey term where the average mean water line is. He said Mr. Heady is correct if high tide was coincident with that defined line you would have to be in the water to be on public property.

Mayor Young closed the public hearing at 9:04 a.m., with no one else wishing to be heard.

Mr. Brackett made a motion to approve the Ordinance. Mr. Graves seconded the motion and it passed 4-1 with Mr. Neville voting no, Mr. Graves yes, Mr. Brackett yes, Vice Mayor Moss yes, and Mayor Young yes.

B) RESOLUTIONS

- 1) 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 908 Sandpiper Lane, Vero Beach, Indian River County, Florida; Providing for an Effective Date. – Requested by the Applicant**

The City Clerk read the Resolution by title only.

Mayor Young opened and closed the public hearing at 9:06 a.m., with no one wishing to be heard.

Mr. Neville made a motion to approve 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.

- 2) A Resolution of the City Council of the City of Vero Beach, Florida, Opposing Proposed Legislation to preempt or limit local government home rule authority, including Senate Bill 1128 and House Bill 1011, by further restrictions on City's ability to regulate Short-term Rentals; Directing that the City Clerk provide a copy of this Resolution to the Indian River County Legislative Delegation; Providing for Conflict and Severability; and Providing for an Effective Date. – Requested by the City Council**

The City Clerk read the Resolution by title only.

Mayor Young asked are there any updates on where this is in the Legislature.

Mr. Brackett thought this passed Committee yesterday.

Mr. Turner said that is correct.

Vice Mayor Moss said there is a hearing today according to the memorandum that they received urging the House Subcommittee to oppose HB1011 Short Term Rental Preemption. That hearing will occur today, Tuesday, February 4th at noon, and the House Government Operations and Technology Appropriations Subcommittee will consider HB1011 relating to vacation rentals, also known as short-term rentals. She said on the Committee, the Vice Chair is their own Representative Erin Grall, so it would behoove them, any of them in the audience or the community to contact her. Her contact information is erin.grall@myfloridahouse.gov and her telephone number is 850-717-5054. She said it looks like there are about 12 people on this Subcommittee, but she (Representative Grall) is the Vice Chair so presumably she has some influence over this. Vice Mayor Moss said this is a really important issue to everyone in the City so she urged everyone to get involved. She said the Subcommittee is meeting today at noon so this is very timely.

Mayor Young said this would facilitate Tallahassee from reducing the municipalities' ability to have short-term rental legislation that would preclude that from happening and Vero has been down that road in the past, but there are other elements within the State that they would like to see the short-term rental legislation go away, specifically the airbnb's. He said this is going to be a fight; it was last year and again this year so the City Council has asked for the Resolution to support opposing it and he thinks it is something that keeps their character here in Vero Beach.

Mr. Graves was not sure it is such a comment on short-term rentals as the ability of a local municipality to be able to pass Ordinances and rules governing its own affairs so the power to regulate such things as short term rentals should be within the power of the Council and not Tallahassee, who has no idea of what is going on in our community. He said these rules and regulations should be with the Council, not with the State.

Vice Mayor Moss said for those who might not know, this Session is even worse than last year and there is basically just a full out assault against Home Rule by Tallahassee so you should be advised, be aware, keep track of it, and urge our people at the State level to fight back on this.

Vice Mayor Moss made a motion to approve the Resolution. Mr. Graves seconded the motion.

Mayor Young opened and closed the public hearing at 9:10 a.m., with no one wishing to be heard.

The motion passed 5-0 with Mr. Neville voting yes, Mr. Graves 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, relating to High-Speed Passenger Rail; expressing support of efforts by Senator Debbie

Mayfield and Representative Tyler Sirois to address enhanced safety along the High-Speed Rail Line; Authorizing the City Clerk to provide a copy of this Resolution to Senator Mayfield and Representative Sirois; Providing for an Effective Date. – Requested by the City Council

The City Clerk read the Resolution by title only.

Mayor Young reported that they discussed this at their last City Council meeting, a letter was sent in support of it, and this Resolution formalizes it.

Mr. Graves made a motion to approve the Resolution. Vice Mayor Moss seconded the motion.

Mayor Young opened the public hearing at 9:11 a.m.

Mr. Brian Heady said the high speed rail is an issue that gets some people's attention. He often has heard things about the high speed rail that is flat out not true. He thinks that the community in the final analysis will benefit from it. He doesn't think trains would ever go through this town at 110 mph. He spoke at this podium before about going up and trying the high speed rail going from Boston to Washington. He said the County spent millions of dollars trying to fight them. He felt they should not continue this insanity of trying to fight them. They might be better off if they welcomed them through and made a stop available. He said there are people that would use it for transportation to Miami or to Orlando. He felt they would be better served by not trying to control the Railroad, which really is controlled by Washington anyway.

Ms. Adrienne Cronebaugh, of Senator Debbie Mayfield's office, thanked the City Council for their support of this Resolution. She referred to Mr. Heady's previous comment stating that this Legislation is not to stop the Rail. It is really for the State to step in and regulate the gap so that we have in these high density areas safety measures, such as fencing, etc. She said the train is coming and this Legislation is not going to stop it.

Mayor Young asked for an update on how it is going in Tallahassee.

Ms. Cronebaugh reported that it did pass Committee unanimously and is now going before the Senate Transportation Tourism and Economic Development Appropriations Committee, which they expect it to be heard by the Committee very soon.

Ms. Susan Mehiel, of the Alliance for Safe Trains, said they are very happy the City Council has decided to address the issue. She said this is a very simple process. The FDOT regulates intrastate systems, not the Federal Railroad Administration (FRA), until they get to 125 mph, which is the legal definition of high speed rail. There are no regulations with FDOT on the books at this point for trains going over 79 mph. There are no additional regulations reflecting the dangerous aspects of speed. What this Legislation does is it points this out and requires the FDOT to promulgate regulations that have been outlined by numerous consulting firms as being very much needed. When there is an industry in

this State that has killed on average 20 people a year for the last two (2) years, one would think we would be taking a look at what is happening. She said they (Alliance for Safe Trains) have reviewed all of the accident reports filed with the FRA and only 19% were definitively suicides. She said this is not a bunch of people committing suicide. It can be regulated and it can be made more safe, which is all they are asking. She said they were very disappointed to see the Florida Chamber of Commerce lobbying against this new Legislation. She said we need FDOT to regulate and then they can go and beg for stops or whatever they want, but we need a baseline of safety.

Vice Mayor Moss asked what other local municipalities have passed a Resolution, such as what the City is doing.

Ms. Mehiel said Sebastian is about to. She said Indian River Shores and the City did a long time ago. St. Lucie County is about to pass another Resolution.

Vice Mayor Moss asked has the Indian River County Commission passed it.

Ms. Mehiel answered yes.

Vice Mayor Moss said Sebastian is about to and Indian River Shores has not.

Ms. Mehiel said they have in the past.

Vice Mayor Moss said years ago doesn't count. She means right now, currently.

Ms. Mehiel said they haven't been asked, but they can. She said Indian River Shores does not have a crossing. They are on the barrier island. What they are looking at are the entities and agencies that have to directly work with these dangers.

Mayor Young said the Vice Mayor of Indian River Shores supported the Resolution by the Treasure Coast Regional League of Cities that supports the Bill.

Ms. Mehiel said they have been working with the Indian River County NAACP Chapter because they see the devastation for minority communities in this County. What they have found is that an overwhelming majority of people being killed by trains are minority residents and often times the poor who cannot afford to buy a car have been crossing the tracks by foot.

Vice Mayor Moss said for the community, this has to do with safety, not with stopping the train. They are not going to stop the train. The County lost all the lawsuits for years and years, which she thinks it was about five (5) years and it cost about \$4 million. She said the train is coming. It is just a matter of do they want it to stop in Vero Beach or not. She thinks they are inviting Mr. Rusty Roberts, Vice President of Government Affairs, here at some point; the City Manager is in the process of inviting him so we will hear all sides of the story, but this has to do with safety specifically.

Mr. Graves said that he thinks this Resolution makes it clear that this City Council will never trade safety for a stop.

The motion passed 5-0 with Mr. Neville voting yes, Mr. Graves yes, Mr. Brackett yes, Vice Mayor Moss yes, and Mayor Young yes.

5. PUBLIC COMMENT (3-minute time limit)

Mr. Barry Segal said everyone is familiar with the Holy Cross Rowing Team and the accident that occurred. He reported that there will a fundraiser at Vero Fitness that starts at 6:00 a.m., Friday morning and run continuously through Sunday at 6:00 p.m. This is a 61 hour event, which if they recall the young women who passed away had just set a world record for continuous rowing of 62 hours. The funds raised will go towards helping the victims, their families, and hopefully some kind of scholarship. He said they are trying to fill 61 slots and they are not going to touch her 62 hour record. All the information is available on the website, 62hours.org. He reported that the first participant to take a timeslot was the first responder of the Police Department who was onsite during the accident. He said you do not have to know how to row to participate.

Mr. Jonathan Rodenback, Attorney, said under item 10-A, there is going to be a discussion on the DOAH Case and he wanted to let the Council know that he is present for the petitioners. He noted that several of the petitioners were present in the audience and he didn't know if the City Council wanted to move this item up on today's agenda or not.

Mr. Brian Heady said that would be a nice thing to do to move that item up. He asked does anyone have even one (1) single case where a car or a person was hit by a high speed rail at a crossing where the gates didn't come down. He said the constant refrain that they are talking about is safety, but there is nothing the City Council can pass that is going to prevent someone from trespassing and crossing railroad tracks where there are no gates. The car that was recently hit was in front of the gates. He said that he has seen people go around the gates when they are down and there is no legislation that they can pass to stop that. He said it is like provoking a dog. When you provoke a dog you are going to get bit. When you don't pay attention to those gates coming down there is a good chance you could get hit. He said passing any kind of legislation just gives the Railroad one (1) more thing that they have to do. He thinks we should all be friends of the Railroad and not the constant provoking and poking at the Railroad. He said under New Business on today's agenda is an update on affordable housing. He said every time government takes some action to provide affordable housing, they make the rest of the housing less affordable because the only way that you can make housing more affordable to someone who can't afford it is by taking money from those who already have housing. He said that he has worked on several affordable housing projects and is not against people who find themselves in a situation where it is tough to afford it, but the efforts by government with affordable housing makes all of their housing less affordable because their taxes pay for that.

Mayor Young asked the City Councilmembers if there is any opposition to go ahead and have the discussion regarding the DOAH Case heard at this time.

Vice Mayor Moss asked if she could just discuss the affordable housing matter that she has on the agenda since that was a perfect segway. She said it will just take two (2) minutes and then she is willing to do whatever they wish.

The City Council agreed.

6. CITY COUNCIL MATTERS

A) NEW BUSINESS

- 1) Affordable Housing in Indian River County Update**
 - a) Florida League of Cities 2020 Key Points on Affordable Housing attached.**
 - b) Resolution from Joint Meeting attached.**
 - c) ALICE information distributed at Joint Meeting attached.**
 - d) Letter dated 06/04/2019 from Vero Beach City Council urging Governor to spend Housing Trust funds on housing attached.**
- Requested by Vice Mayor Laura Moss**

Vice Mayor Moss said actually what she is looking for is to have a Resolution passed that has to do with the Sadowski Affordable Housing Act, just the way they have done these other Resolutions. She said actually the money for affordable housing, a big surprise, has not been going to affordable housing and by that she means the Sadowski Trust Fund. She said this was part of a Resolution that was passed last October by a joint meeting of the Treasure Coast Regional Planning Council and the South Florida Regional Planning Council. The Sadowski Affordable Housing Act was passed in 1992 and it did provide full funding from the Housing Trust Funds every year from 1992 through 2003, but since that time it hasn't worked very well. She said the money doesn't come from general taxes; the money comes from the Documentary Stamp Tax, which has to do with real estate transactions. She said that money since 2003, has not been spent on affordable housing and it should be. It has become a fund for Tallahassee to spend as it will to balance whatever budgetary requirements they have at any given year, so it has not gone toward affordable housing. In this year alone they are expecting it to generate \$350 million dollars, which should be spent on affordable housing locally. It does impact them. County Commissioner Tim Zorc stated at one (1) of their meetings that roughly they are sending a million and a half dollars and only getting back \$300,000. She noted that these are rough numbers; they are not exact, but it is just to give them an idea. Basically all she is requesting is that the Council consider, just the way they have done these Resolutions either supporting or opposing certain measures, just to request that Tallahassee actually spend the Housing Trust Fund on housing. That's all. The Affordable Housing Trust Fund, spend it on affordable housing. She said they shouldn't have to do this, but unfortunately they do. She said however they wish to do that, that is her request of Council and if there is any public comments to allow them to speak and then they can move on to the agenda item regarding Azalea Lane.

Mr. Brackett said it is his understanding that the City Council sent a letter to the Governor in June. He said they do have different members on the Council now and if those members would like to speak differently they can do that, but they did address this on June 4, 2019.

Vice Mayor Moss said that is correct. She said this is a new Legislative Session and they have new City Councilmembers.

Mr. Graves commented that there was a letter sent in June.

Mayor Young asked the Councilmembers if there is a sense that they would like to reiterate the endorsement for the proper expenditure of the funds.

Mr. Neville felt the more they write the better. He said there are numerous families in this community who are living in a difficult way so his view is he thinks they should paper them with letters as often as they can.

Mayor Young said that he is fine with him.

Mr. Brian Heady said it is interesting that they listen to City Councils, County Commissions, or whatever, praise our County Legislators, State Representatives, and State Senators on a consistent basis for all the good they do and then when you want something else you hear a City Councilmember say, "oh by the way, the money that we give to them they don't spend the way they are supposed to." He said it is a shell game of money and he would give them 100-1 odds that he probably has more volunteer hours in helping people with housing than everyone at the dais combined. He has spent thousands of volunteer hours and the way to help people with affordable housing is to pay them living wages. He said if they were paid a decent living wage they would be able to afford housing. He said it is all tax money and all tax money is their money. If they know government officials are not spending money for what it is collected for then they should be yelling about it, not trying to send letters and begging them to do what is right. He said stop the nonsense. The way to have affordable housing in the community is to set a living wage for the workers in the community.

Mr. Brackett asked if the Mayor wanted to send another letter to the Governor reminding the Governor of the letter that was sent in June.

Mr. Turner asked what would be their request.

Mayor Young said to draft a letter for his signature to go to Tallahassee in light of their previous endorsement of this legislation that they would request that the intent is to provide the money as directed.

Vice Mayor Moss said that sounds great. She knows they are looking to resolve this matter quickly, but for the community, all this information is uploaded; everything is always on the website and she would encourage people to go there, to covb.org. She said the joint Resolution is there and it gives the whole history. She said that she didn't want to belabor

it now in moving to the Azalea Lane item, but it is there and yes, she knows it's taxes. She meant ad valorem. She said taxes are taxes; it's all your money and it's all your land too by the way and so is this building.

At this time, the City Council heard item 10-A) on today's agenda.

B) OLD BUSINESS

1) 2020 US Census

a) Frequently asked questions and facts Sheet attached.

b) Employment Opportunities attached.

c) List of websites for additional information attached.

**Requested by Vice Mayor Laura Moss, Vice Chair of the Indian River County
Census 2020 Committee**

Vice Mayor Moss explained that the Census is conducted every 10 years by the Federal government. Data from the Census provides the basis for distributing more than \$675 billion in Federal funds annually to communities across the country to support vital programs. She said it is not only their civic duty, but it also affects the amount of funding their community receives. Beginning in mid-March, people will receive a notice in the mail to complete the 2020 Census. Once they receive it, they can respond online. In May, the U.S. Census Bureau will begin following up in person with households that haven't responded to the Census. All of this information is available on the City's website. The Census Bureau will never ask for someone's social security number, bank or credit card account number, money/donations or anything on behalf of a political party. Strict Federal law protects all Census responses. The penalty for wrongful disclosure is a fine of up to \$250,000 or imprisonment for up to five (5) years, or both. Vice Mayor Moss said that the public can learn more about the 2020 Census by visiting 2020census.gov. There are now PSA spots available, which contain video and information regarding the 2020 Census. She would be providing regular updates to the Council. It is very important that everyone responds to the Census request. The process will end in July.

Mr. Neville commented that this is the first time that people will be able to do the Census online. He said that hopefully people will take advantage of that convenience.

2) Vote on the additional 70 parking spaces then hold a workshop on how they are going to pay for the additional parking spaces (estimated cost \$400k). – Requested by Councilmember Joe Graves

Mr. Graves wanted to discuss their consultant's recommendation on how they can capture 79 spaces for beachside parking. He said after talking to the business owners, they are upset about the parking situation. He didn't think that they could keep kicking the can down the road and taking no action. The issue of how to fund this would be a separate discussion. He felt that it was time that they make a decision on beachside parking. He wanted to take a vote today on capturing these 79 spaces for the beachside area and support their businesses in that location.

Mr. Falls agreed that a decision from the Council would be great. He just wanted to make sure that everyone knows the \$400,000 is a construction estimate. They have seen how bids can come in all over the place and estimates can only be three (3) things. They can be lower, higher, or exactly right. This cost is for construction only and does not include any design work.

Vice Mayor Moss asked if this will be in next year's budget or do they have funds available now for this project or are they talking about the next fiscal year.

Mr. Falls stated that they will talk about how they want to fund it at a workshop. He said they could always do a budget amendment if they wanted to proceed quicker than putting it in a work program.

Mr. Brackett agreed with Mr. Graves that this matter was not going away. They need to resolve this and probably the easiest way is to install these 79 parking spaces. They will have to work out the funding, but this has to be done. People can't keep moving their cars around from space to space every few hours. They have the same issue downtown, but there may be some other opportunities downtown to help solve the parking situation.

Vice Mayor Moss recalled that the last time they talked about this there was a consensus of Council on this particular item. She thought they were going to discuss parking at a workshop. She said she doesn't have a problem not holding the workshop if it is not needed.

Mayor Young noted that this was one of the initial recommendations and they may also want to consider some other implications on enforcement if they want to go down that road.

Mr. Graves wanted to still pursue the issue of shared parking arrangements and try to find parking alternatives for the employees. He recalled Mrs. Cook saying that they have a very beautiful beach and business area and if they don't want to put t-shirt shops and souvenir shops all along their beachside they need to do something. He said businesses south of Beachland have multiple businesses without any parking spaces. He felt that as a City Council this was something that they could do, which according to their consultant would resolve the short-term problem.

Vice Mayor Moss asked the City Manager if they could give direction to him to pursue this by a consensus of Council. She is uncomfortable voting on it if they don't have an actual number on what this is going to cost. She asked how are they going to proceed with this.

Mr. Falls said that he hated to initiate any project without a known mechanism to fund it. He thought what Mr. Graves was looking for was a commitment from Council to the public that they are serious about adopting one of these policies. This scenario will give them 79 spaces. As he has said several times whatever they do here will set the template for what they want to do in other locations. If they want to build parking spaces at the City's expense then just be aware that other locations may be making the same request.

Mr. Neville commented that he was in favor of funding some engineering study so that they can get some real information on this. He doesn't like the idea of a vast asphalt scape going down Camelia Lane. He said there are ways to do this. He would like to explore other opportunities. He wants this done in a way that is reflective of the neighborhood and not as a business thoroughfare. Vice Mayor Moss asked if they could use pavers. Mr. Neville said that he was a business owner and a property owner on Cardinal Drive and Camelia Lane for 30 plus years. The property he owned actually had 14 access parking spots beyond what was required by Code. In that time he only had one (1) person come to him and ask him if they could use the parking spaces and the only reason they were asking was because they needed to get a permit. No one in all those years ever asked him to share that parking, which he would have been happy to do and not charge \$400 a month. The only thing that he would have charged someone was to clean the parking spaces if they got dirty. He knows that there are parking lots in that area that are underutilized. He cannot understand why property and business owners cannot sit down and have a discussion on how they can make this work. He knows that it can work. All they need to do is designate four (4) or five (5) spots at some of these underutilized parking spaces and provide them to staff. He said with Northern Trust the parking lot is empty most of the time so there are ways they can deal with this that won't cost them anything. He did not understand why Mrs. Cook did not come to him looking for parking spaces for her employees. And why other people who own parking lots who have spaces that are never used could not offer them to businesses in this area.

Mr. Brackett encouraged Council to go and talk to business owners that have parking lots because he hears they are not real receptive.

Mr. Falls added he has met with landowners on the beach who own multiple properties and they were less than enthusiastic about the idea. However, if someone watching this meeting has a parking lot and wants to partner with the City to please give him a call. The other item that Mr. Neville brought up is those parking lots are not in the residential portions of those streets, but they are in the commercial portion of the street and they also could look at additional paving surfaces, but they have to make sure that they get the look that they want. He is open to all ideas.

Mr. Neville proposed that they initiate an engineering survey and look at different surface alternatives. He said they want to keep the look of those streets as much as they can the way they are now.

Mr. Graves agreed that they could look at various ways of doing this.

Mr. Neville suggested doing an engineering study to find out what it will really cost and then move from there.

Mr. Falls said that he would bring something back to the next City Council meeting that they could talk about.

Vice Mayor Moss asked that he look at pavers. She suggested looking at what they are doing in the Dog Park. She said that is a high traffic area and it is a better look than asphalt.

Mr. Falls said that they would look at a couple different alternatives.

Mr. Graves made a motion to move forward with recommending that they capture the 79 parking spaces as recommended by their consultant. Vice Mayor Moss seconded the motion.

Mrs. Nancy Cook explained why parking partnerships will not work. She said that people are going to look for free parking instead of where they have to pay to park. She hoped that they would regulate curb cuts on side streets. Some are huge and limited to what is necessary for a car to get in and out. She mentioned that Center Street parking gets them a lot of parking spaces. She expressed the number of spaces it gets them is invaluable. It is hard to say what the commercial value of parking spaces is. She brought up the Three Corners project and said that requires a lot of parking and she doesn't know where the parking will be. She attended the charrette meeting held on the beachside and felt that the consultant showed a lack of respect.

Mr. Falls said that they could take a look at the curb cuts and see how many spaces they have and they might be able to add on to these 79 spaces.

Mr. Ken Daige asked Council if they were voting to spend \$400,000. He was told no and that in their workshop that Council holds they will be discussing where the funding resources will come from. Mr. Daige expressed the importance of letting the property owners and business owners know about this project.

Mr. Neville amended the motion to include getting an engineering study and knowing where the money was going to come from.

The original motion passed 5-0 with Mr. Neville voting yes, Mr. Graves yes, Mr. Brackett yes, Vice Mayor Moss yes, and Mayor Young yes.

Mr. Falls will come back to Council at their next meeting with an update.

Mr. Neville withdrew his motion.

3) Update on information received from Florida Department of Transportation (FDOT) concerning future projects. – Requested by Councilmember Robbie Brackett

Mr. Brackett commented that the Florida Department of Transportation (FDOT) has given them a three (3) year reprieve concerning the grants that the City receives from the Airport. He said it was a great day when they received that letter. He wanted to personally thank Senator Debbie Mayfield, Representative Erin Grall, County Commissioner Peter O'Bryan and Charles Sembler for their help.

Vice Mayor Moss thanked Elite Airways for staying the course and to the community for their input. She said that it makes a difference when they care about something.

Mr. Neville commented that ultimately they will need to settle on the number of enplanements that they can live with. He reminded everyone that they have three (3) years to complete the deal.

Mr. Falls did not think that 200,000 enplanements was the number, but they will do whatever the community wants. They would be talking about five (5) to 10 flights daily if they were going to have 200,000 enplanements. He said maybe there is a number that as a community they can agree on as to where they want to see their Airport go.

Mr. Neville commented that noise is a major factor at the Airport and they may need to be constrained on the number of enplanements.

Mr. Graves saw Mr. Buck Vocelle, Vice Chairman of the Airport Commission in the audience. He said that the Airport Commission made the right decision and City Council made the political decision. It is important not to kick this matter down the road so that another City Council has to deal with it. He said the citizens don't want that many enplanements and the County is not interested in helping them out. He said that noise becomes a quality of life issue for Vero Beach residents. They moved here because they don't want it. If that was the case they would want to see the Regional Airport moved out west somewhere. The City Council needs to discuss this matter in the next few months and make some decisions. It is better to have a plan sooner than later. They need to discuss whether or not they want to have an Airport Authority. He was not happy that this information was not presented to the City Council when the deal with Elite originally passed. They need to really investigate this issue and what the costs are.

Mr. Graves brought up the Twin Pairs project and said that he would like to address the matter while FDOT has a paving project in the works. He said that would be the time to discuss it. He would like this discussed at a future workshop. He does not want to miss the opportunity to have changes made while FDOT is taking care of paving the road.

Mr. Falls explained that it is not on their work program as of yet. He will keep the Council updated on the project, which he feels probably will not start until five (5) years from now. He will also be prepared to give the history of the project.

Mr. Buck Vocelle commented that he came to City Hall to pick up some permits and saw that they were having a meeting so he stopped in. He stated that the Airport Commission did the best that they could with the information that they had.

Mr. Graves thanked the Airport Commission for all their hard work. He said it is not easy to make a good decision and then have rocks thrown at them. He appreciated their service.

Mr. Vocelle hoped that Council understood why they did what they did.

Mr. Falls added that if the Airport Commission had not made the decision that they did this matter might not have ever gotten out to the public.

7. PUBLIC NOTICE ITEMS FOR FUTURE PUBLIC HEARING

- A) A Resolution of the City of Vero Beach, Florida, Establishing Rates and Fees for the Collection and Disposal of Solid Waste and Recyclable Material and Sale of Items used for Collection Purposes; Repealing Resolution 2013-33; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Public Work’s Department**

The City Clerk read the Resolution by title only and reported that the public hearing will be heard on February 18, 2020 at 8:30 a.m.

Mr. Neville asked about the rates. He questioned the \$5.00 pick-up fee.

Mr. Falls explained that rates needed to be looked at because of the sale of the electric utilities.

8. CITY CLERK MATTERS

Mrs. Tammy Bursick, City Clerk, announced what openings there are on the different City Commission/Boards.

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

Mr. Falls thanked everyone for attending the planning process for the Three Corners. He said once they get all of the ideas finalized they will hold a Steering Committee meeting, which will probably be at the end of February or the beginning of March.

Mr. Falls announced that at the MPO meeting scheduled for Wednesday, February 12th Representatives from FDOT will be there to talk about safety at the intersection of the Barber Bridge.

Mr. Falls asked the City Council that if they had items for the upcoming workshop that they get the items to Mrs. Bursick before Monday so that they can discuss at their next Council meeting what matters they want to discuss at the February 25th workshop.

10. CITY ATTORNEY MATTERS

- A) Settlement Discussion on the DOAH Case**

*Please note this item was discussed earlier in today’s meeting.

Mayor Young said as a result of the outcome of the Executive Session, they want to hear public comments.

Mr. Turner said for the benefit of the public, they are here this morning as result of the Executive Session that they conducted on January 21, 2020, to discuss settlement strategy in this pending case before the Division of Administrative Hearings, which is an administrative adversarial hearing by petitioners who are in the area of the adopted Future Land Use Map (FLUM) amendment. The petitioner's counsel offered a settlement at a public meeting. That settlement was discussed at the Executive Session and as a result, the City Council set the matter for this morning to hear public input on the proposed settlement. He asked Council to be cautious of any questions or responses since this matter is still pending. At the conclusion of public input, Council may ask for comments from him and he will give them his assessment and if they desire, a recommendation on how to proceed in this matter.

Mr. Graves wanted to clarify one (1) thing. He said the offer that was made at the public hearing was changed through a subsequent letter. So now, the offer went from just rehearing the matter to rehearing the matter and restricting their legislative authority.

Mr. Turner said that is correct. He added that the offer made at the public hearing was that if Council would agree to rehear this, the application for the FLUM amendment; that the petitioners would dismiss their case with prejudice. It was followed up with a letter to Council that added a condition that Council not consider at any rehearing any amendments or any other legislative actions that could be taken regarding the FLUM. He said the other option is to proceed with the DOAH proceeding, which is scheduled for February 27, 2020, for a public matter in these Council Chambers.

Vice Mayor Moss asked are they making any decisions today or is this just a listening session. She asked what are they about to do.

Mr. Turner said this is a listening session, which at the conclusion he hoped to receive direction from Council on how to proceed.

Mayor Young said the default outcome, unless they change, is that they proceed to the DOAH hearing.

Vice Mayor Moss asked if they could change something today. That is what she is asking. She questioned can they make a decision today.

Mr. Turner said the options are as to the settlement offer, to accept the offer as made with the condition, reject the settlement offer with a counter offer, or do nothing and proceed with the DOAH hearing on February 27, 2020. He said there will be an additional consideration that he will address at the conclusion of public input.

Mr. Jonathan Rodenback, Attorney, said that he is present today to provide any clarification needed. He was not sure how his letter restricted the legislative authority of Council and

how it was different than what was set forth at the public hearing on January 7, 2020. If there is something that is confusing or misleading he would be happy to clarify it. He said that he was concerned that he might have been misconstrued in his letter.

Mr. Graves asked Mr. Turner to clarify exactly what the offer is with the petitioner's attorney.

Mr. Turner requested that he address that at the end of public input.

Mr. Graves felt Council needed to know what the offer is.

Mr. Turner said that he would hand that back over to Mr. Rodenback if he wants to explain what his client's offer is to resolve the matter.

Mr. Rodenback explained that if the City Council agrees to rehear the matter, they will dismiss the administrative proceedings with prejudice. He didn't think there were any strings attached to what they ultimately decide at that rehearing. It was if they agree to rehear the application for the FLUM amendment, they would drop their case because they believe the rehearing would address all the legal concerns that were raised in their petition and would be rectified one way or the other at the subsequent rehearing. That was the offer. He apologized if he conveyed something different in his letter.

Mr. Graves questioned so the offer is if Council agrees to rehear it, they would dismiss prejudice no matter the outcome.

Mr. Rodenback said that is correct.

Mr. Brackett asked wasn't there a comment made about text amendments.

Mr. Turner answered yes. He explained that if they want to take it one (1) step further so Council is making an offer that if there is the discussion or consideration for a text amendment to the Comprehensive Plan that is a legislative prerogative of this Council that he cannot recommend that they would negotiate that away. That is an issue to be addressed if the Council is to rehear the matter. His understanding from Mr. Rodenback is that they are not putting in any conditions that the City Council may not consider any other matters relevant to the FLUM amendment.

Mr. Rodenback said if the City Council ultimately wants to do text amendments, there is a procedure set forth in Florida Law and in the Florida Code that presumably they would follow. If they don't, that would be a different matter for a different administrative proceeding, which would have nothing to do with the rehearing. He said it is not going to impact their decision in any way if the City Council decides they want text changes to the Comprehensive Plan.

Mr. Dick Winger said that he has been to court several times. He said when he was on the City Council, he was part of the litigation to get the old Diesel Plant where it is now, he

was part of the litigation that was eventually successful in selling the electric utility, which Vice Mayor Moss concluded, he was behind the litigation in short term rentals, and today he is in the position of litigating against them. To explain, he had a two (2) hour deposition with Mr. Turner, which he didn't know why it had to be that long. He said that he thinks they were being unfair to the residents of Azalea Lane. The other thing that he sees in this is "creep." He felt this needed to be rethought and hoped that they come to an amenable solution.

Mr. Brain Heady said one (1) Councilmember suggested a reasonable path forward at their last meeting and no one listened to him. The comment was that this was a no brainer. Mr. Heady felt the same thing holds true today. Mr. Rodenback has offered to end this case with prejudice. Mr. Heady said that stops taxpayer's expense and all the City Council has to do is hold a rehearing. He said this is all costing the taxpayers money that could have been avoided. He said the right conclusion is pretty simple. They should make a motion that they will hold a rehearing. If they do that, this whole thing ends right now. It ends their legal expense and it gives these people at the rehearing the opportunity to present their case.

Ms. Catherine McInby (spelling may be incorrect) said that she owns the property adjacent to 705 Azalea Lane. She said that she is still unclear on whether they are having a hearing or not.

Mayor Young explained that at this time if they continue as they currently are, there will be a DOAH hearing on February 27, 2020. They are taking public input at this time to determine if they are going to continue with that or do something else.

Ms. McInby (spelling may be incorrect) said her biggest confusion about this is to the benefit of one (1) person, one (1) company, or whatever the entity they refer to as the petitioner for this change, to the benefit of the one (1) and the detriment to the community at large on Azalea Lane to benefit one (1) person, one (1) company and detriment to the community at large on Azalea Lane, and the creep through central beach, she does not understand. She said that there will be a loss in value to her property. The way she sees this is for the benefit of one (1) versus the benefit of all the other residents. She doesn't understand when there was a 5-0 vote by the Planning and Zoning Board not to pass this, how it could be passed by the City Council.

Ms. Fenny Pennera (spelling may be incorrect) stated that she lives next door to 705 Azalea Lane. She said it is very important to her and her daughter that they live in a safe quiet neighborhood. She is very worried about having a parking lot next door to her.

Ms. Mary Jean McCleary said this morning the City Council presented a Proclamation for the beautification of Vero Beach. She said there is no beauty in parking lots. She said taking paradise and putting in a parking lot encourages global warming.

Ms. Gail McConvey said what comes to her mind when thinking about tearing down homes and commercial creep is not only the relaxed atmosphere, the community that she enjoys,

and walking with her son and daughter and their children, it concerns her about the cars racing back and forth when there is a commercial entity in the neighborhood. The residence they want is a relaxed and safe residence and one (1) that they can be proud of.

Ms. Jan McNab said that she has the same concerns as everyone else, particularly regarding safety.

Ms. Cathy Johnston said that she lives immediately in back of Azalea Lane. She said that she could only reiterate what has been said, that a single applicant can overturn what the residents who actually live there want and need. As a realtor it would have definite impact on the quiet enjoyment that the owners of Azalea Lane need. Tearing down a house and putting in a parking lot for an office building that backs up to it is not the highest and best use of the land. She said when this was first presented to the Planning and Zoning Board, it was said that a lot on A1A was not viable for a nice home. She said there was a property on the corner of Camelia Lane and A1A that was recently sold for which she thought the price for the lot was \$170,000, and a home is now being built on that property. She said this property is just two (2) blocks away from the property they are discussing today. She said that she is against this and hopes the City Council will consider rehearing this.

Ms. Nancy Cook said that she owns property on Azalea Lane and lives on A1A and the traffic noise is terrible. She didn't think that A1A was going to creep down Azalea Lane. A1A is going to be where it is. When she thinks of a parking lot, she thinks of the parking lot of the Northern Trust Building that is beautifully landscaped, quiet, tasteful, and maintained. She said that she is not either for or against this, but looking at it as a property owner on A1A, which is the busiest intersection on the beach.

Mr. Ken Dage said that he is very concerned about this situation. He has been watching this since it started. The Planning and Zoning Board turned this down and for good reasons. He said what is being done here is up-zoning. He said they are asking to go from Residential High zoning to Residential Medium 10-12 zoning, which it could then go to POI zoning easily. That is what happened where he lives. He said that he has held back taking some of the City Councilmembers out to show them the adverse affect of what POI does. He said at the end of the day, POI really degrades an area. He said Northern Trust does have a nice parking lot with a lot of hedges, but that was done years ago and it is not in the City's Ordinance now to do it like that. There was a clinic that was built out west a few years ago that has very sparse vegetation, the trees are smaller, and the buffer to the neighborhood was reduced so it is not the same today as it was yesterday. The POI as it stands does need to be squared away more than what they have. He reminded the City Council that they are the mothers and fathers of the community. The most important thing of a City is its neighborhoods, people, and children. He hoped that the City Council would have mercy on the neighborhood and rehear this. He said the way this has played out is not a good thing. The people present today took time out of their day to be here and express their thoughts and they did it at the Planning and Zoning Board hearing. He asked that the City Council at least hear this again. He didn't think it was that big of a deal. He asked that the City Council to please look out for the people in the neighborhoods.

Mrs. Eileen Slattery-Molar said that her family has been coming to Vero Beach for 15 years and purchased their home on Azalea Lane five (5) years ago. She said it has been very pleasant to be able to live here six (6) months of the year and they look forward to it. She said they were totally shocked when that heard that there was this major change, which there was not time for them to respond or to even react. She hoped that the City Council would listen to their opinions and rehear the case.

Mr. David Long said that he and his wife moved here five (5) years ago and reside on Azalea Lane. He said the Planning and Zoning Board's decision was unanimous and the neighbors are unanimous on what they want. He invited the City Council to join them in being unanimous. He said this is not a good plan. This is a bad plan for the people who have invested in the neighborhood because the rezoning will diminish the value of their property.

Mr. Barry Siegel, Attorney, said that he is present today on behalf of the owners of the property. He said there are two (2) things here. First and foremost from a legal prospective, what the City Council is being asked to do he doesn't think they can be asked to do. The property has been adjusted for the FLUM by action of this Council. Legislatively it has been completed. It is subject to review by DOAH and they understand and respect that. But for the City Council to come back now and make that change, he does not believe there is a legal procedure precedent for the City Council to do that at this time. His client is guaranteed certain Constitutional due process substantive and procedural rights with regard to the processes that the City must adopt in order to take action such as what is being proposed in the rehearing. In other words, his client has a vested right in the property right now with the land use designation and for the City Council to change it by some way of a rehearing it is going to expose the City to a different form of litigation. He knows the discussion is lets resolve it this way and it will end litigation, but it will only create a different type of litigation. It will actually be a Circuit Court litigation involving certain Constitutional issues, which his client does not want to have to go down that path and it is certainly not in the City's best interest. He said if DOAH says that they did it wrong the first time and they have to do it again, then they come back and do it again. If DOAH says that they did it right the first time then the process continues. He noted that they still need to come back and look at the zoning. This is not the last time this Council is going to have to review this matter or the last time this Council is going to have to take input and action based on what the public thinks is necessary for this property. Simply stated, it is not in the City Council's or the City's best interest that each time they feel as though they are threatened with litigation that they need to redo their prior actions. He said it is only going to invite future litigation in greater mass later from any type of party that is aggrieved in any type of action. He didn't believe it was a prudent mechanism right now. Legislatively, this Council has taken their action and he thinks they are required to abide by that until DOAH tells them otherwise. He reported that this project that is before the City Council is not the same project that was presented to the Planning and Zoning Board. His clients listened to the Planning and Zoning Board and they have made a lot of changes. He said some of the information they are receiving from the public this morning is not consistent with what this project has been changed to do. He reported that there is no access to this property off of Azalea Lane. This property will be completely buffered with landscaping

on three (3) sides, leaving the side closest to the bank as the access point which will not be buffered. The only other exception is that the buffering between this property and the property to its immediate will also be improved with a wall to keep the properties separated. That was not part of the plan when this went before the Planning and Zoning Board. He asked that the Council take a look at the Northern Trust property. He said it has been done beautifully with trees and landscaping, which is what his client is looking to do. He said it is actually an improvement to the end of Azalea Lane. He said they have heard about this house on Camelia Lane, but that is a total different story where they have a property that deals with the southbound traffic three (3) blocks away from this intersection. His client's property is on the northbound traffic side backed up to the intersection, which is noisy and smells. He said this is an opportunity for his client to bookend the end of the block, clean it up, and put something beautiful there. He asked that the City Council allow the DOAH proceeding to proceed. They do not believe that the City Council has the right without violating the Florida Constitution to just rehear this matter and take away his client's land use designation that they possess.

Mr. David McNab said it was is understanding that the purpose of today's meeting is to consider whether the City Council wants to rehear the original application. He said a lot of the comments made actually would be more appropriately made in a rehearing. He thinks it is very disingenuous of Mr. Siegel to basically threaten the City Council with another lawsuit. He said the City Council is being sued by people in the community and it is up to the City Council to say that they will do whatever they can to try to settle this. What is being asked is simply to have a rehearing. He said whoever spoke today will probably speak at the rehearing and will probably make the same remarks they made today. The petitioners are not saying we will sue you and will continue to sue you, that you have to do what we want and what we want is to undo the original decision. He said the petitioners are simply saying to give them a rehearing. The City Council might make the same decision as the previous City Council. They are saying give us a rehearing and you may make a different decision. Mr. Siegel stated that if the City Council does this they are going to be sued. He felt it was a bad precedent to have the City Council on a receiving end of a lawsuit and let the fact that they are going to be sued dictate what they want to do. If the petitioners were saying change your mind and undo what the previous City Council did and do something different, that is equally offensive. They are simply saying let's settle this, have a rehearing, and the lawsuit goes away. It seemed to him that it is almost impossible to resist the offer to simply rehear the matter with no costs and everyone starts at the same position they were in when the matter was first heard and there is no prejudice to Mr. Siegel's client.

Mrs. Jennifer Culgo explained that the reason they are asking the City Council to rehear this matter is because of the way that it was approved the last time. It was a 3-2 vote with a condition and the condition has not been made. She said it wasn't because they just didn't like the outcome, which they did not, but it was approved with a condition that has not been met and that is why they are asking Council to rehear this matter.

Mr. Turner explained that the changes made at the meeting when this was heard are pending due to the DOAH proceeding. He also said the text amendments and the rezoning have also been tabled pending the outcome of the hearing.

Mr. Turner stated that he wanted to address a few comments that were made. First in regards to expenses if they continued on. He said as far as attorney fees from his office they are paid the same whether they are at City Hall or arguing cases in court. There are no additional attorney fees. The use of the City Attorney's time is a different matter. This may take some time to litigate when he could be doing other things. The additional expenses that would be involved if they proceeded to the DOAH hearing would be perhaps for additional transcripts or court reporters for depositions as well as at the DOAH proceeding. Usually the parties agree to share the cost of preparing the transcript by the court reporter, which is used in preparing a recommended order for the administrative law judge. Also, the City has obtained an expert witness and his costs are capped at \$13,000. At this point he has been paid \$5,600. Mr. Turner did not foresee any other expenses. The DOAH hearing will be held in the Council Chambers on February 27th beginning at 9:00 a.m.

Mr. Turner referred to what was presented by Mr. Segal. He had a copy of his letter sent to the City Council outlining his client's position that if there is a rehearing or redo of Council's decision and a different decision is made there may be additional exposure to the City for procedural due process, takings, injunctive relief, and Bert Harris claims. He said that is always a possibility and something that Council needs to keep in mind and part of his making a recommendation.

Mr. Brackett recalled that the process that Council went through the first time is where they did make the zoning changes, but asked for certain conditions when it came back to them.

Mr. Jeffries clarified that this case was all applicant driven by the property owner. This is not at all initiated by the City. When the Planning Department receives an application they have an obligation to review it and make a professional recommendation and take it to the Planning and Zoning Board and then to the City Council for a hearing. What the applicant is requesting to do requires a two (2) step process so two (2) applications were made. The first application was to amend the future land use map amendment and in that process under their Land Development Code it requires an application, staff review then a hearing before the Planning and Zoning Board for their recommendation and then a final decision by the City Council. The State Statute allows for the decision to be appealed, which is where they are right now. All they have done is amended the future land use amendment. There is a second application for rezoning and that request is for POI. The request was tabled at the Planning and Zoning Board meeting. Because of the hearing in September, Council asked for staff to look at issues in terms related to commercial creep, which is a Comprehensive Plan Amendment. He took this to the Planning and Zoning Board for a hearing, but it was tabled. This was intended to be a separate Comprehensive Plan application to address the broader issue of commercial creep in the neighborhoods. Staff plans on having another workshop with the Planning and Zoning Board once they get through some of these procedures. The other request was to make amendments to the Land Development Code

Text Amendment. This is to address some of the issues that have been raised by Mr. Daige concerning the POI zoning. He has put together a proposed amendment to address a lot of these issues, which is mainly screening and buffering. He said that issue was not even talked about at the Planning and Zoning Board meeting. It was on their work plan, but they tabled it.

Vice Mayor Moss stated that this was initiated at a City Council meeting held on September 17th. At that time she made a motion that the Council accept the recommendation of the Planning and Zoning Board and deny the application and Mr. Young seconded the motion. The motion failed 3-2 and since that time there are two (2) new Council members. Also on that day what did pass according to the minutes of September 17, 2019, page 30, Mr. Howle made a motion to approve the amendments to the Future Land Use from RL to RM zoning at 705 Azalea Lane with the provisions to be put into the text. Mayor Zudans seconded the motion and it passed 3-2, with her and Mr. Young voting against it. She asked Mr. Jeffries if what he was saying now is that did not occur.

Mr. Jeffries explained that he took that as direction to staff. The Ordinance was approved as a small map amendment, but within that motion there was direction to staff to address these issues through the text amendments. He said there are drafts prepared to be heard before the Planning and Zoning Board, but their action was they tabled it.

Mr. Graves felt because of the allegations that have been raised by Mr. Segal that they need to have another Shade meeting to be advised by their attorney on the legal process to rehear whether or not a vested right has been bestowed upon the petitioner. Also, the potential causes of action that the City would be exposed to by rehearing the action in the likelihood of success of those causes of action. He needed this information before he could render a vote.

Mr. Turner said he would address it generally. He asked Council if they were asking from him a recommendation regarding the DOAH proceedings.

Mr. Graves commented it is one thing to say that you are exposed to certain causes of action and then another thing to say what is the likelihood success.

Mr. Turner would appreciate not addressing the likelihood. He said for his clients that a defense of all these matters would be viable and it is not an automatic that the applicant would recover if this change was made. He would not want to make a public comment in more detail.

Vice Mayor Moss asked if they were precluded from having a rehearing because they have been threatened with additional legal costs. She asked if that was where they were going with this.

Mr. Turner stated that he does not feel that way. His interpretation is that if there is a settlement to redo or have a rehearing that they have to make sure that they follow all of their requirements because that is the will of Council. He said there may be notice

requirements, there may be additional time requirements, but he does not know yet. He said that he and Mr. Jeffries need to agree on what that procedure will be. He said generally the concept is if there is going to be a rehearing and there is going to be a dismissal with prejudice pending DOAH matters claims without any additional costs of defense to either side. Each side absorbs all costs and expenses that they have occurred to date at the time of the dismissal. If that is not the will of Council and the will of Council is to proceed with a DOAH hearing for February 27th then they need to analyze it from that perspective. What will occur at the DOAH proceeding is that the DOAH judge after hearing all of the evidence could say that the City did everything proper under State law and under its Ordinances and the DOAH judge would uphold the Future Land Use Map Amendment. Then they would come back for an additional proceeding, but the DOAH case would be over. Additionally, the DOAH judge could say after hearing all of the evidence that the City did not adopt this properly so it is being sent back to them to do over. He said that is all the judge's jurisdiction can be. They cannot impose their own findings. In either case they are only following what the court directs them to do and not making a decision to change anything at that point. There will be additional out of the pocket expenses if they go with the DOAH proceeding.

Vice Mayor Moss commented that every time they meet on this it gets more complicated legally. She was wondering if it wouldn't be better to just to rehear it and go with that.

Mr. Turner explained that if they go with that and there is a change and the application is denied then that is when Mr. Segal's client may be interested in pursuing any rights that they determine have been violated as a result of that change.

Mr. Graves felt that he needed to know what their exposure is.

Mayor Young felt that it was appropriate to realize what the exposure is in relationship on whether they go left or right. He said there is an opportunity where they could end up in a circumstance that they don't want to be in. He said no one on this dais is not in favor of protecting their neighborhoods and he thinks that the City Planner understands that as well. Again, what they are attempting to do is understand the City's latitude to make decisions that would not be in violation with other precedent that has been made previously.

Mr. Brackett agreed that Mr. Graves was right in wanting to have another Shade meeting on this matter. He questioned the timeframe in having that meeting in order to resolve this.

Mr. Turner said if they have another Executive Session he was not sure what more information he could share with them that he hasn't already shared.

Mr. Graves said that they need to hear the likelihood of success of those various causes of actions.

Mr. Turner said he would reveal that in an Executive Session.

The Executive Session was set for Friday, February 7, 2020, at 8:30 a.m. Those in attendance will be the City Council, City Manager, City Attorney and Court Reporter.

Mr. Turner asked for an Executive Session to be held on February 7th at 8:30 a.m. The meeting would be opened and then closed for the Executive Session. It will take approximately 30-minutes and then it will be reopened again in a public meeting before the Mayor announces termination of the attorney-client session.

Mr. Graves made a motion to hold the Executive Session on February 7, 2020, at 8:30 a.m. Mr. Brackett seconded the motion.

Mr. Turner asked the Council if they want to reopen the meeting and make their decision. Council agreed that is what they wanted to do. The public meeting will begin at approximately 9:30 a.m.

Mayor Young opened up the meeting for public comments on the motion at 10:33 a.m.

Mr. Dick Winger commented that when he was on the City Council he couldn't count how many times that they went to court on so many different things. He told them that when they are in the Shade meeting that they need to do what is right and don't let the lawyers tell them that they have to do something.

Mr. Ken Daige commented that he hoped that when the Council has their Shade meeting that they all agree to do what is right and good for the neighborhood. He said whatever they do they have to stand together and don't be afraid because of threats.

Mr. Neville wondered if Mr. Jeffries should attend the Shade meeting. He was told that State Statue does not allow Mr. Jeffries to be in attendance.

At 10:40 a.m., the Council took a five-minute recess and the meeting reconvened at 10:45 a.m.

B) Update on Szechuan Palace

Mr. Jeffries reported that the Historic Preservation Commission (HPC) made a motion at their last meeting concerning Szechuan Palace. He said that they have been discussing Szechuan Palace and one (1) of the things that they requested to City Council was for the City to do anything possible to protect the property. The HPC Ordinance for the City of Vero Beach states that applications for Historic Preservation designation of historic sites must be started by the property owner. This is all in relation to their Comprehensive Plan. In their Comprehensive Plan they do have objectives regarding historic preservation that they are to protect preservation and historical resources in the City. The role of the HPC in terms of preservation is education to property owners and to provide assistance. The property owner submits the application and staff helps them through the process if they wish to designate their property. He said that other cities in Florida sometimes do this differently. He said a lot of cities in Florida do have it where their HPC can initiate the

designation of a property or City Council can start it. There are also some cities that allow their local Historic Society to nominate and initiate the process. He said there are also some cities that allow the City Council to initiate the process and there is a strong emphasis on property owner consent. He said you would notify the property owner that you are considering the nomination and they have the opportunity to object to it. In some cities they require a 2/3rd majority to vote if the property owner objects to it.

Vice Mayor Moss asked who owns the property now.

Mr. Jeffries said that it is FDOT.

Mr. Brackett commented that he talked to his father about this property. He asked Mr. Jeffries if he was talking about a Local Historic designation and not a National Historic designation.

Mr. Jeffries answered yes.

Mr. Brackett explained that the building would never qualify under the national guidelines because the building would need to have some standing. He would like to have more information about the building. He said that his father recalled when the building was moved to its present location and it was a one-story cracker house. The building that is there now has been added on to numerous times. He wondered if they would have to bring the building back to its original state of being a one-story cracker house according to their guidelines.

Mr. Neville commented that he is the reason that this item is before them today. He happened to attend the last HPC meeting when this was discussed. He knows that Mrs. Ruth Stanbridge, County Historian, has been working hard to try and get some sort of historical status attached to the building. She could not do it because of the way the City's Ordinance is set up. He went over the value of that structure. He said if someone buys it, it has Dade County Pine in it so they would pull it apart board by board and build something else, which would be terrible. He said the murals in the building can be restored and that is one of the things that would be so valuable to the structure and that is the interior of the building. He said whether or not they could restore it back to the original cracker style it is probably would not happen. He asked Mr. Jeffries if there was some way that they could adjust their Code so that when a government entity owns the property and they have no interest in the property they just want to get it sold, then it would fall to the community. Since it is owned by the government it is owned by all of them and they have a share in it and then could initiate on their own a request for historical preservation of some kind. He hopes that they can do something before the building is destroyed.

Vice Mayor Moss asked if anyone has asked FDOT to donate the art work inside to perhaps the Historical Society.

Mr. Graves suggested taking this a step further too at least try to see if they would sell the building to the City at some reduced cost. He thought they could do a governmental to governmental transfer without an open bid.

Mr. Falls explained that FDOT purchased the property as a right-of-way acquisition so the roadway project could move forward.

Mr. Graves felt that the City should at least approach them about doing a government to government transfer without an open bid. Then they could decide what can be done with the building. They could always sell it as surplus, but that is the only way to make sure there is control over the building.

Mr. Falls commented that FDOT is scheduled to open bids on Friday.

Mr. Neville heard that as a few days ago FDOT had not received any bids.

Mr. Graves felt if someone was going to pick up the building cheap then it should be the City. They need information to make a decision on.

Mr. Falls said that he and the City Attorney will look and see if there is a government to government transfer that can be done outside the bid process.

Mr. Graves asked Mr. Falls to find out if FDOT would be interested in doing this and what the cost would be and to add this item on to their Special Call agenda on Friday and discuss it.

Mayor Young questioned that if they do own the building, what are the implications in order as far as moving it, etc. He knows with the Laura Riding Jackson home it cost \$350,000 to move that building to its new location at the College.

Mr. Graves was sure that in this community there would be people willing to get behind a project like this.

Mayor Young continued by saying that the Historic Society presently has their hands full with running the Train Station and the Halstrom House. He said they can see what is available on Friday and then go from there.

Mayor Young recalled that during the Centennial they came up with certificates for families that had been here and maybe the HPC can look at a lesser form of recognition concerning the owners. Mr. Jeffries felt that already existed in their Code.

Mr. Graves brought up the matter that the City was being sued on a public records issue. He also understands that the County, the School Board, and the Sherriff's Department are also being sued and they have retained outside counsel who are public records experts to handle this dispute against the same plaintiff. He said some of the people he spoke to felt very adamant about needing a public records expert to defend the case. He said from what

he understands there is some peculiar issues involved in this particular case. He asked the City Attorney what he thought about that.

Mr. Turner said they could always look into that. He felt comfortable in handling the case for the City. He has had experience with these matters before. He will look into it and report back to Council and give them some recommendations.

Mr. Neville asked what is the scope of the request from the City.

Mr. Turner said it is everything that you can think of.

Mr. Graves was just thinking that maybe they could piggyback on what these entities are doing, especially since they are dealing with the same issues.

Mr. Brackett agreed that they definitely wanted a unified front. The same person is doing the same thing to all four (4) entities.

Mr. Turner had no problems working with the other attorneys representing those entities. It has been his experience that they usually do have a pretty good team they put together. He said there are some preliminary matters that they need to address in the lawsuit. But, he will definitely look into discussing the lawsuit with the other attorneys that are engaging in the same matter.

Mr. Graves asked if he could see what the cost would be to hire a public records expert.

Mr. Turner said he will look into that.

11. COUNCILMEMBER MATTERS

A. Mayor Young's Matters

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

Mayor Young showed a short video of boats at the Marina and in the water. He said they only saw one (1) derelict vessel and it was already marked. He thinks they are on the right track. He complimented the new Marina Director and what an asset he was to the City.

Mr. Neville asked if the Marina Study has been delivered yet.

Mr. Falls said that they should be receiving it shortly.

Mr. Neville asked if the Police Officers were comfortable boarding these boats.

Mr. Falls said he would need the Police Chief to answer that. He wasn't sure if they have finished all of their training yet.

Mr. Graves asked about the boats being moored at the Marina and not having their black water dumped.

Mr. Neville explained that those boats are at leased docks and not at their Marina.

Mayor Young commented that in talking with the Police Officers it seems they are familiar with the boats that are there on a normal basis.

Mr. Neville agreed that as the word gets out it will be so much better for their community.

Mayor Young brought up a letter that he received regarding trash and the cleanliness in the area south of US1. He advised the person that there is a collaborative effort between the City of Vero Beach, Indian River County, Keep Indian River Beautiful and DBI to keep the area clean. He mentioned that the City also has increased their street sweeping in some areas.

Mayor Young reminded everyone about the Veterans Four (4) Chaplain Ceremony that will be held at Riverview Park in Sebastian.

B. Vice Mayor Moss's Matters

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

Vice Mayor Moss announced that Keep Indian River Beautiful will be having their Awards Ceremony on February 20th at the Vero Beach Yacht Club. She invited everyone to attend and said that this is one way to support them.

- 1) "MHA /Rocks! British Invasion" Gala for the Mental Health Association on Saturday, February 22, 2020. Photographs and information attached.**

Vice Mayor Moss announced that the Gala for the Mental Health Association would be on February 22, 2020. The theme this year is "MHA/Rocks! British Invasion."

- 2) "Stars and Stripes" Gala for Veterans Council of IRC on Saturday, February 29, 2020. See veteranscouncilirc.club for information.**

Vice Mayor Moss invited to the public to attend the "Stars and Stripes" Gala for the Veterans Council of Indian River County on Saturday, February 29, 2020. More information is available on their website.

- 3) "EcoFest" at Environmental Learning Center on Sunday, March 1, 2020, Free admission. Information attached.**

Vice Mayor Moss invited the public to attend "EcoFest," which is a free event and will be held at the Environmental Learning Center on Sunday, March 1, 2020. Additional information is available on the City's website at covb.org.

4) Grand Opening of Children’s Garden at McKee (Jungle) Botanical Gardens. Photograph and information attached.

Vice Mayor Moss and Mayor Young attended the grand opening of the Children’s Garden at McKee Jungle Botanical Gardens. A picture of them with an alligator in the middle of them was shown. Additional information about the Children’s Garden is available on the website.

C. Councilmember Brackett’s Matters

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

Mr. Brackett complimented the Council and staff on the things that they are getting done in the City. He said that they have some fine people working hard to get these things done and they are moving in the right direction. He thanked the Steering Committee for their dedication regarding the Three Corners project.

D. Councilmember Joe Graves’s Matters

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

Mr. Graves echoed what Mr. Brackett just said. He is proud to be a member of the City Council especially on Friday night when the Three Corners project was shown. All of the charrettes were handled with a lot of class and were very informative. Again, he was proud with the way everything was handled.

Mr. Falls thanked all the venues for letting the City have their charrettes at the different locations. He also thanked the community for attending the charrettes. Everything went very smoothly.

Mayor Young questioned the comment cards and if Council would be receiving those along with the presentations. He was told that the questions addressed in the comment cards would be answered and put up on the SpeakUpVeroBeach website. All the presentations will also be on the website.

Mr. Graves congratulated the Vero Beach High School Women’s Soccer Team on another great season. He encouraged the public to come out and watch them play on February 11th. He will be the announcer for the event.

E. Councilmember Rey Neville’s Matters

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

None

13. ADJOURNMENT

Today's meeting adjourned at 12:03 p.m.

/tb