

CITY OF VERO BEACH, FLORIDA
MARCH 5, 2019 5:00 P.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

PRESENT: Mayor Val Zudans, present; Vice Mayor Tony Young, present; Councilwoman Laura Moss, present; Councilmember Robert Brackett, present and Councilmember Harry Howle, present. **Also Present:** Monte Falls, Public Work's Director; Kira Honse, Interim City Attorney and Tammy Bursick, City Clerk

The invocation was given by Father Robert Switz of Trinity Episcopal Church followed by the Pledge of Allegiance to the flag led by Mr. Young.

1. CALL TO ORDER

A. Roll Call

The City Clerk preformed the roll call.

2. PRELIMINARY MATTERS

A. Approval of Minutes

1. Regular City Council Minutes – February 19, 2019

Mr. Howle made a motion to approve the February 19, 2019 minutes. Mr. Young seconded the motion and it passed unanimously.

B. Agenda Additions, Deletions, and Adoption.

Mayor Zudans commented that he received a request from Mr. Bob Joy to pull the item concerning the Dog Park from the consent agenda. He asked the public if that was the matter that they were here to speak about to hold off making their comments until they get to that item in the meeting. He said that Mr. Joy would go first and then anyone else that would like to make a comment would go next. There was also an additional item that staff requested to be added to the agenda as item 3-H) "Agreement Consenting to Assignment of Commercial Lease Agreement (Parcel 11B) from Bridgeton Real Fund I, LP, to Two Ridges, LLC. (Revenue)."

Councilwoman Moss requested that item 4A-3) be removed from the agenda. She said that this was not submitted by the City Council and she did not want to set a precedent that businesses begin to submit Council Matters.

Mayor Zudans felt that it may be a bit premature for the renaming of the Lagoon-front property anyway because they are about to make a selection of a consultant and this

might better be handled as a part of the visioning process that they do when they start talking about this.

Councilwoman Moss agreed. It was the consensus of the Council to remove this item from the agenda.

Mayor Zudans said that he would be in touch with the person that submitted the item to let him know why it was removed from the agenda.

Mr. Young made a motion to adopt the agenda as amended. Mr. Brackett seconded the motion and it passed unanimously.

C. Proclamations and recognitions by Council.

1) March for Meals Month – March 2019

Mayor Zudans read and presented the Proclamation.

- D. Staff/Consultant special reports and information items.**
- E. Presentation items by the public (10 minute time limit).**
- F. Public Comment (3 minute time limit).**

Mrs. Stefanie Austin talked about small cell permits. She said that she appeared once before and spoke about this same topic. She felt that this was a very serious health issue. She asked the City to let her know how many permits have been issued over the past year. This information will be provided by the Public Works department.

Mrs. Phyllis Frey realized that the parking issue was coming before the City Council again. She understands that it is a topic on the front burner, which brings up her next topic about the decision that the Planning and Zoning Board made at their last meeting to approve a development project where there is not adequate parking. She then read a prepared statement.

Mr. Brian Heady congratulated the new City Council and the new Mayor. He was at the Organizational meeting and felt that the Mayor did a good job of keeping the meeting to 30 minutes. He was the only one who spoke at the meeting coming to the defense of Mr. Young to become the next Mayor. He said anything that he says is directed at the entire City Council and the public. He spoke two (2) Council meetings ago suggesting that \$5 million of the \$50 million received from the sale of the Electric Utilities go towards Parks. He said that all needs to be done is a ledger entry. He said that each project could be approved as it comes along. He said that maybe a motion could be made, which would show that the Council cares about their Parks. He expressed that there was not a parking problem on the barrier island, it is a customer problem.

Mrs. Linda Hillman asked for a little information for the public. She said there was a notice in newspaper about an RFP going out on March 7th for the planning design for the

three corners property. She wanted to make sure this property is where the Power Plant is located. She wanted the public to know that they were entertaining bids.

Mr. Monte Falls, Public Work's Director, reported that the proposals were due by March 7th and the Selection Committee will hear presentations on March 28th to short list them and their decision will be brought to the City Council for approval. There will be public charrettes held after that.

Mrs. Hillman thanked Mr. Slezak for cleaning up Pocahontas Park after there were complaints made by some parents.

Mayor Zudans commented that he also contacted Mr. Slezak and the Police Department asking them both to address this issue.

3. CONSENT AGENDA

- A) Northern Restrooms Remodel – Final Pay Acceptance – Contract: C-11-2018 – (\$14,948.37)**
- B) Downey Grand Pavilion at Riverside Park – Hurricane Irma Replacement – Final Pay and Acceptance – COVB Public Work Project #2018-01 – Bid No. 080-18/JO-Contract: C-22-2018 (\$24,785.80)**
- C) Hurricane Irma Debris Removal – CrowderGulf Joint Venture, Inc. – Final Pay and Acceptance – Bid No. 100-17/JO – (\$37,879.40)**
- D) Coastal Drilling and Backhoe Inc. – (\$53,000.00)**
- E) Renewal of Professional Janitorial Services, Bid 080-16/CSS – Contract 1722-C (Estimated Annual cost is \$235,268)**
- F) Interlocal Agreement between Sheriff of Indian River County, Florida and City of Vero Beach, Florida**

Mr. Heady requested to discuss the Interlocal Agreement between the Sherriff of Indian River County and the City of Vero Beach. He said by allowing the County to take this over they would be making the County bigger. He said that the City Manager has the authority to spend \$50,000 without bringing it to the City Council. He said it would be sad if they couldn't find a mom and pop maintenance garage to fix their cars. He said that he knows of a very good mechanic off of Old Dixie who does repair work for Veterans and is very good at it. They don't need to be making government bigger. He said give the business to one of the local guys. He felt that vehicles can get repaired within the dollar amount that the City Manager is allowed to spend, which is \$50,000. If the cost exceeds that then they shouldn't be fixing the vehicle.

Mr. David Currey, Police Chief, explained that this would be for the purposes of specialized vehicle fleet maintenance, specifically a Humvee, which may require maintenance or repairs from time to time. He said it is a military vehicle and there were not many local shops capable of repairing it. He always tries to give local businesses preference.

Mr. Heady gave the name of a local company that they could use that probably has the experience to maintain the Humvee.

Chief Currey said that the cost per hour plays into this agreement and there are not many places that will repair this vehicle for \$45.00 an hour.

H) Agreement consenting to Assignment of Commercial Lease Agreement (Parcel 11B) from Bridgeton Real Fund I, LP, to Two Ridges, LLC. (Revenue)

Mr. Howle made a motion to approve the consent agenda (with item 3-G being pulled). Councilwoman Moss seconded the motion and it passed unanimously.

G) First Amendment to Lease Agreement by and between the City of Vero Beach, Florida, and Vero Beach Dog Park, Inc., fka The Friends of the Vero Beach Dog Exercise Area, Inc.

Mr. Bob Joy, President of the Board of Directors for the Vero Beach Dog Park, Inc., stated that five (5) years ago, he appeared before a previous City Council to ask them to lease an unimproved parcel of Park land to a fledgling group of local volunteers including Jim Welles, John Wester, Leah Muller, Phil Reid, and Robin Pelensky. They proposed to relieve the City of the financial and administrative burden of building and operating a first class Dog Park that would be open to residents and visitors without a membership or fee. They were hopeful that the community would support them by contributing their time and donating their resources. They have learned since then that their faith in this community was not misplaced. In fact, they underestimated the generosity and good will that has come their way. He was also before them in February, 2018, to receive a Proclamation from the City recognizing their efforts. He believed that Mayor Zudans commented that they have become a model for how a public-private partnership could benefit the City and its residents. It is nice to see that other groups are now following their example. He noted that they have invested over \$100,000 in the Park. That figure has now doubled to nearly \$200,000 and they have budgeted another \$100,000 in improvements this year. In all, they have raised nearly one-half million dollars to build and maintain this public Park. Major donations have come from the Indian River Community Foundation, the Emily Hall Tremaine Foundation, the Gloria Estefan Foundation, the R&L Becker Family Foundation and the Spittle Family Fund. Just as meaningful have been the hundreds of businesses and individuals who have given generously over the years. With this support they have provided handicapped parking and accessible walkways at both entrances, invested over \$30,000 in trees and landscaping, and installed benches and shade structures for the comfort of their patrons. They have also created a Welcome Garden at the south entrance that accommodates people in wheelchairs, mothers with children in strollers, and others who may not be at the Park with a dog, but simply want the enjoyment of watching dogs at play from this observation area. As a result of these efforts they have become tightly knit into the fabric of the Vero Beach community. Over 250 community members and their dogs come to the Park every day. Realtors tell them that property values in Central Beach have been

enhanced by the presence of the Dog Park. They regularly drive by the Park as they show off the community to prospective buyers. One even made a video of the Park that they feature on their website. The pet-friendly hotels on Ocean Drive direct their guests here. They get letters from boaters who tell them they choose to moor at the Marina because they provide easy access to the Park for their dogs. One couple drives down from Melbourne every Saturday to meet friends at the Park and then goes to Mulligans for lunch outside with their dogs. Just last week he met a woman at the Park who says she often brings her sister who has Alzheimer's because it comforts her to just sit and watch the dogs. They are at today's meeting to ask Council to extend their lease by ten years so that they can continue to serve the community and build upon this record of success. Doing so would reassure their donors that they have a stable future, provide greater parity with other leases the City has signed in recent years, and enable them to participate in the SolarNow program sponsored by Florida Power & Light (FPL). They know FPL is keenly interested in demonstrating the benefits of solar energy in their newly acquired service area and they concur with the City's suggestion that the Dog Park would provide an ideal public venue. He hopes that he was not being too optimistic when he thanked the members of the Council for their continuing support. He also wanted to express his appreciation to the City Manager, Acting City Manager, Interim City Attorney and Director of Planning and Development.

Mayor Zudans gave the history of how the original lease came about. In that lease they provided language that allowed the City to terminate for convenience because they did not know how this entity was going to work. They have done far better than they originally thought that they would. He understands by extending the termination date of the lease it is good for fundraising when people know that the Dog Park will be in existence down the road. He does think that this is an excellent role model for all kinds of nonprofit organizations. He brought up the Youth Sailing Foundation, the Rowing Club, Live Like Cole, and the Pickelball organization. He said that none of those entities are costing the City money for maintenance. He said in a lot of communities government is going in and running these Parks. He told Mr. Joy that he has done a great job with the Dog Park and he will be voting for this. He brought up some future plans for the Marina that would not interfere with the Dog Park. He could not find anything wrong with extending this lease agreement.

Mr. Howle asked what are the terms of cancellation for either the Dog Park or the City.

Ms. Kira Honse, Interim City Attorney, said that they could give notice at any time if they want to leave. The lease provides for if they are in default for any reason that they (the City) could cancel the lease.

Mr. Howle asked if for some reason that they decide that they don't want to use the Park anymore, who is responsible for taking down the fences.

Mr. Joy explained that if at some time they no longer want to operate the Park then they would need to remove the fences and it would be at their expense.

Councilwoman Moss referred to the Lease Agreement on page 2, number 5, which reads, *“Paragraph 17 of the Lease Agreement titled “Termination for Convenience” is hereby deleted in its entirety.”* Today she requested a copy of this paragraph 17, which reads *“Landlord may terminate this Lease for convenience and without cause in the sole discretion of Landlord’s City Council by providing at least three (3) months written notice of such termination to Tenant. Landlord may not exercise such termination for convenience during the first five (5) years of the Term. Tenant may terminate this Lease for convenience and without cause in its sole discretion by providing at least six (6) months written notice of such termination to Landlord.”* She said that this paragraph is now deleted and asked what are the terms now in regard to termination since this paragraph has been deleted.

Ms. Honse said that it would be termination for cause. She said the whole point of this amendment is to give the Dog Park people some long term stability to plan. She said as this is written, the City a year from now could give them notice saying that they are out of here. The intent for this amendment was to provide for long term stability. She said that paragraph was not included in any of their other long term leases, such as the Rowing Club or Youth Sailing.

Mayor Zudans explained that he thought the history of that clause being in the agreement was because of the uncertainty of an undeveloped piece of land and this organization has shown due diligence.

Mr. Joy explained that Mr. O’Connor put that clause in the agreement to make sure that they had time to make improvements, but if they could not the City would not be stuck with them for a long period of time.

Councilwoman Moss commended Mr. Joy on \$200,000 of improvements to the Dog Park. She said that is an astonishing amount.

Mr. Young commented that as he looked at the contract his concern was similar to Mr. Howle’s in that the City does have recourse if something should happen with the Dog Park organizers. He was impressed with that if they have another serious hurricane they can use that land for debris, which is important to the City.

Mr. Joy stated that they recognized that and when they did the original construction the whole section of fence along Indian River Drive East is removable.

Mr. Young told Mr. Joy that they have done a fine job and he supports it.

Mr. Brackett agreed on the fine job they have done. They have taken a piece of property and made it a tremendous asset.

Mr. Brackett made a motion to approve the First Amendment to the Lease Agreement between the City of Vero Beach and The Friends of the Vero Beach Dog Exercise Area, Inc. Mr. Howle seconded the motion and it passed unanimously.

4. CITY COUNCIL MATTERS

A. New Business

1) Strategy discussion for handling future negotiations for the City such as property sales and leases, hiring decisions, RFPs, and union negotiations in light of Sunshine Law and Majority Vote Limitations – Requested by Dr. Val Zudans

Mayor Zudans commented that both himself and Councilwoman Moss were interested in discussing this item. He felt that it was a good time to do so before they get started in their budget process and with potential City negotiations coming forward. He said that as a City Council they have a fiduciary duty to act in the best interest of the City of Vero Beach. Throughout the year they have had multiple instances where negotiations are taking place between the City and other entities. This year they will have Union Negotiations, City Manager and City Attorney hiring negotiations, RFPs for services, and other unforeseen negotiations. The entities with which they are negotiating (unions, government entities, or private businesses) are aware that they only need a majority. It is not illegal to speak with these entities, but we have more negotiating leverage if they are not negotiating directly. Because of the Sunshine Law, they cannot get together and negotiate behind closed doors. Negotiating in public is also not productive. In addition, the City Manager cannot be used as a conduit to bypass the Sunshine Law. But, his understanding is that they can share their positions and desires with the City Manager directly and then trust the City Manager to advocate for the best position for the City in the context of all of the City Council. It is essential under such a strategy that they not undermine the City Manager's negotiations by publicly stating how they will vote while negotiations are ongoing. For union contracts a similar method is used through their Attorney, Mr. Jason Odom, but for these negotiations, he believes they are allowed to meet as a group with the Attorney and City Manager in a closed session solely for the purpose of negotiating that contract. Again, it is not illegal to let union members know how they will vote, but it would be better for them individually or as a group (if legal) to express their positions to Mr. Jason Odom and not publicly while the negotiations are ongoing.

Councilwoman Moss told Mayor Zudans that she agreed with what he said and thanked him for stating it so clearly. She said that her concern was that the authority, the integrity, and the bargaining power of the Council not be compromised by a single Councilmember going forward on something with whomever they are negotiating with. She said that everyone can certainly count to three (3) and once they have then there are no bargaining powers. She felt that they were best advised for the Council not to show their cards. She was not sure how they ensure that and if there was a way to ensure that. She said this was a legal question and she asked Ms. Honse if there was any way to do that.

Ms. Honse did not think there was any legal way to do it. She said that the Councilmembers are able to meet with other individuals individually and that First Amendment cannot be bridged in order to listen and speak. She said it is kind of an honor code amongst themselves as to how they will handle it. She said unfortunately for the public these types of negotiations really can't happen in secret. She said they have to be part of the public. She said that Council can provide information to the City Manager, but for him to actually be able to go and present a position to another entity he needs to have an open vote of the City Council saying that is what they want to do as far as negotiations go. She said while some of it can happen somewhat behind closed doors ultimately the process does happen out front, which does put governments at a disadvantage.

Mayor Zudans felt that the key was to minimize their disadvantage.

Councilwoman Moss said then it is a gentleman's agreement and they just agree amongst themselves to retain the power of the Council.

Dr. Zudans stated that this is a discussion of what they think the optional strategy is then they have a duty to actually act in what is best for the City. He felt that this Council had integrity to the point that is what they are going to try to do. He said when he first started on Council he did not necessarily have all of that information so maybe he did not do it as well as he would have liked to and other people may feel the same. He said there is no action on this item or public comment on this item.

At this time Mr. Brian Heady was standing up at the podium to speak.

Mayor Zudans told Mr. Heady that there is no action being taken under this item so there will not be any public comments.

Mr. Brian Heady said that all he wanted to say was that Councilwoman Moss negotiated by herself with Florida Power and Light (FPL) and Orlando Utilities Corporation (OUC), which got them a deal in selling the Electric Utility.

Mayor Zudans told Mr. Heady that he needed to sit down. He was disrupting their meeting. He said that this was not public comments and that Mr. Heady needed to find his seat.

Mr. Heady continued saying that former Councilmember Dick Winger negotiated the penalty down from \$50 million to 30 million.

Mayor Zudans continued telling Mr. Heady to have a seat.

2) Protocol for City Council Meetings – Requested by Councilwoman Laura Moss

Councilwoman Moss stated that this item relates to the item that they just discussed. She was reviewing the protocol and actually using that particular negotiation (Dodgertown) as an example. She said that came in just as a ten-minute presentation and that probably was wrong. It should have been on the agenda as New Business. She referred to Resolution #2017-32, which adopts the order of business for City Council meetings. She read from page 5 of 7, Section 5 – Supplemental Rules for Public Presentations and Comment. *“Any person or organization desiring more than the time allowed for general public comment in order to make a formal presentation for Council consideration or for potential future Council action shall complete and file with the City Clerk a presentation request form requesting to have such matter placed on a Council meeting agenda.”* She said if someone is making a ten-minute presentation and something gets done that becomes frightening to people that there is not going to be an opportunity to weigh in on the matter. They need to be careful on how they put things on the agenda. One of the suggestions that she would make is that the first time a matter is heard, it is heard as an information item and then it is placed on the agenda again (second time) as an action item. Not every matter; those involving multi-million dollar business deals or other big changes. She said without naming it (Dodgertown) she is referring to the previous matter that spawned this discussion. It could have been potentially just an information item for the community and then actually come back to them for a vote. They have seen in the past like Riverhouse, where that item was on the agenda and then there was a push to act on it and she thinks that is what is disconcerting to the community. This no sooner said than done approach. She said part of that has to do with protocol, which they have and should be followed. As she mentioned earlier she thinks this is the first time where they had something under New Business, which was not submitted by someone on Council. It is her understanding that it should not be there. She thinks everything has to be sponsored by an elected member of the Council. She was not sure why that item was there.

Mayor Zudans thought this was an oversight and not a method for someone to get something on the agenda unless it is from the City Council. He said in all defense he had previously said that he would be willing to bring it before the City Council so maybe that was just the assumption that he had done it. His name was not associated with it and he was not aware that it was on the agenda until he was looking at the agenda that it was on there. He will follow up on this.

Councilwoman Moss agreed with Mayor Zudans that the naming of the Lagoon-front property was premature.

Mayor Zudans said with regard to Councilwoman Moss’s idea that everything should come through a presentation before it gets on the agenda, he is for less talk and more action. He said as long as there is sufficient background information it should be submitted with the agenda item and as long as that is done then they should not put more barriers to doing stuff. Presentations are for informational purposes and Council would not be taking action on them. He did not feel that the ten-minute presentation items should be part of another agenda item where someone wants to just be on the agenda to give their ten-minute talk so they can dominate the conversation. It is not what it was

intended for. He said while they are on this subject he also had some thoughts about making the meetings run more efficiently. He said as far as the way they handle public comment and with some other organizations in the community and this organization in the past whenever there is an action item there is going to be public comment on that action item. So anything they should be voting on they should be discussing and the public should be weighing in. He said the open public comment should not be at the beginning of the meeting. He said all it does is tie up a ton of time from the agenda items and things they are doing and public comment should be at the end of the agenda. He said when they change their agenda he would like to move the open public comment to the end of the agenda.

Mr. Howle commented that there are a few people who abuse the portion of the agenda under public comment, which he feels Mayor Zudans has picked up on. There are people who get up to speak and use their three (3) minutes and then go to the back of the line and feel that they have an additional three (3) minutes to speak again, which should not be the case.

Mayor Zudans said that he planned on stopping that.

Mr. Howle also felt that they should move the consent agenda prior to the presentations. He said if there is an item on the consent agenda that they want to discuss they can pull it off of the consent agenda. He said he hates to have staff sitting in the audience waiting for their consent agenda items to be discussed, when they could be doing something else.

Mayor Zudans agreed with that suggestion.

Councilwoman Moss also agreed with that and said it was a good idea. However, in terms of public comment the reason why they moved it forward a couple of years ago was because someone waited six (6) hours (she was not on Council then) to speak for three (3) minutes. She said that should not be and perhaps by eliminating redundancy they can avert that. She would like to see it remain forward on the agenda. She said the people deserve the opportunity to speak and sometimes these meetings run long, as they all know.

Mayor Zudans understood Councilwoman Moss's concerns, but felt that the priorities should be given to things that are on their agenda. He said that people might not want to have to wait on open public comments that is not related to their items. He also wants to discuss when they get to the Social Media Policy that he thinks that open public comments should be allowed anytime they would like on their social media page. If someone cannot come to the meeting and they want to make a comment that is what social media is for and there should be a place on their website where people can make open comments about things going on in their City. Then the City Council can look and see what the public is saying. He said there may be ways that they can actually increase the amount of public comment and at the same time allow their meetings to run more efficiently. The other item that he brought up was public comment on agenda items was five (5) minutes and it is three (3) minutes on open public comments. He suggested

having three (3) minutes for all types of public comments and allowing it one (1) time per person.

Mr. Howle noted that he has been on the Council for some time now and there has been public comment on the beginning of the agenda and public comment at the end of the agenda. He appreciated Mayor Zudans asking for their input, but this is his (Mayor Zudan's) meeting and it is his duty to run the meeting and what he sees is sufficient to make it happen they should agree with that decision. He likes the suggestions being made and will not be opposed to anything that he is suggesting because it is his job to run the meeting.

Mayor Zudans said that he does want Council's approval because he doesn't want the public saying that he is not allowing them to speak.

Ms. Honse explained that there is a Resolution that sets out these rules that would have to be passed.

Mayor Zudans proposed that they go with three (3) minutes for all public comments; that they affirm that someone gets one (1) three (3) minute period per session, he wanted to move the open public comments to the end of the agenda and also look into whether they can have a section on their website for social media so that people can make comments and move the consent agenda forward.

Mr. Young asked if they allowed public comments on the website would they have to reference that in the Council meetings.

Mayor Zudans said it would be part of the public records and there would not be any limits. They could probably put a link to a you tube video.

Ms. Honse stated as their attorney she would not recommend doing that. She will discuss it when they get to the Social Media Policy.

Councilwoman Moss objected to moving public comment to the end of the agenda. She did not have any problems with the other suggestions.

Ms. Honse will bring them a draft Resolution for their next meeting making these changes to the agenda.

Councilwoman Moss asked Ms. Honse if City Council can vote to entirely delete a matter that a Councilmember has placed on the agenda.

Ms. Honse answered yes.

Councilwoman Moss said that she did not see in the Resolution that there were powers to do that.

Ms. Honse explained that it is the general part of being a City Councilmember that they are allowed to vote to remove items from the agenda.

Councilwoman Moss did not see that in the Resolution. She saw where it says that the order of the matters can be changed. She read that section out of the Resolution.

Ms. Honse explained that deleting an item from the agenda would be modifying it.

Councilwoman Moss said that it seems to be a freedom of speech issue.

Ms. Honse stated that the City Council is allowed to set their agenda and can determine as a body what items they want on their agenda.

Mr. Young commented that under your matters you can discuss whatever you want to discuss.

3) Name for Lagoon-front property owned by City at west end of Alma Lee Loy Bridge

This item was removed from the agenda.

B. Old Business

5. PUBLIC HEARINGS

A. ORDINANCES

An Ordinance of the City of Vero Beach, Florida, relating to the Tree Replacement Fund; Amending Title VII, Land Development, Chapter 72, Landscaping and Tree Protection, Chapter 72, Landscaping and Tree Protection, Section 72.43(i)(1) of the Code of the City of Vero Beach; Providing for Codification; Providing for Conflict and Severability; and Providing for an Effective Date. – Requested by the Planning and Development Director

The City Clerk read the Ordinance by title only.

Mr. Jason Jeffries, Director of Planning and Development, explained that The Tree and Beautification Commission is proposing a text amendment to Chapter 72, Article IV, Tree and Palm Protection to expand the use of the tree replacement funds for installation and planting costs. The City participates in the Tree City USA program and as a Tree City USA participant, the City meets the four core standards of sound urban forestry management; maintaining a tree board, having a community Tree Ordinance, spending at least \$2 per capital on Urban Forestry and celebrating Arbor Day. The Tree Commission proposed that a City Tree Replacement Fund be formed for the purpose and intent of providing applicants with an alternative means for mitigating the removal of specimen trees, protected trees, and protected palms by allowing payment by the applicant into

such Fund the amount that it would cost for purchase and installation of the required replacement trees and palms. They asked that *removal of invasive plants* be taken out and *costs associated with planting, such as stump grinding, irrigation system installation and all requirement permitting* be put in the Ordinance. Based on staff analysis the proposed language recommended by the Tree and Beautification Commission is too broad and may allow the use of the funds beyond Tree preservation costs. Staff reviewed the Tree City USA guidelines, National Arbor Day Foundation Model Tree Ordinance and Tree Preservation Codes in other cities. Staff proposes the text amendment in the Ordinance to expand the use of the funds for costs related to planting trees, as recommended by the Tree and Beautification Commission, but ensure the funds continue to be used only for tree planting and preservation, as required by Tree City USA guidelines. Staff finds the text amendment, as proposed by staff, to be consistent with the native vegetation. The Planning and Zoning Board held a public hearing on January 10, 2019, and voted 5-0 in favor of the Ordinance amending the Tree Replacement Fund to clarify eligible uses of the funds.

Mayor Zudans had some questions on the use of the funds on public and private property.

Mr. Jefferies explained that once the City collects the funds they want to use those funds for a public purpose.

Ms. Honse explained that they could not extend the funds to be used on private property.

Mr. Jefferies briefly explained how the mitigation of funds works. He said that he has reviewed the Tree Codes from other cities and it makes sense to include this verbiage in their Code.

Mayor Zudans opened the public hearing at 6:18 p.m.

Mrs. Marilyn Black Dussault, Vice Chairman of the Tree and Beautification Commission, was at tonight's meeting to answer any questions that Council might have. She explained why they took out removal of invasive species. She said if the Tree and Beautification Commission was to spend money in their Fund for a Pepper Tree Plant they would have to spend all of their money in the Fund and then they would not meet the criteria for continuing their status as a Tree City USA. She will be back before City Council to deal with that, but right now their main goal is to keep trees from being killed unnecessarily. She said there are ways to prevent that and they are trying to come to a compromise with that and this Ordinance is a start.

Mr. Bill Walker asked what happened to item 4-A3) on the agenda. He was told that the item was removed from the agenda. Mayor Zudans will be in touch with 32963 to talk to them about the matter.

Councilwoman Moss added that it was premature to be discussing the name for the Lagoon-front property. She said things may change after the charrette takes place.

Mayor Zudans agreed that was part of the process. He said that 32963 is putting up \$1,000 for whatever name is eventually chosen (whoever the winner is).

Ms. Cindy Schwartz, Tree and Beautification Commission member, wanted to add a couple of things on why they wanted to rewrite this Ordinance. She said that one (1) of the things that people say to them is why don't they just plant these trees here and there. She said what people don't understand is that when planting trees there has to be water in the vicinity for them in order for them to grow. The reasoning for the invasive species to be taken out is because it will take all the funds. She said that they do need some kind of "Tree Police" for lack of a better word.

Mayor Zudans closed the public hearing at 6:24 p.m., with no one else wishing to be heard.

Mr. Young made a motion to approve the Ordinance. Mr. Howle seconded the motion and it passed 5-0 with Mr. Howle voting yes, Mr. Brackett yes, Councilwoman Moss yes, Vice Mayor Young yes, and Mayor Zudans yes.

B. RESOLUTIONS

1) A Resolution of the City Council of the City of Vero Beach, Florida, Adopting the City of Vero Beach Social Media Policy for the Use of Social Media for City Business; Providing for an Effective Date.

The City Clerk read the Resolution by title only.

Ms. Honse said that she was not exactly sure what promoted the need for the policy other than it is a good idea to have a policy in place concerning social media. This Policy is about City Departments creating a social media page where they will have to go through an authorization process in order to get a page and the City will control what goes on the page. There will be a limited amount of people who can post things on the page, which will be supervised. What this does not do is intend to restrict or prohibit social media use in an individual's private capacity. She noted that this is specifically stated on page two (2), Section 3 (a) of the Policy. She said it is not about the individual's right to comment. One (1) issue that makes social media such a quagmire for attorneys is when it comes to First Amendment rights, there are three (3) types of forums, which are: 1) the general forum, which is the public streets and sidewalks, which are traditional open to the public where they can speak, 2) the limited forum, such as City Council meetings where they open it up to the public, and 3) those situations where the government does not open it up to the public. Social media is the new breed of public forum that has not been well established in the courts as to exactly what you can and cannot do as a government with regards to social media. She said while staff is suggesting the adoption of this Policy, there may be a need to come back with amendments as the courts better define it. One issue is a Facebook page. She explained that the City does not own their facebook page, but is being allowed to use it. Facebook has their own requirements with regard to discourse in the public and as a Facebook page owner, the City has to comply with their

rules and some of those rules might conflict with how the City, as a government, can operate. She reported that there is current litigation with regard to twitter on whether or not you can block citizens from your twitter account. The issue with the First Amendment is that people can say anything they want. They can be very derogatory, they can be very mean, they can use language that you would not want children to see, etc., and that would be on the City's page. She said the City might have some ability to remove that language, but they may not because it is a First Amendment and that is one of the areas where it is not entirely clear. Therefore, when you open up that page for public comments they are opening it up to where "anything goes." They do have a provision in the Policy that if there is something very egregious, such as offensive words, those words could probably be taken off. However, some words have become more acceptable in this modern day.

Mayor Zudans said maybe they shouldn't have social media because the whole point of social media is to have the interaction so that someone can make comments, such as what is going on in the Park's Department and then someone from the Park's Department could get on that page to answer their questions. He said what Ms. Honse is describing is really just a webpage. He said if there is not an easily feasible way to utilize what social media is good for then he is not sure what the value is to the City in doing it.

Ms. Honse said the value is reaching younger audiences who are more inclined to look for things on social media. The question is what social media do they use because it is her understanding that Facebook is for older people. She asked that the City Council approves this Policy because it is important to have one. She felt that the questions as to whether the social media is effective is something for the City Departments to decide as to how well it is working for them. She said that she could see twitter being positive for emergency situations where they would want to get out a short message to a lot of people, such as it there was a waterline break. She said there are different times where putting information out on social media is a positive thing even though they don't have that interaction.

Mayor Zudans asked if the City tweets something and someone comments under that tweet, would that be public record.

Ms. Honse answered yes.

Mayor Zudans asked if they re-tweeted under their own tweet, would that also be public record.

Ms. Honse said she didn't think so, but she was not sure if that has been specifically addressed.

Mayor Zudans agreed that it makes the most sense to use twitter if they are going to do this because it is more like a quick news release, such as if they have a hurricane. He asked if police departments use twitter.

Ms. Honse said police departments use twitter and facebook. She said the interaction part of social media is one of the positives of it, but it is also getting out information in a less formal manner that may be more positive and less confrontational.

Mr. Young read in part from page two (2) of the Policy, "*The City's intent in use of Social Media is not to create a public forum, but instead to provide a means to disseminate City information to educate and inform the public ...*" He said that is already being accomplished through the Police Department. He said that he was not sure how much they were going to gain from this Policy without a larger understanding of where they want to go.

Ms. Honse said the City already has departments using social media so this Policy is to rein that in so departments do not create a social media page on their own.

Dr. Zudans felt this was more about having an appropriate policy rather than what they are actually going to do with that policy. He said that would be more of the City Manager's job as to how staff is to be using this.

Mr. Young asked is there a specific concern they want to address for City Departments.

Ms. Honse answered yes. She explained it is a City Department creating a facebook page that is in the name of the City that no one but that person and that department is aware of.

Mr. Brackett said facebook and twitter monitors their accounts and sometimes deletes people's comments. He asked would that cause a problem from the public record standpoint if a comment is deleted prior to the City retrieving it.

Ms. Honse said it is her understanding that it doesn't actually get removed from the system so the City would be able to go back and retrieve it.

Mayor Zudans opened the public hearing at 6:35 p.m.

Ms. Cynthia Swartz, Tree and Beautification Commission member, thought that she was the person who brought this up. The reason she wanted something like this was for the immediacy. She understands the City has the website, but that is not the immediacy or what people are using right now. She said that she did not state the specific type of social media and maybe twitter would be better. She said that she does not know what the answer is.

Mayor Zudans explained that currently they are discussing the general Policy. Implementation will be the next step.

Mr. Brian Heady questioned what should cities do. He said that he heard several Councilmembers state that they shouldn't compete in the private sector and have given parameters of things that cities should do. He thinks that as a City, they should take care of the Parks, take care of the streets, put lifeguards on the beach, have a Police

Department, provide public safety, etc. To do the things that government should be doing. He said the City just spent millions on attorney fees to get out of the electric business because they have been told over and over again that the City doesn't belong in that business. He said they don't need to be making policies on twitter and getting into facebook. They have enough to do in taking care of our Parks. He said there are buildings that the roofs have holes and leak, there are Parks that are in need of repair and they don't want to do that, but they want to have facebook and twitter. If people want to know about the City they can turn on their computer and watch the meetings. He said stop finding things to do. He said the less they do the better off we all are. The only resolution to adopt any Social Media Policy is to stay out of it.

Mayor Zudans closed the public hearing at 6:38 p.m., with no one else wishing to be heard.

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

- 2) **A Resolution of the City Council of the City of Vero Beach, Florida, Repealing Resolution 2016-05; Authorizing the Interim City Manager and Director of Finance to Issue Warrants, Checks, and Vouchers of the City of Vero Beach for the Payment of Funds from any of the Depositories Utilized by the City; Providing for an Effective Date. – Requested by the Finance Director**

The City Clerk read the Resolution by title only.

Mr. Falls explained that this Resolution is required by the City's banks and financial institutions as part of the City's internal controls. The Resolution removes Mr. O'Connor from the City's list of authorized signers to formalize his removal from access to their banking and financial service accounts and adds Mr. Falls in his place.

Mayor Zudans opened and closed the public hearing at 6:39 p.m., with no one wishing to be heard.

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

6. PUBLIC NOTICE ITEMS FOR FUTURE PUBLIC HEARING

None

7. CITY CLERK MATTERS

A) Commission/Board Openings

Mrs. Bursick reported that there is one (1) alternate position open on the Code Enforcement Board, one (1) alternate position open on the Historic Preservation Commission and two (2) alternate positions open on the Tree and Beautification Commission.

The City Council Committee Appointments will be made at the next City Council meeting.

8. CITY MANAGER MATTERS

A) Utility Relocation Agreement with Indian River County – SR60 and 43rd Avenue Road Widening – (\$1,869,851.61)

Mr. Falls requested that Council approve this utility work with the County for the amount of \$1,869,851.61, which includes an 11% cost for mobilization, MOT, accounting and construction management and a 10% contingency. He said that the Water and Sewer Department has been working with the County on the SR 60 and 43rd Avenue roadway widening project for over 20 years. The project is finally ready for construction this summer. The County will administer the replacement of water and sewer lines as part of the project. This contract allows for the County to perform this work. The contract is similar to contracts that the City has entered into with the State of Florida on other roadway widening projects. He said that one (1) contractor would be responsible for all the utility work within the right-of-way and the water and sewer lines will be relocated during construction of the roadway and the businesses along the roadway will only be inconvenienced once. Without this approval the City would have to bid this work separately and they run the risk of conflicts when the roadway project commences.

Councilwoman Moss asked if any of the funding comes from the State or the County for this project.

Mr. Falls explained that it was incumbent upon the utility provider to take care of their utilities.

Councilwoman Moss asked if they have a legal obligation.

Mr. Falls explained that it was the City's obligation to move the utilities out of the road. He said these were not brand new lines.

There was no one from the public who wished to discuss this item.

Vice Mayor Young made a motion to approve the Utility Relocation Agreement. Mr. Brackett seconded the motion and it passed unanimously.

B) Beachside Parking (2018-13) – Parking Study – Cost (up to \$70,950)

Mr. Falls reported that at the January 15, 2019 City Council meeting staff was directed to request a work order for a parking study for the Oceanside Business District area. Public Works contacted their continuing services consultant for general civil engineering services, Kimley-Horn and Associates (KHA) and requested a scope of work that includes a menu of tasks that the Council could decide to move forward on. The tasks are broken down into two (2) phases. Phase 1 consists of filed surveys and a review of existing codes and zoning to determine the extent of parking surpluses and deficits on a block-by-block basis. Phase 1 includes tasks 1-4 for a fee of \$31,010. The results of this work would be presented to Council and would serve as a basis for identifying proposed solutions that would be explored in the scope of work for Phase 2. Phase 2 of the work consists of tasks 5 through 12 for a fee of \$39,940. Phase 2 focuses on the solutions available to the City and would include accounting for future growth, structural solutions along with their costs (such as parking garages or on-street parking improvements), Ordinance modifications to reduce future problems, a public charrette process that identifies the opinions and solutions favored by local stakeholders, and options for funding future improvements. Phase 2 would conclude with a presentation and report to Council. The total cost for Phase 1 is \$31,010 and Phase 2 is \$39,940 for a total cost of \$70,950. The proposed study also includes an option to conduct a parking count and analysis for the summer season at a cost of \$20,140 that could be considered at a later date. He said that KHA has done jobs in different cities from 2016-2018. What the proposal is recommending is for them to identify what the problem is. He said it is important to move forward with Phase 1 while they are in peak season. Parking occupancy counts will be conducted every other hour between Wednesday and Sunday of a typical week between the hours of 10:00 a.m. and 8:00 p.m. Counts will be conducted for off on-street and off-street public and private parking in the study area. Residential and hotel parking will not be included in the surveys. The parking supply/demand by facility, block and user type during the peak weekday and weekend period will be determined. The peak parking surplus/deficit for the study area and by block will be determined. This analysis will help identify any existing parking deficiencies or areas of concern. There will be one (1) charrette meeting with local businesses to present the results of the existing and future parking demand analysis and gain input regarding parking conditions in the study area. Preliminary discussions of parking management strategies, policy changes and parking infrastructure suggestions will be discussed and vetted. They will rely on the City to assist with organizing the stakeholder meetings and providing a place to meet. One (1) public presentation and outreach effort to the community will be conducted to present the results of the existing and future parking demand analysis. Preliminary recommendations regarding parking management strategies and supply solutions will be presented. The public workshop will provide an opportunity for the community to learn what the City is considering regarding improvements to the parking network and provide valuable feedback and suggestions. They will prepare a draft report that will include appropriate text, graphs, charts, tables, and figures to effectively document their analysis, findings and recommendations. The report will include a summary and action plan. The action plan will serve as a tool for the City in charting a path of the next steps to implement recommendations based on a prioritized list.

Mr. Falls said that they talk about a parking problem, but there has never been a quantitative study to see how bad the parking is.

Mr. Howle commented that the City needed to do more than just spend the money on a study. Whatever the suggestion is within the limits of the City to do so, they need to implement that. If they say do nothing, then they do nothing. If they say you need a parking garage, you get a parking garage.

Mayor Zudans agreed with Mr. Howle's comments. He said that there may be more than one (1) option to choose from. It sounds like a lot of money, but some of the parking garages costs \$1,500 per parking space. He is happy that they are getting a traffic engineer to address this. They need to bite the bullet and solve this problem.

Councilwoman Moss agreed that Council has exhausted all of the possibilities. What they will obtain from this study will not be obtained in any other way.

Mr. Falls added that the consultant will look at the demand for parking on a five-year to ten-year horizon. He said they will know if the problem will get better with some action taken or without any action taken. They need to know the best way to spend their money. If building a parking garage is the way to go then they will have the data to move in that direction.

Councilwoman Moss agreed they were doing due diligence in this matter.

Mr. Brackett commented that they were not the experts here and he was in favor of hiring the consultants to do a study.

Mr. Falls added that the City does not have the expert staff needed to handle this.

Mr. Young said by looking at that background information the tasks outlined are what they need to do in order to approach this matter. He said that Phase 2 is put together in a fashion based on what they have accumulated and will be brought back to them.

Mayor Zudans opened up the item for public comments.

Ms. Cynthia Schwartz commented that Mr. Falls mentioned other communities had chosen to do a similar study like this one. She asked if there was a particular reason why other communities had chosen this firm. Was it because of the end results or does that even play into this. Mr. Falls explained that he guessed that these communities were in the same situation that this City is in and that they were having issues and a professional consultant needed to be hired. Ms. Schwartz asked what is their end result that they want to do.

Dr. Zudans felt that what they wanted to know is what their real parking issues are and what a professional engineer would say are the best solutions. He said that the engineer who does this study may come back and say that metered parking is the solution to their

problem and this will not go over culturally with this community. He is hopeful that the consultant will present more than one option for the City Council.

Ms. Schwartz said that is why she asked the question up front because she does not know if there is another company available to do this kind of work.

Dr. Zudans explained that the reason for using this company is because they have a standing contract for professional services and they can have them do work for the City without having to go through the whole RFP process.

Mr. Falls added that there is no cookie cutter approach and that this firm has a huge office in Indian River County.

Mr. James Carr agreed that the City clearly needed to get an expert opinion on the parking situation. He said that there are places marked for compact cars and when he wants to park his compact car in one of those spaces he has a problem when a regular size car is parked there.

Mr. Howle commented that there are small signs that say no SUV's or oversized vehicles are to be parked in these spaces and that can be enforced.

Mayor Zudans said that there is confirmation from the Police Officer working tonight's meeting that they do enforce that.

Mr. Brackett asked if they have to approve both phases now.

Mr. Falls explained that Council did not have to approve both phases now. He said that it will take some time to put Phase 1 together, which ultimately needs to be done.

Mayor Zudans agreed that doing Phase 1 should be first before they approve doing Phase 2. He said the engineer could come back to them and say that there is not a parking problem, which would mean that they would not have to do Phase 2.

Mr. Howle made a motion to approve Phase 1 for the Beachside Parking Study. Councilwoman Moss seconded the motion and it passed unanimously.

9. CITY ATTORNEY MATTERS

None

10. COUNCILMEMBER MATTERS

A. Mayor Val Zudans's Matters

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

Mayor Zudans wanted to talk about the RFP time frame for the three corners project. He has some urgency to having this done because he would like the people who are seasonal in the community to be able to participate. Also, the process as they go through this there will be an August deadline to have the charrettes done if they plan on putting this on the Election ballot for a referendum to change the zoning for what is going to be on that piece of property.

Dr. Zudans thanked everyone who called him and said congratulations to him on being Mayor. He said that he has already agreed to do a lot of things over the next week. He will be doing his first Coffee with the Mayor on Friday at the Heritage Center from 8:00 a.m. to 9:00 a.m.

B. Vice Mayor Tony Young's Matters

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

Mr. Young thanked the community for renewing his contract to continue serving on the City Council. As they move forward this is a Team effort to conduct City business.

Mr. Young reported that tomorrow begins lent season. He said that last Friday and Saturday he attended a Florida League of Cities Elected Officials training in Tampa and what came out of that meeting was the Mayor from Parkland spoke and said that you never know what is going to happen in your community. Mr. Young gave a brief Centennial update. He commented on the two (2) Centennial concerts that were held last weekend. One of the concerts was held at the Community Church and the other concert was held at First Baptist Church. On Saturday, March 16th from 12:00 p.m. to 4:00 p.m. Airport Heritage Day will take place at the Airport. He then thanked the Parks Department for the new plantings at some of the different Parks in the area and for their help with getting the new marker installed at City Hall. He said that they will be moving forward with the interview process for a new City Manager and a new City Attorney.

Mayor Zudans commented that he forgot to mention that all of the votes taken at this meeting were 5-0.

C. Councilmember Laura Moss's Matters

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

Councilwoman Moss thanked everyone who voted in February. She got the numbers today from the Supervisor of Elections and they were 2,790 ballots were cast February 26. The City of Vero Beach for those who might not know has a total of 12,208 voters. The difference however between 2018 and 2019 in terms of the Election results was striking. In 2018 on Election day there were 7,913 ballots cast. The dark side of this is

the number of people who were disenfranchised (meaning the difference between the two Elections) and that number was 5,123 people. That's the difference between the two, with the large turnout in the previous Election of November 6th and the very low turnout on February 26th. So more people 5,123 were disenfranchised and 2,790 people voted in February. She thanked the people who voted. Again, this should not have happened and there is a very dark side to this.

Councilwoman Moss reported that there is a concert coming up on March 16th with First Lady on the Move, which is their fifth annual gospel concert. It is put on by Ms. Brenda Robinson who does a lot of charitable work in the community, especially focusing on children. She said that she met her when she was the Mayor and she has observed the charitable activities that she conducts and has always been impressed with her. She said that tickets for the concert can be purchased on Eventbrite.com.

D. Councilmember Robbie Brackett's Matters

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

Mr. Brackett thanked the citizens of this community for voting him into office. He also thanked staff for all of their help.

E. Councilmember Harry Howle's Matters

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

Mr. Howle agreed with Councilwoman Moss that it is sad that in a country where they have the right to vote that with an Election that is not happening in a primary year it has such a low turnout. He said that people just don't exercise their right to vote. He congratulated everyone who ran a very long election period. He welcomed Mr. Brackett to the Council and knows that he will do a good job and was happy to have him here. He congratulated Councilwoman Moss, Vice Mayor Young and Mayor Zudans. He then asked the Water and Sewer Director to give them a brief update on where they stand with the Water Treatment Plant.

Mr. Rob Bolton, Water and Sewer Director, reported that Council voted on two (2) separate engineering contracts that they have been working on with two (2) separate consultants. The consultants were hired to look at the existing Waste Water Treatment Plant and the cost to maintain that Plant in the next 15 years. They looked at it as if they were to build a brand new facility, which will take about five (5) years to get there and then after you are done with it there are 10 years where there is no real investment. So they wanted to look at a 15-year window and what the cost of maintaining the existing facility would be and then what the cost of building a brand new facility would be. He said the new facility will have much better treatment and they are looking at all of these options and applying them to the existing site. The first study has pretty much been

completed and he will be meeting with some people next week to go over the final drafts. He then will bring both consultants into one room to meet and make sure that all the same parameters were being used. He wasn't sure of the format that Council wanted him to use. He asked Council if they wanted him to bring these things directly to Council or take it to the Utilities Commission first.

Mr. Zudans asked Mr. Bolton to bring it to the Council.

Mr. Bolton stated that sometimes presenting a document to the public and having comments made can be good and bad. It is up to the Council to determine what process they want to use.

Mr. Brackett did not have a problem with Mr. Bolton taking it to the Utilities Commission. He just didn't want it to be delayed getting to the City Council.

Mayor Zudans said he did not have a problem with it going to the Utilities Commission as long as there were not any delays with it coming to the City Council.

Mr. Bolton did not think that there would be much of a delay.

Councilwoman Moss commented that it is the City Manager's responsibility to bring items like this one before their Commissions.

Mr. Bolton commented that historically they have tried to run large items through the Commissions. He said they bring items to the Commission to make comments on it before it comes to Council. The Commission could not stall the time period of when it would be brought before the City Council because the date of it being discussed at the Council meeting would be on the document. It gives Council the opportunity to see the presentation twice or the Commission could have comments that come out that staff may want to modify their presentation before they bring it to the City Council.

Mr. Falls will bring a timeline on this project before the Council at their next meeting.

Mr. Howle said that he would like to see it go before the Utilities Commission.

12. ADJOURNMENT

Tonight's meeting adjourned at 7:13 p.m.

/tb