

**SPECIAL CALL CITY COUNCIL MINUTES
FRIDAY, MAY 3, 2019 1:00 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Mayor Val Zudans, present; Vice Mayor Tony Young, present; Councilwoman Laura Moss, present; Councilmember Robbie Brackett, present and Councilmember Harry Howle, present **Also Present:** Monte Falls, Acting City Manager; Kira Honse, Interim City Attorney and Tammy Bursick, City Clerk

1. CALL TO ORDER

A) Roll Call

The City Clerk performed the roll call.

2. PRELIMINARY MATTERS

A) City Council to interview the applicants for the City Attorney's position and possibility make a decision

Mayor Zudans reported that at the Special Call meeting that was held on Monday, April 29th at 5:30 p.m., the City Council narrowed their search down to five (5) candidates (four (4) individuals and one (1) law firm). This morning each of the City Councilmembers interviewed the five (5) candidates individually and now they will conduct public interviews. He said they will be having 30-minute interviews with each candidate. At the conclusion there will be an opportunity for public comment and hopefully today they will decide from one (1) of the five (5) candidates, which candidate they want to enter into negotiations for the new City Attorney. He said that no one will be hired today, but hopefully they will narrow it down to their finalist.

Mayor Zudans asked the candidates to come forward and give a maximum of five (5) minute, of their background and then the City Councilmembers will ask questions.

Mr. Colin Baenziger, Consultant with Colin Baenziger & Associates, told Mayor Zudans that he did a great job of summarizing the process. He said that the candidates are waiting outside and he will bring them in one by one to be interviewed by the Council.

Vose Law Firm –

Mr. Wade Vose and Mrs. Becky Vose (his law partner and mother) of the Vose law firm introduced themselves. Mr. Vose said it was a wonderful opportunity to meet with each one of them today. He is excited to have the opportunity to work with each and every one of them. Mr. Vose is Board Certified in local county and city government law and their firm serves as City Attorney for cities around the State including two (2) beach communities, which are Cocoa Beach and Anna Maria and they have an extensive amount of experience.

Mayor Zudans stated that there are three (3) employees of the City that report directly to the City Council. They are the Charter Officers, which consist of the City Manager, City Attorney and City Clerk. Everyone else working in the City do not report directly to the City Council. He said there have been some questions asked as to how this would work if it is a law firm. He said one of the members of the firm would be the Charter Officer. He had some questions about budget, salaries and structure. He asked them what do they see as the staffing budget level knowing what they know about this City and what do they plan to do in the future.

Mr. Vose commented that the analysis is a little different for them because they are a firm. What they would do is have a proposal with two (2) different options. He said one (1) option would be to handle all the legal services for the City for a fixed fee per month of \$21,500. If they were to retain their in house paralegal, which has worked well for them in the past. Mayor Zudans wanted the public to understand that last year the City Attorney's budget was approximately \$550,000 and there was a City Attorney, two (2) Assistant City Attorneys and a Paralegal. Mr. Vose continued by saying by having an in-house Paralegal has worked for them in the past. He said if everything for the City Attorney's office was being provided by his firm including any support staff their proposal was for \$28,000 a month.

Mayor Zudans asked if City employees start calling them more often then what they were expecting, will it be unlimited legal services and what kind of limits do they have on what they can do.

Mr. Vose stated that they would be providing unlimited legal services for the City of Vero Beach. If employees are calling more than they would expect that would be fine in building a long term relationship. They have been doing this a very long time so they take into the possibility that there will be a lot of hand holding with employees and building relationships and getting on top of everything that is going on. He said there will be some things, such as bond counsel, insurance counsel, etc., work that would have to be done by an outside attorney; they serve as what is called local counsel.

Ms. Vose said in the beginning she wants employees to be calling all the time. The reason for that is that their business model doesn't work unless they can stop problems before they become problems. She said with every project that is occurring she would request that employees take the time and call them and let them review everything that is done. She wants to keep the City out of trouble because if the City gets in trouble they have to defend the City and they don't get paid extra for it. She said it is important to them to be an integral part of the City and that is how they handle all of their cities.

Vice Mayor Young said that there were three (3) areas that he felt were relevant to the discussion. He asked about their availability. How many attorneys do they have available and what is their status.

Ms. Vose explained there are five (5) attorneys that are part of the package. They could call any of them and they would respond immediately. She would love it if the Council would contact some of the Commissioners and City Managers in the other cities that they serve and find out what they have to say about how responsive they are.

Mr. Vose added that there are three (3) partners in their firm and then two (2) attorneys who are of counsel of the firm. The firm is City Attorney to seven (7) cities throughout the State and they are fully available to be present at their Council meetings and other Boards and Committees that need legal representation at the meetings.

Vice Mayor Young asked what is the level of work associated with the largest city that they represent, which would be Cocoa Beach.

Ms. Vose explained that it varies widely. She said when they are needed they are there. She can't quote hours because they don't charge on an hourly basis.

Vice Mayor Young explained that what he was trying to get a handle on is that they have a significant commitment with Cocoa Beach, Brooksville, Oakland, Oviedo and Sanford. The question is with availability. If they have a matter that they need to have addressed what is the frequency that you will get to them.

Ms. Vose said they would get back to them, even if they call them at night.

Mr. Vose added that they are dedicated to being immediately responsive.

Vice Mayor Young commented that the other concern to him was access. He asked if they would be providing an attorney to the City full time.

Ms. Vose answered no. She explained that their firm has five (5) attorneys and they are available and will get the work done. They will be on the phone, on their computers, responding to emails, texts, and doing whatever it takes. She does not anticipate any kind of hurdle getting to them.

Vice Mayor Young commented that it is normal for them to have items come in at the last minute and he asked how have the cities been accommodated, those that have gone out of house, have to factor in a response window to reaching out to them.

Ms. Vose said they don't because on meeting days she would be at the City. She said all cities have those last minute things and they are on it. She carries her laptop with her and would be at the City with her laptop changing contracts or whatever needed to be changed.

Mr. Vose added please feel free to speak to the City Council and City Managers that they currently work for. He said while they work for each of the City Councilmembers they work with their City Managers every day of the week.

Councilwoman Moss asked if there was a legal opinion regarding the legality of having a law firm serve as a Charter Officer, which is what they will be doing here.

Ms. Kira Honse, Interim City Attorney, stated that there is nothing in the Charter that prevents a law firm from being their Charter Officer.

Councilwoman Moss continued by saying that what she did read in Section 3.06 of the City Charter to her clearly indicates that the person serving as a Charter Officer is an individual. She expressed her personal sentiment that it should be an individual because there are many subtleties in the City and she thinks that they are best fully appreciated by an individual serving in that capacity. They need someone that knows the City well, someone who knows them inside and out and in her opinion the only way to achieve that is to have an individual serving in that capacity as City Attorney and to be their Charter Officer. As it was mentioned earlier there are only three (3) Charter Officers.

Mayor Zudans told Councilwoman Moss that they would be discussing the pros and cons and get public input later on in the meeting. He said right now they are just interviewing the different candidates. He agreed that is a point that they have to discuss.

Councilwoman Moss wanted to make one other point that she feels is legitimate and that is that they have a letter dated April 30th from the firm of Weiss Serota Helfman Cole & Bierman. She said this was a firm that has applied to act as the Interim City Attorney and they would like to be considered for City Attorney if the Council is considering this law firm (Vose). She said this could be an inappropriate action if they were to hire this firm, even though as she just stated she was not in favor of it, but if they wanted to do this it could be wrong because they should be considering other firms. They are getting on very uneven ground here.

Mr. Brackett asked to talk about possible conflicts of interest. He asked them to explain those situations when they arise, how they would arise, etc.

Mr. Vose stated that it is rare for conflicts to arise among cities that are not geographically close to each other. He said they could get into situations if they had two (2) cities that were right next to each other and they were in an annexation war and they were City Attorney for both. He said that might cause some trouble. He said with his firm they don't anticipate a situation where a conflict of interest will arise between any of their local government clients. Also, they do not have any private clients in this part of the State and would not take on any clients that had anything to do with the City of Vero Beach.

Mr. Brackett asked if that would also apply to surrounding municipalities.

Mr. Vose said it would certainly be something they would have to evaluate if it caused the slightest bit of concern to any of the Council.

Mr. Brackett commented that when he spoke to them they talked about the Airport that they have in this City. They mentioned that there is someone in their firm who is familiar with Airports. He asked them to explain that.

Mr. Vose commented that one of the many things they have to offer is the breadth and depth of local experience. One (1) attorney mentioned in their firm has extensive work with regard to aviation law when she was working with the City of Orlando.

Mr. Brackett stated that there is some concerns about timelessness and getting back to staff in a reasonable amount of time. He asked that they give him an explanation about transition and an office that has never had a private contractor be the City Attorney. He said there are going to be some bumps in the road. It is a transition period and people don't like change. He asked how would they anticipate making the first 90-days go smoothly.

Ms. Vose said that she would be camped out here as long as it takes. She has to get a good relationship with staff and Council. She wants to get to know all of the employees of the City. She said she would be spending a lot of time here.

Mayor Zudans asked if she has done this at other places.

Ms. Vose answered yes. She said with the City of Deltona she was there every day close to a year. After the first year she did not need to be there the whole time. She expressed how important it was for them to fit in and they have to have the cooperation of staff and full support of the Council for the relationship to work.

Mr. Brackett asked why do cities leave them.

Ms. Vose stated that no city has ever left them, but they have left some cities. She has written some letters of resignation and some cities don't want to accept it. She said they submit the letter of resignation and see what the city wants to do with it. She said if they were to mess up here and the Council tells them they want them to go then they would smile and leave.

Mayor Zudans asked how many of their attorneys are Board Certified and how many of them have received the AV rating.

Ms. Vose said that the firm is AV rated and she is AV rated. Mr. Vose is not AV rated, but he is Board Certified and two (2) other attorneys in the firm are Board Certified.

Mayor Zudans asked how many years of experience do you have among your attorneys in having city or county experience.

Ms. Vose said probably around 75 years.

John S. Turner -

Mr. John S. Turner from Ft. Myers Beach was the next attorney to be interviewed. Mr. Turner thanked the Council for having selected him as one of their finalists. Also to Mr. Baenziger and his staff for a professional job done in this process. Since 2015, he has been in private practice and a partner in the firm of Peterson Law Group (“PLG”) with emphasis in local government law and civil trial. From February 2017 to February 2019, he was the contract Town Attorney for the Town of Fort Myers Beach, Florida. He said that there are a lot of similarities in Vero Beach and Fort Myers Beach and the problems they face, which is one of the reasons he applied for the job. From 1991 to 2015 he was a trial attorney with the Lee County Attorney’s office in Fort Myers, Florida. He was Senior Assistant and Chief of the Trial Section. He went over some of the different cases that he tried. Prior to working for Lee County, he was in private practice in Tulsa Oklahoma. Prior to that time he was a judge with two (2) other full time judges. He has been certified since 1977 by the Florida Bar in City, County, and Local Government Law and AV rated by Martindale-Hubble. Additionally, he is a highly experienced and qualified practitioner in civil trials and appeals having conducted over 130 jury and non-jury trials in State and Federal Courts. He is also experienced with real estate and land use/zoning issues, with administrative proceedings and with water quality issues before the State of Florida Division of Administrative Hearings.

Mayor Zudans stated that the only three (3) employees of the City who work directly for the City Council are the City Manager, City Attorney, and City Clerk. He said the City Attorney’s last year’s budget was approximately \$500,000 with a City Attorney and two (2) Assistant City Attorneys and Paralegal in that Department. His desire is to offer the same level of service, but maybe at a different level of staffing. He asked Mr. Turner if he was the City Attorney what would he expect to need in the City Attorney’s office as far as staffing and what kind of things can he handle himself. Also, what kind of issues would need outside attorneys to be hired for the City.

Mr. Turner explained that staffing would depend on the volume of work. He said from reviewing the information the types of services rendered by the City Attorney’s department he would imagine and would work towards limiting the City Attorney’s office to perhaps two (2) City Attorneys at the most and one (1) competent trained Paralegal. He would be looking at directing a reduction without a reduction in services. He feels confident in most areas, in representing local government. He said rather than be from in trial on appeal in front of counsel, in front of Administrative Hearings, zoning, land use matters, employment matters, as well as everyday contract disputes, reviewing all items are legally sufficient.

Vice Mayor Young commented that looking at Mr. Turner’s references it said that he served eight (8) years as a municipal judge. Mr. Turner said that was correct. There was a comment that said Mr. Turner was cranky and was not good as a co-chair. He asked Mr. Turner to explain that.

Mr. Turner explained that means he does not take directions very well. He said co-chairing and sharing in litigation is kind of like a backseat driver and your job is not to be involved in the questioning and sometimes issues come up.

Vice Mayor Young asked Mr. Turner to address availability.

Mr. Turner stated that he would expect what he has done in the past and that is to have an open door policy.

Vice Mayor Young asked Mr. Turner if he had any limitations on when he will be available to the Council and staff. He asked does someone have to make an appointment to see him.

Mr. Turner said that he would be here 24 hours a day if that is what Council needs. He said that his services will always be available.

Councilwoman Moss noted that Mr. Turner listed pages of different suits in which he prevailed legally. She took special notice of a few of them. She said for the community they may be on the verge of a lawsuit themselves and one (1) of the suits that Mr. Turner represented was successfully defending a water service franchise agreement in action by a municipality concerning coverage and terms. She said one (1) of the other ones in particular that interested her had to do with the Florida Department of Transportation (FDOT) where he was able to get \$95,000. She asked Mr. Turner to talk about these two (2) cases.

Mr. Turner explained that the FDOT matter was for the construction of a new water line they had installed under a new bridge that was defective and FDOT wouldn't repair it until after a lawsuit was filed and a claim was made. They settled it for cost and expenses they had in the matter, which was \$95,000. He said the other matter was between two (2) different franchise areas; one (1) involving the City and the other involved the small service area. The County was involved in this because they had overall jurisdiction. They won that case on trial level and it was appealed and they won on appeal. The claim involved who was going to control distribution of the water and in particular to address safety issues and concerns with fire prevention.

Councilwoman Moss commented that Mr. Turner also mentioned ADA claims. She said it seems like he has a very broad range. She asked him if he wants to address this. She said it is positive that he has a very broad range of cases and he has been successful.

Mr. Turner complimented the other attorneys and staff that he worked with. He said they were very capable and well trained. He has very specific ideas on how to train and what to train on that will lead to successful results in trials. He said with these things combined they will be successful most of the time. He said they did lose some cases, but they sure won the majority of the ones they were involved in. They won one of the cases that was the highest profile case in Lee County, which was a twenty-seven million dollar claim that a developer made against the County because the County moved the road around a projected development.

Councilwoman Moss asked Mr. Turner if it was a policy of his to be awarded attorney fees and that he goes after that.

Mr. Turner answered yes. He goes after attorney's fees. He recalled a judge he knew who tried 47 cases with 47 appeals and there were no reversals. He entered an order for request for attorney fees, which he read from and received.

Councilwoman Moss explained that her point in mentioning that was because they are concerned with being efficient. She said this is a way to do this while still having an individual serving as the City Attorney and Charter Officer if they choose the right person. She said there are other ways to save money and this is a very logical, reasonable, and appropriate way to do it.

Mr. Brackett asked Mr. Turner to address how he is going to make the transition from working at a private practice now to working for the City.

Mr. Turner explained that his practice is really focusing on local government concerns and problems. He said transitioning to Vero Beach would be a logical move in his estimation. He said as long as his energy and capacity is there he will do the job at one-hundred percent.

Mr. Howle told Mr. Turner that he thought it was very interesting that he has so many similarities to the issues at hand in Vero Beach today. He named a few being parking, stormwater, red tide, and land use. To him that was an impressive fit for the things that they are dealing with here today.

Mayor Zudans commented that there was one (1) humorous thing that came out in the interview that he did with Mr. Turner and that was when he was asking the questions about the budget, Mr. Turner said that one way they could save some money is that they are paying their City Attorneys too much. He asked Mr. Turner what a City Attorney should be paid and Mr. Turner said between \$85,000 and \$100,000. He said that they advertised this position paying more of a salary than that. He asked Mr. Turner if he wanted to take the job at that salary and he said that he wasn't sure. Mayor Zudans asked Mr. Turner what did he think was an appropriate salary for a City Attorney.

Mr. Turner stated that it depends upon several factors. He said one is the risk and if they are in a community with a lot of risks and you wonder if the challenges are like is your car going to be towed. He said if the risk is so high then the level of compensation should also be that. He said with the size of Vero Beach and the legal issues that are going to be involved are not high risk that he sees. He said they are issues he deals with on a daily basis and sometimes does involve litigation, which he would try to keep them out of. Their salary should be in line with what other local governments of their size and services are paying. His understanding is that is between \$85,000 and \$100,000. He said that he would be happy to negotiate the salary.

Vice Mayor Young asked Mr. Turner if he is selected what was his concept in going into the City Attorney's office. He asked him what is he looking to accomplish.

Mr. Turner explained the first thing he would do is have an action plan. He would be visiting with each of the Councilmembers and asking them what their expectations are for the office and coming up with an action plan. That way they can then define to him what it is that they expect.

Vice Mayor Young asked Mr. Turner if he was opposed to utilizing a firm for additional services if he sees it is necessary.

Mr. Turner said it would only be after a review and consultation with Council. He would want their input.

Cynthia Everett

Ms. Cynthia Everett stated that she currently is practicing in Miami, Florida. She has served as the City Attorney for the City of Fort Lauderdale, Village Attorney for the Village of Pinecrest, General Counsel for Our Kids of Miami-Dade, Adjunct Law Professor, for Florida International University College of Law, City Attorney for the City of Opa-Locka, worked for the Law Offices of Williams & Associates in Miami, Florida, the United States Attorney's Office for the Southern District of Florida, and the Miami-Dade County State Attorney's office. These positions provided her with experience in litigation, managing and directing professional and support staff employees, preparing budgets, drafting documents, interacting with elected and appointed officials, the public and the media, and a municipal attorney, regularly providing advice and opinions on substantive, local government law issues in the areas of land use and zoning, public works, public safety, public finance, human resources, civil forfeitures, ethics, conflicts, public meetings and public record.

Mayor Zudans stated that there are three (3) employees who report to the City Council and they are the City Manager, City Attorney, and City Clerk. The City Attorney is responsible for running the office of the City Attorney. There was a \$500,000 legal budget in house consisting of a City Attorney, two (2) Assistant City Attorneys and a Paralegal in the office. He asked her what she thought the structure should be in the City Attorney's office while still maintaining the level of service that the City expects.

Ms. Everett explained that is a difficult question to answer. She realizes there has been three (3) attorneys in the office. She felt at a minimum they do need two (2) attorneys and additionally if it is their goal and they do plan on having litigation handled in house is where an attorney has to spend one-hundred percent of their time if they are involved in litigation, so that would serve as the need for some type of backup attorney. She said if they look at as to what their history has been in terms of various activities within the department she would think realistically they can get along with two (2) attorneys, but it would be based on the goals of the City Council and what they envision in terms of upcoming projects and issues that would need to be addressed and how much time would

be involved. When time becomes of the essence if two (2) people are not able to meet those needs then they will have to look at acquiring other assistance whether it be an in-house person or getting outside assistance as necessary.

Mayor Zudans asked Ms. Everett what her limits were as far as what she can handle directly for the City and what needs to be done by an outside attorney. He said right now they actually contract out labor negotiations. He asked her if she would plan on doing that in-house or continue outsourcing it and are there any other areas where she feels that it would not be appropriate for her to handle.

Ms. Everett stated that labor negotiations could be handled in-house. She said that in the legal field there are some matters that have become so specialized that it requires full time dedication to that particular area. She gave examples of tax matters, bankruptcy issues, pension issues, etc., which might require an outside attorney.

Vice Mayor Young asked Ms. Everett from her professional experience how does she believe that she is a fit for Vero Beach.

Ms. Everett stated that she feels that she is the right fit for any city because she knows that she can do the job. She said in determining what the right fit is, it is the hard job that Council has and must make that decision. She said the City Attorney is here to help the Council carryout their goals and make sure that their plans for the City and residences are reached. She said in terms of her abilities and background, she is a litigator and has handled various types of subject matters and has good relationships with other city and county attorneys.

Vice Mayor Young said he could see from Ms. Everett that she has extensive experience. He asked her to translate that to Vero Beach. He went over some of the amenities that Vero Beach offers (Airport, Marina, Solid Waste department).

Ms. Everett stated that so far all of those areas she has experience in. She said as a seasoned attorney she knows where to look for the information in order for her to accomplish the goals or projects that she has to accomplish. She has dealt with municipal airport matters for the Ft. Lauderdale Airport. She said Ft. Lauderdale also has a Marina. Also, at some of the other cities that she has worked for she has dealt with Water Utilities and Public Work matters.

Vice Mayor Young understood from reading Ms. Everett's background that she likes to get the job done. He asked her to speak to that.

Ms. Everett commented that she likes to get the job done because that is what she is hired to do. Her goal when given a project is to get it completed in a timely manner.

Councilwoman Moss stated that as she understands Ms. Everett's background, she was the City Attorney for the City of Ft. Lauderdale and she did not leave voluntarily and the vote was 3-2 to release her from that position. She said with the benefit of time passed

she was wondering if Ms. Everett felt that there was an issue or a matter that she might have handled differently that would have caused that vote to be 3-2 to keep her.

Ms. Everett answered no. She said that they recently had an election and one of the new, but surviving members of the old Commission was not a supporter of her. She said two (2) of the Commissioners who never worked with her were the no votes so it couldn't be because of her work. She thought it was a leadership change requested by the new leaders. She said not only was she released, but the City Manager was also released. She said it was a new body that wanted a new team and that is what they got. She said to change any of her legal opinions or recommendations there is not anything that she would have changed. That would have been a compromise of her values and what she respects as a lawyer so there would be no basis for her to change any of those opinions.

Councilwoman Moss said then from her position she (Ms. BEverett) sees it as purely a political decision.

Ms. Everett stated that she could not characterize it, but only speak to what happened. She said the people who made those decisions would have to explain it or characterize it. She was very confident in saying it wasn't because of her work.

Mayor Zudans remarked that was a tough decision.

Mr. Brackett referred to Ms. Everett's information that she provided to the Council where it says that her most significant legal issue handled by her was an Election issue and Charter qualification of an elected commissioner was challenged. He asked her to explain that.

Ms. Everett explained that there was an issue and ultimately the issue was resolved by the Courts. She said that her office represented the City and it was a challenge as to the qualifications in terms of paperwork that was submitted, a residency issue and a technical issue because the commissioner that had been appointed was filling a term and the way that the Charter read there was a question as to whether or not someone that was appointed as opposed to having being elected could qualify. She said ultimately there was a challenge by another candidate in the race and it was resolved by the Courts.

Mr. Brackett said it was a little different issue then the one this City had, but more to the point that she has had experience with Elections. He asked Ms. Everett how she would get her first 60 days running if she was hired. He mentioned the new staff that has been recently hired at the City.

Ms. Everett stated that she would start with the Council, who she reports to, to find out what their goals and plans are. She said in this form of government the City Manager is usually the Executive Director who carries out the will of the Commission usually working very closely with the City Attorney and the City Clerk. She said those are the people that she looks to for that type of guidance. She said one (1) of her goals when she

comes into a new city is to figure out how her office can best meet the needs of the city, from the Council to the individual departments to the individual employees.

Mayor Zudans asked Ms. Everett in the top position of City Attorney, how many years of experience in that particular role does she have.

Ms. Everett stated about 20 years. She is Board Certified and AV rated.

At this time (2:20 p.m.) a break took place and the meeting reconvened at 3:15 p.m.

Philip Sherwin

Mr. Phillip Sherwin gave his credentials. He is a blend of both a litigator and transactional attorney. He has worked in the private sector and has 15 years of in-house local government experience. As a local government attorney he was very hands on and involved in the day to day legal work of the office, while at the same time mentoring and helping younger attorneys develop their legal skills and careers. In 2017, he was selected as one (1) of the four (4) finalists considered to become Pinellas County's next County Attorney after the County conducted a statewide search. He is one of the small minority of attorneys who could successfully lead any Florida local government legal department, large or small.

Mayor Zudans explained that the City Manager, City Attorney, and City Clerk are the only three (3) employees that answer to the City Council. He asked Mr. Sherwin what matters does he think should be handled internally in the City Attorney's office and what matters should be handled by outside attorneys. He said the current budget for the City Attorney's office is \$500,000, which did include three (3) attorneys and one (1) Paralegal. He asked Mr. Sherwin what did he see as the structure of the City Attorney's office.

Mr. Sherwin stated as far as litigation goes he has been involved in quite a few litigation matters and feels very comfortable in handling these things. He said local government attorneys are doing mostly transactional work. It would depend on what the matter is as to if outside attorneys would have to be brought in. He said one area he has not done a lot of work in is collective bargaining. He has a very broad background and feels comfortable in handling most matters. He said with general matters that come up before the City, he feels very comfortable with the courtroom setting and the transactional setting. He grew up with a family of lawyers. He said as far as staffing goes, he would like to get a sense of the operation over the first couple of months. He said ideally another Assistant City Attorney would be a good thing and a second Paralegal would probably meet the needs for the City. He would find out in the first few months what the real needs of the office are.

Mayor Zudans asked Mr. Sherwin how many years has he served as a City Attorney.

Mr. Sherwin stated that he has 15 years with in-house local government experience. He worked for the City of Cape Coral and in that City there were two (2) attorneys and two (2) secretaries that did 90% of the work. He represented the Police Department in that City and brought the largest forfeiture action up until that time in southwest Florida.

Vice Mayor Young asked Mr. Sherwin about his experience between local city and county government. Mr. Sherwin said between the two (2) of them he has 15 years experience. He thinks by having the experience of a County Attorney, he has been involved in all kinds of interlocal arrangements between counties and cities and understands the relationships of government between cities and counties.

Vice Mayor Young said one of the things they are dealing with right now is their water utility. He asked Mr. Sherwin what experience does he have with that.

Mr. Sherwin explained that he was the Polk County Utility Attorney for 10 years.

Vice Mayor Young asked Mr. Sherwin what is his experience in dealing with the environment because the Lagoon for them is extremely important in Indian River County.

Mr. Sherwin reported that for a period of time he served on the Stormwater Technical Advisory Committee in order to improve the water quality. Because he is interested in water and has experience in it he read their study about the STEP program and thought that was an innovative way to address some problems in a cost effective way. He has a broad experience in the environmental area because he represented Natural Resources and a number of environmental issues.

Vice Mayor Young asked what would his availability be to the City.

Mr. Sherwin said that he could be here in about 45 days. He would be available on a 24/7 basis. He has an open door policy to the extent it was necessary and made sense. He would be available to the City Manager and to the City Council as often as they wanted him to be available. That is the commitment he would make to the City if he was hired as their City Attorney.

Councilwoman Moss told Mr. Sherwin, as he knows, land use is an important issue to the City of Vero Beach. She said they updated their Comprehensive Plan recently and it had not been redone thoroughly since the 1990's. She went back through Mr. Sherwin's archives. It is from 2007 and what it says is *a Planning Commissioner, Barbara Douglas, tried to win approval of Waverlys complete proposal even though Assistant County Attorney Phil Sherwin warned that it would be inconsistent with the County's growth plan. Her motion failed.* Councilwoman Moss told Mr. Sherwin that it sounds like he gave good advice. She asked if he would care to elaborate on this.

Mr. Sherwin said that he does not remember this situation because he has dealt with thousands of matters since then. He did say that their job is to give the best possible legal

advice and in that case they followed his advice because everything has to be consistent with the Comprehensive Plan.

Mr. Brackett asked Mr. Sherwin if after he left Polk County did he go back to private practice.

Mr. Sherwin said that he did because there was a death in his family that required him to travel and he didn't see a pathway forward to becoming a county attorney.

Mr. Brackett asked Mr. Sherwin how he would be transitioning back to government with a limited staff.

Mr. Sherwin explained that he would be reaching out to the City Manager and staff and getting an understanding of the local government entity. He noted that employees don't always like to come and see lawyers, however he tries to be of the nature that people feel comfortable. His job is to carry out the policy of the City Council.

Mr. Sherwin asked the City Council if there were any concerns in his background that might prevent him from being considered for their next City Attorney. All of the Councilmembers said they have none.

Susan Garrett

Ms. Susan Garrett stated that she currently is working as the Deputy City Attorney for the City of Atlanta, Georgia. She has 11 years of City Attorney experience. She worked for the Assistant City Attorney in the City of East Point, Georgia from 2009-2012. She has done pretty much everything. She said that in East Point, Georgia they had a electric utility. She did employment litigation in Atlanta then moved into the Department of Procurement and was responsible for oversight of bond and disclosure counsel, legislation, contract solicitations and bid protests, revenue, permitting, franchise and telecommunications matters, annexation, and zoning and land use litigation. She was a key team member for major urban redevelopment transactions. She had her own private practice from 1988-1996 where she did land use, environmental work, zoning, historic preservation, employment, civil rights and education matters.

Mayor Zudans expressed that he was impressed with all of the candidates that have applied for the City Attorney position. He said some of them are over qualified for the position. He asked Ms. Garrett with all of her qualifications what things does she feel that she would not have the expertise to handle legal matters in-house. Also, what does she see with the current budget of the City Attorney's office, which is \$550,000 with a City Attorney, two (2) Assistant City Attorneys and a Paralegal. He asked her what would she see as the structure of the City Attorney's office as far as staffing and what matters does she think could be handled in-house versus has to be contracted out.

Ms. Garrett said that she would endeavor to handle everything in-house with a couple of exceptions. First of all, legal work does not come in smoothly with the same amount

every week and sometimes extra help is needed because everything happens all at once. She would think that they would need bond counsel and she does not know of any local government that does its own bond transactions. Also, real estate closing is usually more efficiently done by outside counsel. She can do anything that she is asked to do if she is given enough time to do it. She said every job she has ever had she had to walk in the door and hit the ground running and figure it out. She said these two (2) areas it is usually just more economical to go with the experts. As far as litigation goes she does not have a good grip on the amount of litigation that the City has, but if she had sufficient person power she would feel comfortable handling virtually all the litigation in-house. She said once in a while there is a case that is highly specialized and it might be advantageous to have a specific firm with a name handle that case. She would look to see what economics can be achieved. She said if not filling one (1) of the positions seems viable she would not rush to do that. She thinks that it would be hard to be the only City Attorney for the City because you cannot be two (2) places at the same time. She would look at what levels of experience they need and what other options there are.

Mayor Zudans asked Ms. Garrett if she has done union negotiations.

Ms. Garrett said that they do not have collective bargaining in Georgia so in terms of negotiating contracts with labor unions she has not done that. But, in Georgia they do have labor unions who do not have collective bargaining powers and she has been involved with that.

Vice Mayor Young asked Ms. Garrett what gets under her skin and her response was she wants people to take responsibility. He asked her to elaborate on that.

Ms. Garrett explained that as a supervisor and someone that reports to her she gets irritated by people who will not take responsibility in getting their work done appropriately and on time. She said everyone makes mistakes and she tries to create an atmosphere where people are not afraid to come and ask questions before hand so mistakes can be avoided. Also, if something doesn't go right she wants people to come and tell her and make a suggestion on how they think it can be fixed. Then she will work with them to solve the problem.

Vice Mayor Young noted that Ms. Garrett's Florida Bar Certification was in 2018 and he asked if that was going to be a potential concern as she operates in Florida.

Ms. Garrett explained that she did not think it should be a concern for the City as her client. It will be something that she will be mindful of that she will need to do a little extra preparation to make sure that she is ready for any discussion that they are going to have. She had to study all of the laws in order to pass the Bar exam. She will prepare before every meeting anything that she might not have stored in her head already and make that not apparent to anyone.

Vice Mayor Young asked Ms. Garrett to address availability.

Ms. Garrett stated that her concern was being professional and considerate to her current employer. She has things going on that she wouldn't want to walk out the door on in Atlanta. She wanted to make sure that there was time for a smooth transition between her current employer and the City of Vero Beach. She does not have housing issues. She has a house that it will take her about 25 minutes to get to after she leaves City Hall.

Vice Mayor Young asked Ms. Garrett if she has an open door policy or are there some constraints that she personally uses in her setting.

Ms. Garrett stated that she is accustomed to being expected to being assessable at all times during business hours and to some extent when she is out of town and off hours. That is the difference between being a City Attorney and an Assistant City Attorney. She would not necessarily expect an Assistant City Attorney to be on call, but the City Attorney is. Although, she would not encourage people to call her at 1:00 in the morning.

Councilwoman Moss commented that Ms. Garrett's range of experience would tend to match many of the needs that they have for the community, such as environmental issues, zoning and historic preservation. She said other than the obvious difference of her coming from Georgia to Florida and she commended her for already gaining admission to the Florida Bar and preparation for this on her own dime. Councilwoman Moss asked coming from a City as large as Atlanta to Vero Beach, what other differences would she expect to address.

Ms. Garrett said from her perspective the differences would be positive ones in the sense that one of the things she enjoys about municipal work is being part of the team. She said not just a lawyer pushing papers, but being involved in the operations of the City. She said what she enjoyed very much when she was in East Point was the interaction throughout the day. She commented that there are a lot of similarities in things that happen regardless of what state or city you are in.

Councilwoman Moss asked that in comparing Florida law to Georgia law does she see them as more alike or disparate, comparing the two (2) bodies of state law.

Ms. Garrett said realizing that she does not know every single law that either jurisdiction has what she has observed so far is that in municipalities there are some differences, such as the Sunshine Law and there are some smaller differences with the way home rule is handled in Florida, but at the end of the day it is a very similar structure. There is just mostly subtle differences. She will be looking up a lot of Statutes whether she is in Georgia or Florida to make sure that she is right. She said that a good lawyer doesn't quote the law. She said a good lawyer researches the law and does it in preparation for something that is going to come up.

Mr. Brackett commended Ms. Garrett on passing the Florida Bar and looking ahead. He said that Florida has a pretty detailed Comprehensive Land Use Plan that is unique to

other states and have to submit an update every five (5) to seven (7) years. He asked Ms. Garrett if she was familiar with that at all.

Ms. Garrett said the requirement is the same in Georgia as far as submitting an approved Comprehensive Plan in order to benefit from a lot of funding opportunities and other benefits you can get from the State.

Mr. Howle asked Ms. Garrett to tell them what experience she has in dealing with the Federal Aviation Association (FAA).

Ms. Garrett said that she has some experience dealing with FAA because the City of Atlanta Law department also represents and advises the Atlanta Airport. She was not on the team in the law department that worked on a day to day basis with the Airport, but in her capacity as the Finance Deputy she worked on Airport bond projects. She has not had dealings with the FAA, but they did play some roles in their requirements for contracts.

Mayor Zudans asked Ms. Garrett if there was anything that has not come out that she thinks would be important for the Council to know about her and what interests her in Vero Beach.

Ms. Garrett commented that she loves this area and she is not interested in being in other parts of Florida. She loves municipal law and representing cities. She likes dealing with the public and Elected Officials.

Vice Mayor Young realized that Ms. Garrett has a connection with Ft. Pierce and Ft. Pierce has recently done away with an outside attorney to in-house counsel. He asked her if she has dealt with outside counsel and how would that impact them.

Ms. Garrett stated that she was outside counsel for the brief time she was City Attorney for Clarkson, Georgia and found it difficult because the city was not in a position to compensate her well enough to spend as much time with them that she needed to spend in order to be fully informed as to what was going on and do the best work possible for them. She said because she was running her own office and had overhead she had to charge Clarkson an hourly rate to at least cover her overhead and that limited the number of hours that they wanted to use of time. The Mayor at that time severely limited anyone's access to her other than himself. She said that made it very difficult to do the job. She said either model can work and plenty of cities use outside counsel exclusively, but it does change the nature of what they get. She said with an in-house City Attorney they get a partner on the team who is there everyday. She does not believe a city can pay enough to get that same level of service from outside counsel.

Mr. Baenziger told Council that he was ready to proceed. He does have some ballots for them to fill out or if they want to wait until next Tuesday and vote on a new City Attorney that is fine also.

Mayor Zudans complimented all of the candidates and told Mr. Baenziger that he brought in very good candidates. He was happy with everyone that was on the list. He said one (1) of them jumped out to him that he would have picked first and he is curious to hear what the other City Councilmembers have to say about their candidate. He said if it is the same person they will save a lot of time here.

At this time there was a disturbance from Mr. Richard Winger speaking from the audience and Mayor Zudans called him out of order.

Mr. Brackett commented that he would like to take a little time to think about the candidates. He is down to three (3) candidates and all the candidates are qualified, but it comes down to the right fit. He said personally he would like to discuss this on Tuesday, which would give him some time to review his notes, but he would do what the Council wants.

Councilwoman Moss agreed with Mr. Brackett that they should vote on this matter at Tuesday's Council meeting. She is down to two (2) candidates, but she would like to review some of the material and her own notes.

Vice Mayor Young added that he knows clearly that he probably has a pick of two (2) of the individuals, even though all of the candidates were very strong. He felt it was important to have public discussion as to where they are at this point. He realizes that it is 4:00 in the afternoon, but there have been many people that have come to the meeting to speak. He agrees that it would be warranted that they do wait until Tuesday to proceed forward with a motion.

Mr. Howle asked the Council if all of them were down to individuals. The Council said that their first choice would be an individual. He agrees that they need some time to digest what they have heard and would like to vote on the matter on Tuesday.

Mayor Zudans opened up the meeting for public comment.

3. PUBLIC COMMENT

Mr. Richard Winger stated that there were six (6) former Mayors in the room today. He said that Mr. Baenziger did a good job selecting the candidates. His pick of candidates would be Mr. Turner, Ms. Everett, Ms. Garrett, and Mr. Sherwin. He was involved in picking the last City Attorney. He said the scope of work that was asked by the City Council was to look for an individual and then on Monday there was somebody that was not an individual included in the interviews. He said a lot of their people are not in Vero Beach right now. They have left for the summer. He said moving from a Charter Officer person to anything else would be a major change in the City. He felt that they had some very good candidates and he hoped that they select one (1) on Tuesday. He was not against having outside counsel, but he thought the Charter Officer has been an in-house employee for 100 years and they need to keep it that way.

Mayor Zudans commented that with the inclusion of an outside law firm even if they don't go that route he thinks it was a value to see what their alternatives were and to fully understand what decision they are making. He said that is the proper role of City government to actually explore all the options even if they choose not to so that route. He said it is beneficial to their City and to their residents to know that they are fully exploring all of the options. He said that there were some things in the press that said three (3) of the City Councilmembers were supporting this particular one (1). He said that is factually incorrect. He said they included them along with multiple other people that they wanted to interview and that does not necessarily mean that any decision was made. He felt that was misrepresentation on what they were doing and it is a good value even if they don't go with the firm to at least have heard what their other options are and the responsible thing to do.

Mrs. Phyllis Frey reminded Council that at the August 21st City Council meeting this Council voted 4-1 saying that they need an in-house attorney and outsourcing lacks continuity, it demoralizes the rest of the staff and is not in the best interest of the City. She then read a prepared statement.

Mr. Arthur Economy commented that they have known for the last six (6) months that the City Attorney was leaving. He said that Ms. Honse would have been the logical choice to hire as their City Attorney. Their Charter was intended that the positions of Charter Officers were transparent and that they would be void of conflict of interest. That they would be available at all times to City officials and available to City staff to serve City and community interests. He said to consider using an outsource legal substitute as a Charter Officer for financial reasons would be conflicting and has the potential to undermine the foundation of their Charter. He said that Council needs to act collectively to their City Charter in all matters and not after push back from citizens. He said in central beach they are forming a group to regain control not only of their community's well-being, but also to understand that only as a group united can effective change take place. Hopefully their group will grow to have knowledge and share the responsibility to represent their entire City community and Charter. He said this is not only their responsibility but also that of their City government. He said only with an in-house and always present City Attorney will the well-being of their community be generally served and the duties and laws of their Charter upheld and fulfilled. The City Council must act and construct responsively, mindfully, by and through Charter law always and without hesitation.

Mr. Ken Daige thanked Mr. Baenziger for bringing qualified candidates and a firm to them so they could hear how they stood on all of the issues. He said all of the individuals have said that they would relocate to the area and this is a plus. There were a lot of concerns from the community wanting all of their Charter Officers to be in-house. They are not interested in having an outside firm represent the City Attorney.

Mr. Brian Heady commented that an attorney carefully chooses their words because once they utter those words they can be "hanged" on them. He said one (1) attorney told them that they don't write down hours. He said if an attorney told him that he doesn't bother

keeping track of his hours the first thing he would do is send him out the door. There was one (1) attorney who said he would work 24/7. He said that is not possible. Nobody works 24 hours. Another attorney said that he doesn't take orders well. Mr. Heady said that is a red flag, because he is going to have to take orders from the Council. Another attorney told the Council that the job of the City Attorney is to give the best advice. He said that is accurate and that is their job. He said Council doesn't have to follow it, but that is why they want a good attorney to cover them when they don't follow advice. Another attorney told them that there was more than one (1) way to skin a cat. He knows that is an old cliché, but he can't image why you would ever want to skin a cat. Again, this goes back to using a careful choice of words. He said there was one (1) candidate that has a local connection and Councilmember Moss was complimented by the Mayor in asking this candidate a hard question and the Council all agreed that she answered it pretty well. There is one choice that did stand "head and shoulders" above the rest.

Mrs. Lamar (last name was not heard) stated that when people ask her where she lives she says she lives in Vero Beach and she doesn't say that she lives in Indian River County. She asked the Council to do whatever is in their power to protect City assets. She doesn't want to see development here and they need to protect the paradise that they live in. She wanted them to defend their Charter and not find ways around it.

Ms. Adrianna Canter thanked the Council for taking the time to go through all of the resumes. They are all neighbors here. There is a certain community feeling in Vero Beach that you don't find everywhere else. They need people dedicated to their City and their County. By delaying the vote on the new City Attorney until Tuesday is definitely wise. She said efficient government is not always speedy government. The Council must do what is in the best interest for their community.

Mayor Zudans stated that he was fine with waiting until Tuesday (City Council meeting) to discuss this matter.

Vice Mayor Young commented that it is a Friday afternoon and it has been a long day. He thanked everyone for being at the meeting. He expressed his appreciation to Mr. Baenziger for bringing in such good applicants. The final decision will be one that supports their community.

4. ADJOURNMENT

Today's meeting adjourned at 4:30 p.m.

/tb

