

CITY OF VERO BEACH, FLORIDA
MAY 19, 2009 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

Mayor Sabin Abell, present; Vice Mayor Tom White, present; Councilmember Debra Fromang, present; Councilmember Bill Fish, present and Councilmember Kevin Sawnick, present. **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

B. Invocation

The invocation was given by Pastor Tim Womack of the First Presbyterian Church.

C. Pledge of Allegiance

The audience and the Council joined together in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

The Clerk requested that item 7-G) “American Recovery and Reinvestment Act” be added to the agenda under City Manager’s Matters.

Mayor Abell requested permission to move up item 7-F) “Agreement for Minor League Baseball (MiLB)” and have it heard before public comments. There was no objection from the Council.

Mr. White made a motion to approve the agenda as amended. Mr. Fish seconded the motion and it passed unanimously.

B. Proclamations

1. Memorial Day – May 25, 2009

Mayor Abell read and presented the proclamation.

**7-F) Agreement for Minor League Baseball (MiLB)
(moved up on the agenda)**

Mr. Charles Vitunac, City Attorney, reported that Council received a copy of the Dodgertown Lease very late yesterday afternoon and it is their choice if they choose to vote on it today. He said that in conjunction with the lease by the Indian River County of the Dodgertown Baseball facilities to Minor League Baseball (MiLB), MiLB has requested that the City restrict the use of its 37-acre former golf course property to a golf course, recreational uses, or athletic fields, and acknowledge that MiLB will take over the rights that the Dodgers had in the adjacent 9-acre parking lot leased by the City from the Dodgers (the County is now the landlord) and change the definition of the events when there can be parking on the 9-acre lot. Also, as to restricting the 37 acres, last month the Council agreed to this same language in the proposed MOU, which was presented at a Council meeting. MiLB has requested that the language be in the form of a letter from the City rather than in the MOU (letter to be signed by the Mayor). It was agreed in the proposed MOU that if the 37 acres is ever unavailable for use by MiLB, the City would provide alternate sites for all uses except for the golf course. The 9-acre lot was used by the Dodgers as overflow parking when spring training games were held and at other "Dodger Events". MiLB has asked to use the 9 acres as parking whenever they have an event. The new language, which MiLB requests would read as follows: "Dodgers Events means any and all events and activities held on the premises of the Facility for which Dodgers shall retain the use of the Parking Property for parking and uses associated with the Facility, including baseball and non-baseball sporting events and sports related activities, etc. The MiLB proposed language is included in the "Estoppel Certificate", which is basically the old Parking Property Lease Agreement already in place between the Dodgers and the City.

Mr. Pat O'Conner, President of MiLB, was at today's meeting to discuss the agreement. He informed Council that he just left the County Commission meeting where this agreement was discussed and approved on a 5-0 vote. He said that events will be public gatherings at Dodgertown. The number of events to him will be secondary in that the development of the golf course will take precedent. He said that if the City turns this property into a golf course they are not going to allow people to park there. They are interested in the best result for the City, County and community. The number of events planned will be 40 to 45 weeks a year in Dodgertown. The parking needs will depend on what type of event is taking place. He thanked the City for their cooperation and is honored that they have agreed to go along with MiLB in occupying this space. He said that the City will be proud to have MiLB as a partner. He reported that Craig Callan will continue to work at Dodgertown and that they could not have made this deal without him.

Mr. Fish had some concerns that the definition in the Dodger agreement was over flow parking and he did not think that there was very much other parking available.

Mr. O'Conner explained to Mr. Fish that from their prospective that kind of cooperation is assured. He said that if that property becomes a golf course, then it will be a golf course.

Mrs. Fromang felt that this was a wonderful partnership. She did suggest that there should not be any parking on the greens.

Mr. White referred to the contract and felt that there were a couple of changes that needed to be made. In Section 3.02, page 4, the way it looks like is that the City controls the parking property 365 days and he thinks that MiLB should control their own scheduling.

Mr. Vitunac agreed that they should make it clear that if and when MiLB uses the 9 acres for an event that it is their responsibility to maintain it.

Mr. O'Conner said that it was quite clear that the 9 acres is the City's to control and theirs to maintain when they use it with the City's consent.

Mr. White brought up that the County was using the rights concerning adjacent lands, which is mentioned, and he just wants to make sure that their agreements correspond. Also, when they use the obligation of finding them an alternate site, he just wants it in the agreement that it is a City owned park or property.

Mr. O'Conner was fine with those changes. He wants Council to be comfortable with what they are going to sign. They have reached an agreement on the critical issues and he will continue to work on the document if needed.

Mr. White commented that he is happy that MiLB chose Vero Beach and that Mr. Callan is back. The City will cooperate 100% and welcome them with open arms.

Mr. Sawnick also thanked MiLB for choosing Vero Beach. He said that the opportunities were endless.

Mayor Abell added that this is a great partnership and he is looking forward to everything that MiLB can do.

Mr. Michael Zito, Assistant County Administrator, extended sincere gratitude to the staff in working so hard to get to this point.

Mr. White made a motion to approve the execution of the agreement and authorize the Mayor to sign the Estoppel Certificate and the letter included in their package. He also asked that the changes that he made earlier be included in the agreement. Mrs. Fromang seconded the motion and it passed unanimously.

Mr. Gabbard expressed that they would not be signing this agreement today if it wasn't for Craig Callan working so hard to make it possible.

C. Public Comment

Mr. Rusty Braggs congratulated Mr. Gabbard in his negotiating skills with MiLB. He again asked Mr. White to find out what percentage of the stimulus money would be allocated to drug education and prevention.

Mr. White explained that there has not been a determination made yet on where the money is going to be distributed.

Mr. Ken Daige felt that the agreement with MiLB should have taken place after public comments so that the public would have had a chance to comment on it.

Mr. Brian Heady started off by saying liars, cheats and thieves should not be in charge of governing bodies.

Mayor Abell declared Mr. Heady out of order. He did not like his salutation and said that it does not pertain to this Council.

Mr. Vitunac informed Mr. Heady that personal attacks were not allowed according to their Ordinance. If Council would like to vote that Mr. Heady is out of order that they could do so.

Mrs. Fromang said that personally Mr. Heady simply saying those three words is not a threat to her. She said let him speak for his three minutes and then he will be done.

Mr. White added that Mr. Heady has done this for years.

Mr. Vitunac allowed Mr. Heady to continue speaking giving him his full three minutes.

Mr. Heady referred to the comments made by Mr. Ken Daige and said that the reason Council didn't wait until after public comments to discuss the MiLB agreement was because they don't want to hear any criticism. He then brought up the proposed Health Clinic and said that they (City) want to do that to help save money on behalf of the City employees, but they don't mind buying property on the river using taxpayer's money. Then they (City) say they want to save taxpayer's money and eliminate an election and then vote themselves into office. He said by having an election when no one else is having one will cost the City more money. At this time, Mr. Heady was told that his three minutes were up.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes - May 5, 2009**
- 2. Solid Waste Franchise Agreement – J.R. Trucking, Inc., dba Al's Excavating**
- 3. Environmental Systems Corporation (ESC) Data System Maintenance Agreement**
- 4. Request for Approval of Change Order No. 1 to Work Authorization 1305-27 with Morgan and Associates, Inc., for Design Services – 30'' Reuse Transmission Main along Indian River Blvd.**
- 5. CDM Work Authorization 1303-29 – SRF Facilities Plan/Stimulus Funding**
- 6. Work Authorization for WWTP Pump Station**

- 7. Final Payment Request for Unit 3 and 4 Boiler Evaluations – Tes Tex, Inc.**
- 8. Unit 4 Static Exciter Final Payment**
- 9. Request for Approval of Change Order No. 1 and Final Payment – Water Treatment Plant RO Concentrate Pipeline and Diffuser – Lucas Marine Construction, LLC**
- 10. Bay Drive and River Drive Bridge Replacements – Lateral E Canal Stormwater/Pollution Control Facility**
- 11. Solid Waste Franchise Agreement – East Coast Recycling**

Mr. White did not want to pull item 2D-5) off of the agenda, but just wanted reassurance that they would vote on accepting any stimulus money and the projects that it will be used for if they receive it.

Mr. Rob Bolton, Water and Sewer Director, told him that is correct. He said that this is only to pay CDM for all the work that they did in helping to receive some of the stimulus money.

Mr. White made a motion to adopt the consent agenda. Mr. Fish seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, amending Sections 74.04 through 74.06, Chapter 77, “Architectural Review;” providing for greater clarity in the text; providing for consistency with development review procedures; providing for an exemption or a waiver from final design review requirements; eliminating requirement for review of final construction drawings and modifying site inspection requirements; providing for severability and repeal of conflicting provisions; providing for an effective date.**

Mayor Abell read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, reported that this Ordinance is basically to streamline the existing process for the Architectural Review Commission (ARC). It will provide for consistency with development review procedures; provide for an exemption or a waiver from final design review requirements; eliminate the requirement for review of final construction drawings and modify site inspection requirements.

Mr. Sawnick asked if this hinders or helps property owners.

Mr. McGarry felt that it would help property owners because it would expedite the process for them because they won't have to go through a two step process.

Mr. Fish commented that one of his big concerns is seeing some of these bigger homes going into neighborhoods where they are significantly larger than the other homes that are already there.

Mr. McGarry said that is one of the things that ARC looks at and tries to lead the property owner down the right path.

Mayor Abell opened and closed the public hearing at 10:18 a.m., with no one wishing to be heard.

Mr. White made a motion to approve the Ordinance. Mrs. Fromang seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes and Mayor Abell yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

None

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

- A) An Ordinance of the City of Vero Beach, Florida, amending Sections 2-346, 2-347, 2-348 and 2-351 of Division 2, "Purchasing Procedure," of Article VIII, "Purchasing and Contracts," of Chapter 2, "Administration," of the Code of the City of Vero Beach, Florida, by increasing the City Manager's authority to purchase or contract for supplies, materials, equipment or services from \$25,000 to \$50,000; providing for an effective date.**

Mayor Abell read the Ordinance by title only.

Mr. Vitunac recalled that Council asked him to bring this Ordinance to them which would increase the City Manager's authority to purchase or contract for supplies, materials, equipment or services from \$25,000 to \$50,000. He also cleaned up the Ordinance by deleting some language that is no longer needed. The City Manager will continue to let Council know what expenses that he has authorized be purchased.

Mr. Fish agreed that this was a worthy thing to do and that it shows confidence in their City Manager. He thanked the City Manager for bringing items before them, which he has the authority to approve on his own.

Mr. White made a motion to approve the Ordinance on first reading and set the public hearing for June 2, 2009. Mr. Fish seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes, and Mayor Abell yes.

B) A Resolution of the City Council of the City of Vero Beach, Florida, raising Monthly Water Rates for Customers Inside and Outside the City limits; providing an effective date.

Mayor Abell read the Resolution by title only.

Mr. Bolton provided Council with a corrected page one of the Resolution. The title now reads "A Resolution of the City Council of the City of Vero Beach, Florida, changing monthly water rates for customers inside and outside the City limits; providing an effective date."

Mr. White wondered if they could set the second tier starting January 1st.

Mr. Bolton explained that in September he would be bringing the whole new rate structure before Council.

Mrs. Fromang made a motion to approve the Resolution on first reading and set the public hearing for June 2, 2009. Mr. Fish seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes, and Mayor Abell yes.

6. CITY CLERK'S MATTERS

A) Reappointments to Commission/Boards

Board of Building Appeals

Both Mr. Pete Clements and Mr. Mark David Pierce's terms on the Board of Building Appeals expire June 15, 2009. Both members would like to be reappointed for another four year term.

Mr. White made a motion to reappoint Mr. Clements and Mr. Pierce to the Board of Building Appeals. Mayor Abell seconded the motion and it passed unanimously.

Mr. White made a motion to appoint Mr. Bryant Jenks to the Board of Building Appeals as the alternate member. Mrs. Fromang seconded the motion and it passed unanimously.

Tree and Beautification Commission

Both Mr. Karl Zimmermann and Mr. Philip Russo's terms on the Tree and Beautification Commission expire on June 15, 2009. Both members would like to be reappointed.

Mr. White made a motion to reappoint Mr. Zimmermann and Mr. Russo to the Tree and Beautification Commission. Mr. Fish seconded the motion and it passed unanimously.

Veterans Memorial Island Sanctuary Advisory Committee

Mr. John Matthews term on the Veterans Memorial Island Sanctuary Advisory Committee expires on June 15, 2009. He would like to be reappointed for another four year term.

Mr. White made a motion to reappoint Mr. Matthews to the Veterans Memorial Island Sanctuary Advisory Committee. Mrs. Fromang seconded the motion and it passed unanimously.

Indian River County Census 2010 Community Action Committee

The County is asking for a Representative from the City of Vero Beach to serve on the Census 2010 Community Action Committee.

Mr. White made a motion to appoint Councilmember Kevin Sawnick to serve as their representative on the Census 2010 Community Action Committee. Mayor Abell seconded the motion and it passed unanimously.

7. CITY MANAGER'S MATTERS

A) Award of Bid #500-08/PW – Power Plant Fuel Oil Storage Tanks and Plant Stack Painting

Mr. Jim Stevens, Director of Power Resources, explained that the harsh salt air environment and the sun have caused damage to the Power Plant stacks and fuel oil storage tanks and both are in need of repair and paint. He recommended that Turner Coating be awarded the contract to perform the painting. He said that they were the lowest bidder.

Mr. Fish made a motion to approve the Award of Bid #500-08/PW, for the Power Plant Fuel Oil Storage Tanks and Plant Stack Painting to Turner Coating. Mrs. Fromang seconded the motion and it passed unanimously.

B) SR A1A Median Construction and Landscape Improvements

- 1. Recommendation of Award for Construction, Engineering & Inspection (CEI) Services**
- 2. Recommendation of Award – Contract for Bid No. 0180-09/JV**

Mr. Monte Falls, Public Works Director, reported that this is an Indian River County Metropolitan Planning Organization (MPO) project, which the City agreed to manage. The project was designed by Kimley-Horn & Associates, Inc. under a contract executed in October 2004. The contract included design as well as CEI services, however recent changes to the FDOT LAP procedures prohibit the Design Engineer from performing CEI services for the same project, but require and FDOT prequalified CEI consultant to provide those services. He has identified three consultants who were already under contract with the City and who were also FDOT pre-qualified to provide CEI services.

Of the three consultants, Kimley-horn was disqualified because they had performed the design of the project. They chose CDM because of their proximity to the project. CDM has prepared a contract for CEI services that includes the required inspections and materials testing for the lump sum fee of \$45,000.

Mrs. Fromang made a motion that the Award of Contract for Construction, Engineering and Inspection (CEI) Services for the SR A1A Median Construction and Landscape Improvements to Camp, Dresser & McGee (CDM) of Vero Beach, in the amount of \$45,000. Mr. Fish seconded the motion and it passed unanimously.

C) Briefing on Electric Utility Rates

Mr. John Lee, Customer Service Manager, stated that the last time he spoke in front of them was on April 21st and he talked about an increase that would be effective May 1st. Now he has received some more information from FMPA where another increase will be necessary. He showed on the doc cam the usage month, the all in rate and the smoothed rate (information attached to the original minutes). They chose to go with the smoothed rate, which amounts to an approximate 37% percentage increase to their customers. He said that they would be watching the figures every month and if there is a chance they can adjust the figures then they will.

Mr. White expressed how terrible this was, especially with the summer months coming.

Mrs. Fromang commented that if there was anything that they could do about this that they would be doing it. She suggested notifying the public that there will be a significant increase.

Mr. Gabbard and Mayor Abell will be meeting with Mr. Baird and Chairman Davis at the County and will discuss the matter with them.

Mayor Abell wondered if it would be possible to eliminate that particular 6% adjustment that goes to the County. He asked the Attorney to investigate the legal possibilities of doing that.

Mr. Vitunac explained that the County could waive the 6% or change the agreement that the City has with them. He said that they could even get rid of the entire charge if they wished to do so.

D) Discussion of Annexation Policies and Procedures

Mr. Gabbard reported that the City has been getting petitions for small pieces of property where people have wanted to annex into the City. He said for these particular pieces of property they have just followed State Statutes. However, now there seems to be a lot of interest from people inquiring about annexing into the City so they thought that it would be helpful to have some guidelines in place. They contacted both the League of Cities and the Florida City and County Manager's Association to seek assistance. They were

referred to Mr. Bob Lee, a retired City Manager from Naples. Mr. Lee has extensive experience in annexation matters and he helped prepare this draft document.

Mr. McGarry gave a Power Point presentation on the proposed annexation policies and procedures (attached to the original minutes).

Mrs. Fromang thought that it was a good report.

Mr. Gabbard reiterated that it gives them a guide to work with. He requested that Council instruct the City Attorney to prepare a Resolution for adoption at a future meeting.

Mrs. Fromang made a motion to instruct the City Attorney to prepare a Resolution in order to proceed with the annexation process. Mr. Fish seconded the motion and it passed unanimously.

At this time, Council took a five-minute break.

E) Vision Implementation Plan Program Update

This item will be heard at the next meeting and then in the future an update will be given once a month.

F) Agreement for Minor League Baseball (MiLB)

This item was heard earlier in the meeting.

G) American Recovery & Reinvestment Act

Mr. Bolton gave a run down on the stimulus money (see attached memo). He explained that funds appropriated by the American Recovery and Reinvestment Act (ARRA) have provided funding to the SRF in sufficient amounts to allow the addition of projects to the fundable portion of the priority list. The City of Vero Beach has been awarded a \$10,000,000 loan, which will be at 3% interest and fund five projects. He said that over the life of the loan they will save about 3½ million dollars. He also provided Exhibit 1: ARRA 2009 Fundable List (please see attached), which shows the estimated project cost, grant amount and loan amount. He will be coming back to Council at their June 16th meeting with two loan agreements that are being prepared by CDM. He said that all the paperwork needs to be sent to the State by July 1st. Council congratulated Mr. Bolton on getting this money.

Mr. Bolton thanked CDM for all of their hard work in preparing the necessary documents.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

Mr. Fish commented that the fence at Sexton Plaza that he reported on at their last meeting has been removed and a safety fence has been put up in its place.

B. New Business

Mrs. Fromang referred to the Swine Flu and expressed to the public that they needed to keep washing their hands. She also said that if someone is sick they need to stay home and not go to work.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Sabin Abell's Matters

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

Mayor Abell reported that he attended an MPO meeting, he did a public service announcement for the upcoming hurricane season, he led the Pledge of Allegiance for National Day of Prayer, he attended Coffee with the Council, went to a Governor's Hurricane Conference, and was present for the Community Church Youth Activity Center Dedication.

- 3. Comments**

B. Vice Mayor Tom White's Matters

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

Mr. White reported that he attended a Florida League of Cities Insurance Trust Meeting, he installed new officers at the Irish American Society and he attended a Beach and Shores Preservation Commission meeting.

- 3. Comments**

C. Councilmember Debra Fromang's Matters

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

Mrs. Fromang reported that she attended a Treasure Coast Council of Local Government meeting and that this afternoon she would be attending an Economic Development Council meeting and tomorrow she would be going to the Tourist Tax meeting.

3. Comments

D. Councilmember Bill Fish's Matters

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

Mr. Fish reported that he attended a Treasure Coast Council of Local Government meeting, an MPO meeting and an Enterprise Zone meeting.

3. Comments

E. Councilmember Kevin Sawnick's Matters

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

Mr. Sawnick asked about the 90th Anniversary Party.

Ms. Vock gave a brief report on where they were with the City of Vero Beach 90th Anniversary celebration which will be held Downtown on October 16, 2009.

3. Comments

11. ADJOURNMENT

Mr. Fish made a motion to adjourn today's meeting at 11:50 a.m. Mrs. Fromang seconded the motion and it passed unanimously.

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