

CITY OF VERO BEACH, FLORIDA
APRIL 20, 2010 6:00 P.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

Mayor Kevin Sawnick, present; Vice Mayor Sabin Abell, present; Councilmember Tom White, present; Councilmember Brian Heady, present and Councilmember Ken Daige, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

B. Invocation

Pastor David Charlton of Living Lord Lutheran Church gave the invocation.

C. Pledge of Allegiance

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

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

The Clerk requested that item 4-A) be pulled and heard at their next meeting and that items 7-A) and 2C-1) be heard together. She said that item 2C-1) was sponsored by Councilmember Daige.

Mr. White wanted to discuss under his matters, Committee meetings.

Mr. Heady wanted to have some discussion on item 4-A) so that these changes can be made before it comes back to Council on May 4, 2010.

Mrs. Vock asked that under item 7-B), they also include discussion on setting a joint meeting with the County concerning the Electric System Franchise.

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

B. Proclamations

- 1. Toastmasters International Month – April 2010**
- 2. Earth Day – April 22, 2010**
- 3. Law Week – May 1, 2010 – May 7, 2010**

Mayor Sawnick read and presented all of the Proclamations.

C. Public Comment

1. Maria Kovachek and Daniel Fourmont to speak about Mainstreet – Sponsored by Councilmember Daige

Mr. Daniel Fourmont thanked Council for allowing them to speak at their meeting tonight. He said that Mrs. Kovachek would be covering her six month report and he was here to go over the recent Hibiscus Festival which was a very successful event.

Mrs. Maria Kovachek, Main Street Manager, talked about the goals they have for this year. She said that they will continue to host the events that they have been doing, which include the Hibiscus Festival, Downtown Fridays, the Dinner Dining Strolls and their weekly Farmers Market held on Friday mornings. She expressed that they have just completed a downtown walking map (available in the City Hall Lobby). They are talking about putting some new road signage in the downtown area that will give it more charm. They want to establish the DDD district (Dining Downtown District) and are looking at the possibility of putting a permanent stage outside the Heritage Center. She said that they stay very involved with the downtown businesses and property owners. She asked the City to consider revisiting discussions of CRA's. One of their thoughts involved with renaming 14th Avenue is because just about every downtown has a Main Street. This name would give a new look and vantage point for people who want to come downtown.

Mr. Peter Jones was also at tonight's Council meeting on behalf of downtown. He said that he has been heading up the Task Force of volunteers with a goal of reopening the Theater located downtown. He said that there have been attempts before to try to make this happen and they have learned from that process. The Task Force knows what is necessary for this to happen. He said that there needs to be a good operation for opening, improvements made and a business plan. They are in the process of putting this business plan together and then plan on meeting with Mr. Bob Brackett hopefully in the next two months.

Mr. Daige asked as far as renaming 14th Avenue, how close are they to renaming it and where do you want them to go as a Council.

Mr. Fourmont felt that it was an idea that needs to be pursued. The original name was Davenport on that street and then in 1913 it was renamed Seminole Street. They think at this point it should be renamed Main Street. He said that the Theater is there, it is a busy street, and Main Street would fit the description of this street.

Mr. Daige asked if it was the consensus that the group was happy with Main Street being the new name for the street. He was told that they are.

Mayor Sawnick asked if there was anyone from the public who wished to talk about renaming 14th Avenue to Main Street. No one wished to speak on this matter.

Mr. Jim Gabbard, City Manager, asked for clarification as to how far they want the street to go. He was told from the Train Station all the way to 16th Street.

Mayor Sawnick explained the street name (14th Avenue) will always remain 14th Avenue, with the addition of new name, because of emergency services.

Mr. Gabbard agreed and said that they could adjust the signs and make the additional name (adding Main Street) just like they did with renaming the other street downtown Don Smith Avenue.

Mayor Sawnick made a motion to rename 14th Avenue to Main Street. Mr. Daige seconded the motion.

Mr. White brought up that most GPS systems are geared for 14th Avenue. He asked if the signs will have both names on them.

Mr. Gabbard said that they would. He suggested putting 14th Avenue on the top of the sign and Main Street on the bottom of the sign.

Mr. Heady felt that the motion should read to add the name of Main Street to 14th Avenue instead of renaming the street Main Street. Mayor Sawnick agreed and amended his motion and Mr. Daige seconded the amendment. The motion passed unanimously.

Dr. Steven Faherty read a prepared statement (please see attached).

Mr. White told Dr. Faherty that he did not object to the bill that Representative Mayfield was proposing requiring that they be under the Public Service Commission (PSC), because they already do that voluntarily. What he did have a problem with is if it had passed that 35 other cities might have been affected. He then spoke on the recent Tallahassee trip where Mayor Sawnick, Mr. Abell, Mr. Daige, Mr. Gabbard and Mr. Vitunac went on. He said that these gentlemen went up there with no intentions of speaking on the electric. He said their travel expenses were not paid out of the electric fund. He felt a little biased when you (Dr. Faherty) talks, he comes across like they are a bunch of crooks. He said that each Councilmember lives in the City and pays City taxes and utilities. They have done away with the 10% surcharge for out of City residents that was once charged to their electric bills. Also, this Council and City staff will listen if someone calls them. He recalled a situation where someone living in Dr. Faherty's neighborhood, called him while he was Mayor and told him that he had no electricity. Mr. White made a few calls to the City and the electricity was turned back on in a short amount of time. He felt that if that person had FP&L for their utility provider that would not have happened so quickly.

Mr. Heady said that the City reimbursed his mileage when he visited OUC in Orlando. He requested that the City Manager put on the next agenda discussion of Florida League of Cities (FLOC) and Florida Municipal Power Association (FMPA) dues. He was told that the dues for both of these organizations has already been paid for this year.

Mr. Daige commented that they went to Tallahassee and carried a packet of information, which is on file in the Clerk's office and anyone can receive a copy of it. He reported on the trip at the last meeting and it is attached to the April 6, 2010 minutes. He said that the City Attorney and the City Manager could provide the names of each of the representatives that they spoke to while they were in Tallahassee.

Mr. Abell stated that Dr. Faherty continues to make statements that are incorrect. He said while they were in Tallahassee they did not discuss anything to do with the bill that Representative Mayfield was proposing. He mentioned that the number of utility customers that the City has, has been explained to him. When they went to Tallahassee the City Manager rented a car which they all drove to Tallahassee in which they knew was cheaper than if each of them was to drive their own car and have the City reimburse them at .50 per mile. As far as the Finance Commission and Utilities Commission's not having meetings, they only meet when necessary and if they have something on their agenda to talk about. He brought up the prospect of having a Utilities Authority and said that there were several meetings held over a three month time frame and what came out of those meetings was that the utility rates would go up if they had an Authority. There was no interest expressed that they would benefit by having a Utilities Authority.

Dr. Faherty requested to respond to Mr. Abell's comments. Mayor Sawnick did not allow him to speak at this time. Mr. Heady asked the Mayor to allow Dr. Faherty to speak because he thought that it would be efficient use of time to allow the exchange at this time. Mayor Sawnick did not allow it.

Mr. Robert Walsh said that of everyone sitting on this Council there is only one Councilmember who has been digging into the mess that this Council inherited. He does not agree with limiting the public to only being allowed to speak for three minutes.

Mr. Ted Gordon told the Council that they (Council) could not continue to operate the way that they are. He directed his comments also to Mr. Heady and said that they (council) literally have to work as a team. He said go read the book how to win and influence people, how to work with each other. He said that these people (Council) dedicate a lot of their time on our behalf and he thinks that they are doing a pretty good job. He said sure he has some reservations about some of the things that have been done, but by golly they spent a lot of time up here (dais) and he doesn't think that they demand the abuse that they have been receiving.

Mr. J. Rock Tonkel wanted to deal with the issue of the request for a joint workshop meeting between the City and the County. He said that the County Commission sent a letter to the Mayor requesting this workshop. He read parts of the letter and encouraged Council to enter into this discussion, in good faith and have further conversation with

interested citizens. He requested a copy of any response that the City sends to the County Commission. He brought up the County Commission meetings and noted that there is a different environment in the County then here in the City. The County encourages conversation and debate. He said that the Councilmembers are important role models for this community and he pleaded with them to forget about time limitations because it will help get the business that needs to be done with the help of the public.

Mr. Heady made a motion to have the workshop that Mr. Tonkel is suggesting.

Mayor Sawnick said that item will be discussed under City Manager's Matters.

The motion died for lack of a second.

Mr. Joseph Guffanti stated that tonight they were going to watch the presentation that Mr. Gabbard made to the County Commission back in 2008 (item is 10-D8 under Mr. Heady's matters). He said that when they watch it that they need to pay attention to the aura of urgency that Mr. Gabbard expresses and the danger that he portrays that the City of Vero Beach was in because someone contacted him about the position of the City's bonds. What concerns him at the moment is the recent memo signed by the City Manager to Mr. Heady, which states that he checked his files and found no written documents made concerning his comments. He couldn't believe that when someone makes such a statement on an important issue that there is no backup material available. He told Council to also notice the usage of the word "settle" in the video and all of them should wonder what context that word is made and where he (Mr. Gabbard) got it from. He then made some comments referring to the memo that Mr. Abell had on the agenda regarding the efficiencies of running a Council meeting.

Mr. M.J. Wicker stated that several weeks ago he approached Mr. Gabbard about the possibility of reopening the Dodgertown golf course. He has explored a number of different avenues and he has provided Mr. Gabbard with a memo hoping to get a letter of intent in pursuing this opportunity to open the golf course back up. It is not so much about the money as offering the community an affordable option of recreation.

Mr. Gabbard explained that there are two potential proposals being offered to restore the golf course. One is from Mr. Wicker and the other is from the Wadsworth Foundation. Also, Mr. Craig Callan, with MiLB, has expressed an interest for the land to use for some more ball fields. Staff will put out a bid for proposal, which will outline the rules on what the City expects and bring these things back to Council to see if they want to take any of these different parties up on an offer. He also will give a more in depth report at their next meeting.

Mr. Daige asked Mr. Gabbard if that gives him enough time to get the paper work out to these different individuals.

Mr. Gabbard answered yes. He said that he would try to get the RFP out by next week so Council has time to look at it.

Mr. Daige commented that Council has always been open to allow people to speak. The only thing that he would ask is that people be civil. He said that right now there is no time limit for people coming up to express themselves.

Mr. Heady returned back to the discussion of the golf course and commented that the idea to send out an RFP is nice, but what you do when you do that is limit the proposal that you are going to get back by statements in your request. He said if there are a couple of entities who are interested in doing this then why don't we ask them to give us their proposal. He said let them send to us what they propose.

Mr. Gabbard explained that these interested parties have a number of questions as to what the City expects from them.

Mr. Heady asked Mr. Gabbard to send him a list of questions that these parties have.

Mr. Gabbard said that as for the Wadsworth Foundation, all he has is some information as to what they have done in the past. He will make sure that Council is informed as they move forward on this and that they are involved in the decision.

Mr. Wicker said that of course the most important thing for him is what it is going to cost. He wants people to be able to play golf at an affordable rate and hopes to charge the same fee that was in place when the golf course closed.

Mayor Sawnick was confident that the process they will be going through is the right way.

Mr. Gabbard indicated that a meeting has been scheduled with County staff to talk about the golf course and to make sure that MILB is taken care of.

Mr. Heady requested Mr. Gabbard to give him any information that he has. He was concerned on how much money they spend and before spending any money on RFP's that he wants to see what staff has in mind.

Mr. Gabbard will provide Mr. Heady a copy of the 2007 RFP.

D. Adoption of Consent Agenda

Mr. Daige pulled items 2D-1) and 2D-4) off of the consent agenda.

Mr. Heady pulled items 2D-3) and 2D-4) off of the consent agenda.

Mr. White made a motion to approve item 2D-2) on the consent agenda. Mayor Sawnick seconded the motion and it passed unanimously.

1. Regular City Council Minutes – April 6, 2010

Mr. Daige made it clear that the minutes were accurate, he just wanted to point out on Page 10, Paragraph 8, where Mr. McGarry states that the Ordinance (amending Chapter 30, Alcoholic Beverages) preempts home rule. He has a problem with the Ordinance if it preempts home rule and doesn't want to see that in the Ordinance. He will be sending Council some information on this.

Mr. White made a motion to approve the April 6, 2010 minutes. Mr. Daige seconded the motion and it passed unanimously.

2. Special Call City Council Minutes – March 29, 2010

These minutes were approved under the consent agenda.

3. Habitat Cracker Hoedown

Mr. Heady referred to the memo that they received on this request and noted that the Chairman requested to appear before City Council and tell them about the event. He asked that this be done.

Mr. David Taylor, Hoedown Chairman, reported that this is the annual major fundraiser that Indian River Habitat has. They will be having a dinner, bar service, silent auction, there will be a mechanical bull and some game booths. The event will be held at Riverside Park, the same place where it has been held for the last two years. He said they are charging \$75.00 per person for the event.

Mayor Sawnick made a motion to approve the request from Indian River Habitat for Humanity. Mr. Daige seconded the motion and it passed unanimously.

4. Monthly Capital Projects' Status Reports

Mr. Daige asked that in the future that the pages be numbered in the Monthly Status Report. He had a question for the Water and Sewer Director, where it states change order to date. He wanted to know what the revenue source was for that amount of money, where the money is coming from, and did he receive grant money.

Mr. Rob Bolton, Water and Sewer Director, explained that the change order was approved by Council months ago. He went over the reason for the change order and explained that the funding for this project was coming from the SRF loan funding program at a low interest rate.

Mr. Heady had a question on this same page. He asked if the City decides to join the County in respect to water and wastewater, would this project even be needed.

Mr. Bolton said that the County's interest in joining on the wastewater end of things would be much more expensive than this. He said by completing this project, it gets the City through all of their DEP regulations that they have certain consent orders on that

they would no longer send any water into the lagoon. He said recently there have been new future regulations that have come out and by doing this they have met all of these new regulations.

Mr. Heady commented that it just seems to him that they continue to spend a ton of money on water and sewer and at the same time they have questions as to whether or not they are going to have the customer base that they currently have and whether or not it is in the taxpayers interest to join forces with the County.

Mr. Bolton said that they were required to spend these dollars by a time given. They were under a consent order, as of January 2009, to have everything in place by eighteen months and that will be done.

Mr. Heady referred to the State Road A-1-A landscape improvements. He asked if there were any estimates to when the sidewalks would be completed.

Mr. Monte Falls, Public Work's Director, stated that they are 99% complete.

Mr. Heady then referred to the Bay Drive and River Drive Bridge Replacements and asked why it has taken so much time to get this project completed.

Mr. Falls explained that they needed to make a change in the way that the utilities were located and it took them an additional twenty days in order to get the necessary permits.

Mr. Heady made a motion to accept the Monthly Capital Projects' Status Report. Mayor Sawnick seconded the motion and it passed unanimously.

Council took a five-minute break at 7:33 p.m.

3. PUBLIC HEARINGS

- A) An Ordinance amending Chapter 2, Article VIII (Purchasing and Contracts) of the Code of Ordinances of the City of Vero Beach to replace Section 2-351(7), "Local Bidders," with a New Section 2-352, "Local Preference in Purchasing or Contracting," to provide for an expanded Local Preference Policy and Procedure for Local Businesses in City Purchases or Contracts; including Brevard, Indian River, Martin, Okeechobee, and St. Lucie Counties in the definition of "Local Business;" providing for severability; and providing for an Effective Date.**

Mayor Sawnick read the Ordinance by title only.

Mr. John O'Brien, Manager of Purchasing, provided backup material suggesting that they remove Brevard and Okeechobee County from this Ordinance.

Mr. White asked if they do that, could they still pass this Ordinance tonight. He was told that they could make an amendment to the Ordinance and still approve it tonight. He then asked Mr. O'Brien to explain why he wants to remove these two Counties.

Mr. O'Brien explained that Okeechobee County provides 5% local preference to Okeechobee County bidders, but does not include any other counties or cities. As a result, if a City of Vero Beach contractor was the low bidder on an Okeechobee County bid and an Okeechobee County contractor was within 5% of the Vero Beach contractor, the Vero Beach contractor would be eliminated. However, if an Okeechobee contractor is low on a City of Vero Beach bid and a City of Vero Beach contractor is the second lowest, the Okeechobee contractor would be awarded the City's bid since we consider him local. He said with Brevard County there are four categories to consider, so if you have a bid under \$500,000 in Brevard County and an out of State contractor is a low bidder, a Brevard County contractor within 4% of the low bidder and a City of Vero Beach contractor within 3% of the low bid, the Brevard contractor would receive the award. In a City of Vero Beach bid, Brevard County receives the same preference as a City of Vero Beach contractor.

Mayor Sawnick opened and closed the public hearing at 7:45 p.m., with no one wishing to be heard.

Mr. Daige agreed that both Counties should be removed from the Ordinance.

Mayor Sawnick also agreed and added that they could always add them back in the future.

Mayor Sawnick made a motion to remove Okeechobee and Brevard County from this Ordinance. Mr. White seconded the motion and it passed unanimously.

Mayor Sawnick made a motion to adopt the amended Ordinance. Mr. Daige seconded the motion.

Mr. Heady commented that he has fought for local preference for a long time and this Ordinance will allow the City to award bids based on local preference. He read the existing law that is being removed. The new law is five pages, which is a lot of work on staff to have to add all that new language. He said that they should be finding ways to reduce laws and not to enlarge them. He would urge Council to stick with the current law.

The Clerk polled the Council and the motion passed 4-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, Mr. Abell yes and Mayor Sawnick yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution of the City of Vero Beach, Florida, repealing and replacing Resolution 2008-30, and amending The Veterans Memorial Island Sanctuary**

authorized uses and Memorials to add additional area immediately East of the Veterans Memorial Island Sanctuary to existing committee rules regarding Memorials and Plaques; providing for an Effective Date.

This Resolution was pulled off of the agenda and will be heard at the May 4, 2010, City Council meeting.

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, instituting a one hundred eighty (180) day Moratorium on the Issuance of Development Orders to Establish “Pain Clinics” or “Pain Management Clinics” within the City of Vero Beach to allow time for the City Staff to further review regulatory options and formulate and adopt regulations for these Clinics; providing for severability; and providing for an Effective Date.**

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, stated that Council directed staff to establish a 180 day moratorium on the issuance of development orders pertaining to the establishment of pain clinics and pain management clinics in the City of Vero Beach. The Ordinance is based on similar Ordinances enacted by local governments in Broward, Martin, and Palm Beach Counties. The Ordinance is intended to prevent such clinics from being established in the City of Vero Beach until such time that staff reviews the possible measures for regulating these clinics and prepares the appropriate regulations for consideration by Council. He told Council that they should be aware that Senate Bill 2272 is currently moving through the Florida Legislature, which may place additional regulatory and reporting requirements on such clinics.

Mr. Charles Vitunac, City Attorney, told Council that since the law does not favor moratoriums and the Legislature will have acted on it in the next several weeks, they felt that six months was sufficient and if it is not done they can ask for an extension. He said that it is easier for them to defend, if challenged, if the moratorium was for a shorter period such as six months.

Mayor Sawnick made a motion to approve the Ordinance on first reading and to set the first public hearing for May 18, 2010. Mr. Daige seconded the motion.

Mr. Daige was in agreement with extending the moratorium if they needed to.

Mr. White wondered if they should put in the Ordinance that the 180 days can be extended by the will of the Council.

Mr. McGarry said they could have put that in the Ordinance but felt that the shorter the moratorium the more defensible it is. He hopes that the Florida Legislature will enforce some rules that will take care of this problem.

Mr. Abell referred to Page 3, Paragraph 2, Section C, and said that he thought that there were some words that need to be changed. Staff agreed that the word “is” needed to be inserted between the words “who and a.”

Mr. Heady made it clear that when he brought this matter up at their last meeting, what he wanted to do was make a motion for Council to approve a moratorium, but not have the legal staff have to draw up this five page document. All that was needed for staff was direction from the Council that they not be allowed to issue any permits for pain clinics and that is all it would take.

Mr. Abell explained that Council is a little gun shy because they recently had an issue and an Ordinance in place where someone couldn’t understand where he lived. So they are trying to make their Ordinances more specific.

Mr. Heady has found that when government tries to identify every specific item that may come up in the future, that the only thing they do is open up more loop holes. He understands Mr Abell’s point about the election law and thought that it was clear. He just thinks that they need to stop making needless work for themselves.

Mr. Vitunac explained that the reason they did this was because they will win in court this way and if they did it the way he suggested they would probably lose.

Mr. Heady told Mr. Vitunac that he has not had a good track record of telling them when they will win in court or not win. He said that the City spent millions of dollars based on his advise that they would win and they did not. He said the reality is you don’t know who will win or who will not win in court. He said that if someone came to them and asked for a permit and they were turned down by the City, the State Legislature will have made up their mind before the issue could even get to court.

The Clerk polled the Council on the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

6. CITY CLERK’S MATTERS

None

7. CITY MANAGER’S MATTERS

A) Name Change of 14th Avenue to Main Street – Requested by Main Street Vero Beach

This item was heard earlier in the meeting.

B) Electric Utility Billing – John Lee

Mr. John Lee, Acting Electric Utilities Director, commented that if you mention electric utilities in this town you get some strong emotional responses. He said tonight he wanted to present some facts to the public and Council. He provided them with a copy of a utility bill and explained everything on the bill line by line (please see attached). He also went through Bulk Power Cost, Lowest to Highest Residential Bill Comparison, March 2010, and the Electric Rate Comparison – March 2010.

Mayor Sawnick suggested waiting until after they have received some comments back from FP&L before setting a joint meeting with the County.

Mr. White expressed that citizens don't understand what Bulk Power Cost means. He suggested putting Fuel Cost in place of Bulk Power Cost.

Mr. Lee explained that customers tend to tie fuel cost in with the price of gas that they purchased at the gas station, which is why he doesn't agree with putting "Fuel Cost" in place of "Bulk Power Cost."

Mr. Daige mentioned to Mr. Lee that he talked about FP&L base rate. He said that it was his understanding that this base rate is not the same throughout the State of Florida.

Mr. Lee said that they may have some different franchise agreements here and there, but their base rate is their base rate.

Mr. Daige complimented Mr. Lee on explaining Bulk Rate and felt that some explanation should be on the bills so the public understands what it means. He expressed that he still wants to see the utility bills continue to go lower. He said if they need to bring this suggestion back up at their next meeting, he would be happy to do that.

Mr. Lee said that he would rather not put the explanation on the bill, but could put in some sort of generic insert.

Mayor Sawnick suggested because this will cost money that they wait until their next meeting and discuss this in more detail.

Mr. Daige had no problem with just typing something on the bill.

Mr. Lee went over what has to be done to change anything on the bill and said it is easier to put an insert in the envelope along with the bill.

Mayor Sawnick asked Mr. Lee to bring this back to them at their next meeting for further discussion.

Mr. Heady has heard over and over from the City Manager that they have lost the public relations war, which is one of the reasons to have this joint meeting with the County. He agrees that there will be certain areas that will not be discussed because of negotiations with FP&L. However, for them to not be at that meeting just will further damage the Council and damage the utilities and what they need to do at this time is be as open and transparent as possible. He reiterated that it was important for them to consider the County's request in holding a joint meeting and agree to set a date. He made that in the form of a motion.

Mayor Sawnick suggested that they put this item on their next meeting under New Business.

Mr. White asked that if there is going to be a joint meeting, will the County pay for Sue Hersey and R.B. Sloan to attend the meeting.

Mr. Heady told Mr. White that no one has asked for them to be at that meeting.

Mr. White felt that these individuals needed to be at that meeting because they have the knowledge to answer questions and making sure that the facts and truths come out. He felt that if they were going to agree to this meeting, then it needed to be done the right way.

Mr. Daige would like to see this item on their next agenda under City Manager's Matters. The City Manager did not have a problem with this item being placed under his matters.

The motion died for lack of a second.

Mr. Abell added that anything discussed at this meeting needs to be carefully considered because they are in a situation right now where they are waiting to see if anyone is interested in buying the system.

Mr. White suggested sending a copy of DVD of the meeting where they discussed utilities where both Mrs. Hersey and Mr. Sloan were present over to the County for them to review.

C) Veterans Memorial Island Sanctuary Resolution

Mr. Heady referred to the map that was provided along with the Resolution. He pointed to some additional area, which will be included under the Veterans Memorial Island Sanctuary Committee's control. He said if you look at the square it encompasses the road. So what they would be doing is putting a road under the care, control, and custody of this Committee. This would mean that they would be prohibiting bikes from entering the roadway. He suggested when this Resolution is heard at their next meeting that the center island be included, but that they exclude the road.

Mr. Vitunac stated that he would pass this along to Mrs. Helen Glenn, Chairman of the Committee.

8. CITY ATTORNEY'S MATTERS

A) Tolling Agreement for Certain Potential Bert Harris Act Lawsuits

Mr. Vitunac explained that Michael O'Haire is the attorney for several property owners who own land along A-1-A and who claim that they have causes of action against the City based on their inability to develop the land because of traffic concurrency issues. The Planning Director is working on amendments to the City's Comprehensive Land Use Plan, which would resolve these issues. The problem is that the amendments would not be adopted until this summer and some of Mr. O'Haire's claims by then will have expired (statutes of limitations run out). Mr. O'Haire has proposed a solution, which has his clients and the City entering into a "tolling agreement" so that the statute of limitations will not run during the period from the date of signing this agreement until the date either party exits the agreement. Then if the City Comprehensive Plan amendments are passed, the issues would be resolved. However, if the amendments don't pass then the City would exit the agreement and his clients could pursue what rights that they have. The benefit of this agreement is that it makes it unnecessary to file lawsuits to achieve the same result.

Mr. Heady made a motion to approve the Tolling Agreement. Mayor Sawnick seconded the motion.

Mr. White wanted to hear from Mr. McGarry on the concurrency. He noted that they entered in conjunction with the County on a volunteer concurrency as a test for the State. The State had come and offered to widen A-1-A however the residents and property owners did not want it widened so it has remained two lanes. He said either they go by the rules that are set or they do away with concurrency.

Mr. McGarry explained that they are required under Florida Statutes that under their comp plan, that they have set up a concurrency mechanism. He said that all of their roads have a level service standard and the usual level of service standard is at "D" level. However, due to all the traffic on the road it has been a level service "F" instead of "D". He said if they do change the level of service they propose to go to a "D plus level," which he has talked to the County about. He said then this would allow development on these properties being represented by Mr. O'Haire. He said that it is in their comp plan to actually do this.

Mr. White asked what their liabilities are if they stayed with the concurrency that is on there now.

Mr. McGarry explained that they are obligated to provide a roadway system.

Mr. White had a problem that they are not taking care of the situation by allowing more development.

Mr. McGarry said that they would have to go through the hearing process on this and he doesn't see this as a major problem.

Mr. Daige asked how many owners are there.

Mr. Michael O'Haire, Attorney, stated that he represents the three families that own the property involved. The reason he asked for a tolling agreement from the City is because there are two options. He said that they could either engage in a lawsuit because the clock is running or do this tolling agreement. He understands Mr. White's concerns, but he has to appreciate that these properties are vacant and these property owners have not been able to use their properties because of a concurrency deficiency through no fault of theirs.

Mr. Daige wanted to know how long ago Mr. O'Haire approached staff about this problem.

Mr. McGarry said that he was made aware of it about one year ago.

Mr. Daige then asked Mr. McGarry if he has worked with any of the engineering firms that would represent these properties.

Mr. McGarry answered no. He said that he has just been working with in-house staff.

Mr. Daige wanted to be informed if there are any engineering firms that do come in or have an interest in this.

Mr. Abell asked whose concurrency is this.

Mr. McGarry said that it is ours (the City). They have adopted concurrency in both their comp plan and their land use regulations.

Mr. Abell wanted to know where this stands in accordance with the 2035 MPO plan. He doesn't remember any widening of the roads to four lanes.

Mr. McGarry explained that they were not talking about four lanes. He reiterated that the problem is with the level of service.

Mr. White reminded Council when the residences at Cache Cay wanted a traffic light they asked the State and the State said that there was not enough traffic to warrant a traffic light so the City paid for the traffic light. He said that this traffic light is next to all of these properties.

Mr. Vitunac included the map of these properties as an Exhibit.

The motion passed unanimously.

9. CITY COUNCIL MATTERS

A. Old Business

1. Councilmember's time allotment under his/her matters – Requested by Mayor Sawnick

Mayor Sawnick recalled that he brought up Councilmembers time allotment at their last meeting. He said after a lot of deliberation with not only the citizens of this community, but the other Mayors in the County and other Councilmembers around the State, the process in the meeting where they are discussing correspondence, committee reports and comments are areas where action is not suppose to be taking place. He said that a lot of cities around the State have limited Councilmember's comments during this time. He said that it is important for the public to know that no action will be taken under Councilmember's Matters. He said that when he spoke to the other Mayors of the County about this they agreed that this second section be limited to correspondence that they have receive, committee reports or comments on general issues. He felt that it would be productive for them to do this at this time. He has listened to the public and this is what the public is telling him to do. In addition, he told Mr. Daige at times he gets lengthy with his committee reports, so if someone should go over the ten minute time allotment then exceptions could be made. He reiterated that action items are not to be heard under Councilmember's Matters.

Mayor Sawnick made a motion to limit Councilmember's Matters to ten minutes for correspondence, committee reports and comments with an extension being possible as long as there is a majority vote from the Council. Mr. Abell seconded the motion.

Mr. Abell said that this is very similar to what he mentioned two meetings ago.

Mr. White commented that usually under Councilmember's Matters the Council reports on their correspondence that they want to relay or they give a Committee Report. All of them belong to several Committees that they are supposed to attend and report on. The City Council is representing the City at these meetings and reporting back and that is what this item is for. He said under comments that you can't put on every meeting the exact same agenda items. He said that the items have been discussed so they need to be put to bed and lets move on. This Council has not talked about any future endeavors or future problems that they need to handle as a Council. This Council needs to be discussing the problems in hand and not the problems in the past. He said in the last six months they have not accomplished very much. They need to get back to having professional business meetings. He said a lot of people are confused that this is a public meeting. He agreed that the public should be allowed to speak and watch the business that Council takes care of. He said that Council needs to know the Committee meetings that each Councilmember has attended and be given a report.

Mr. Heady recalled that the Mayor said that other cities do it this way. He asked the Mayor to name six cities that do this.

Mayor Sawnick did not have the names of the cities written down, but would get this information to Mr. Heady.

Mr. Heady was surprised that he didn't remember the names of any cities. He asked if he could name on city any place that was doing this.

Mayor Sawnick mentioned Hillsprings, Montana.

Mr. Heady told the Mayor that the changes that he proposes for their meetings are because of another city, which would be Hillsprings, Montana. He asked the Mayor to name a Florida city and which Councilmember is the offender and is not following the rules.

Mayor Sawnick said that he was not addressing this towards any Councilmember. He did say to Mr. Heady that sometimes his items are long and repetitive.

Mr. Heady asked him if there has been any other Councilmember, other than him.

Mayor Sawnick said not that he is aware of.

Mr. Daige commented that if you go back and look at previous tapes they will find that when he gives his Committee Reports it outlines what he is doing around the City, for the good of their people. He said that the public wants to know what their elected officials are doing. He said if you look at his reporting time you will find that the time he spends giving his report is very short. He told Mayor Sawnick that he appreciated hearing from him, but he also takes quite a bit of time when he gives his reports, which is fine. He felt that under Councilmember's Matters, where there is a space for comments that individual Councilmembers should be allowed to make their comments. He said that he would stand by the statement that he made at their last meeting "That as far as how they conduct their business under Council matters, he is in favor of allowing Councilmembers to speak and it is up to them to be mindful of the Council and taxpayer's time. As individuals they need to move through the agenda, conduct their business, and be aware of the time. He said that time is important. He is not interested in restricting any member on this Council." He is in agreement that when an item is pulled off the consent agenda that it should be addressed immediately. Also, when they put an item on the agenda that there should be some backup material provided. He said in the past Councils' have conducted their business very well. He said if a Councilmember brings up things that are lengthy then there constituents will make that known. He will continue to let the general public know what he is doing and that he will be brief.

Mayor Sawnick brought up for the last six months they have been letting some things go and from his correspondence with the public this is what they want and he has brought it forward. He said that this is not about limiting, but about helping out Councilmembers to get their point across in an effective way.

Mr. Heady made a public records request to the Mayor to receive a copy of all of the correspondence that he has received.

Mayor Sawnick explained that there were a couple of e-mails which the Clerk has, but mostly it has been through verbal correspondence, conversations with the public.

Mayor Sawnick called for a vote on the motion. Mr. Heady requested to speak under discussion and he was not allowed to speak. The Mayor continued with the vote on the motion and it passed 3-2 with Mr. Heady and Mr. Daige voting no.

2. Items on agenda under New Business and Old Business – Requested by Mayor Sawnick

Mayor Sawnick asked that items that need action be placed either under Old Business or New Business and that if possible backup material be provided. He made that in the form of a motion. Mr. Abell seconded the motion.

Mr. Heady asked Mayor Sawnick if he had any names of the people that he talked to regarding the last item that they just discussed.

Mayor Sawnick told Mr. Heady that was not what they are talking about at this time.

The motion passed 5-0.

3. Discuss Efficiencies for Vero Beach Council Meetings – Requested by Vice Mayor Abell

Mr. Abell mentioned that they have taken care of most of the things that he outlined in his memo. He felt that the time for their Council matters being limited to ten minutes was good. He recalled that at their last meeting they voted on any items being pulled from the consent agenda be discussed under the consent agenda and not moved to City Manager's Matters. He agreed with that, but his suggestion was going to be that if you wanted to remove an item from the consent agenda to do so by 3:00 p.m. on the Monday prior to the meeting by notifying the Charter Officer who was instrumental in putting the item on the agenda. He thought that this was a good way to do it because anyone wanting to pull an item off of the consent agenda might get the answer to their question and the item won't have to be pulled. He thought that this was a better management of time. He said that when an item is removed from the consent agenda it is telling him that someone has not done their research as to what the item really is.

Mr. Abell made a motion to add to the previous vote that was made two weeks ago, that to remove any item from the consent agenda be done by 3:00 p.m., on the Monday prior to the meeting notifying the Charter Officer who put the item on the agenda, to understand what the item was about. If an item is still removed from the consent agenda then it is heard at the time that it is removed.

Mr. Daige commented that a taxpayer could come up to them with a major concern about an item that is on the consent agenda after 3:00 p.m. on that Monday before their meeting. He felt that right now the way they are handling consent agenda items is working well. He said usually when he pulls something from the consent agenda it is for the public's benefit to hear about something on that item. He spends a lot of time with the Charter Officers during the week getting questions answered. He feels that it is a bad idea to do this. It goes back to being transparent and he doesn't want to be accused of being nontransparent and he thinks by doing something like this sets a bad perception. He wanted to leave things the way that they are.

Mr. Abell made it clear that this has nothing to do with transparency.

The motion died for lack of second.

Mr. Heady asked if he could comment on this item. Mayor Sawnick said that they are moving on in the agenda. Mr. Heady said that other members of the Council can comment on it, but he can't. He then thanked the Mayor.

B. New Business

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters

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

Mayor Sawnick reported that he attended the Indian River County Mayor's meeting, an MPO meeting, the Hibiscus Festival and on this Saturday he will be participating in the Day of Service, also on Saturday the Mayor's beach clean-up will start at Mulligans, on Monday morning he has a meeting with the City Manager, County Administrator and Peter O'Bryan, and then on Monday night he will be attending the Junior Staff Volunteer Dinner. He spoke with the City Manager that if they do decide to sell the Power Plant that they need to get what it is worth and they need to have a plan. He reminded Council that he still wanted five ideas from them for the June quarterly budget meeting.

3. Comments

B. Vice Mayor Sabin Abell's Matters

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

Mr. Abell reported that he attended the Sustainable Expo held at the Community Center, the Rotary Club Exchange Program where there were five Korean People visiting who were learning about America, he also attended an MPO meeting and the Treasure Coast Regional Planning Council meeting.

Mr. Daige would like a request to go before the MPO and that is that there be a walking trail on 20th Avenue near the canal. He will be providing something in writing.

3. Comments

C. Councilmember Tom White's Matters

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

Mr. White brought up Councilmembers attending their Committee meetings. He said that he touched on this earlier and wanted to elaborate just a little more. He brought this up because a question was asked of a Councilmember on whether or not they served as an alternate on the MPO and that Councilmember didn't know. He said the whole point is that Mr. Heady has not attended any of his Committee meetings for the last six months.

Mr. Heady stated that he was aware of the Committees that he serves on and is aware that he is the representative from City Council to certain Committees that he has been lax in attending his Committee meetings. He said that he has attended certain Committee meetings like Recreation Commission and the Veterans Memorial Island Sanctuary Advisory Committee meeting, whether he was a representative to them or not. It is not his understanding that it is mandatory for him to be at these meetings. His understanding is that he is the representative to these Committees and he is to attend if they fit into his schedule.

Mr. White explained that was the point he was trying to make. He wondered if they should have some sort of form saying that it is mandatory for a Councilmember to attend their Committee meetings if possible. He just wanted to make sure that it is understood that when you are appointed to a Committee then you have an obligation to attend the meetings.

3. Comments

D. Councilmember Brian Heady's Matters

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

Mr. Heady reported on the Elected Municipal Officials class that he attended last week. He said that one of the most interesting debates was over honest service fraud.

1. Date for presentation by Dr. Faherty and Glenn Heran

Mr. Heady reported that Dr. Faherty and Mr. Heran are going around the County giving presentations on the City utilities and he felt that the City should allow them to come before them. This way City residents are aware of when the presentation is going to

occur. He made a motion that they add (Dr. Faherty and Glenn Heran presentation) to the next agenda.

Mayor Sawnick told Mr. Heady that he did not need a motion to add something to their agenda. He suggested to Mr. Heady to place this item on their next agenda under New Business and they will be better prepared to vote on it.

Mr. Abell commented that they just voted on the process and that was not to take action under Councilmember's Matters.

2. Date for joint City/County Meeting

This item was voted down earlier in the meeting.

3. Still waiting for written answers from City Manager

Mr. Heady stated that he was still waiting for written answers from the City Manager.

4. OUC Contract

5. 50 MM penalty

Mr. Heady commented that at the last meeting he asked some questions about the OUC contract because he was trying to get it clear in his mind how the contract came to be. He said it was interesting that the Mayor told the Council that they did not have to answer questions. He said that this is the only time and opportunity at a noticed meeting when a Councilmember can ask a question on something that might come before them for a vote. He said some of the questions involved the fifty million dollar penalty in the OUC contract and it would be nice to know some answers on that. He said that if they are going to refuse to get answers then the only remedy that is available is to file suit, which will be a shame when Councilmembers cost the City taxpayers and utility ratepayers more money rather than just ask questions.

6. November Elections

Mr. Heady mentioned that there are four Councilmembers up for reelection this year and he thought that Channel 13 would provide an excellent opportunity for Councilmembers to get their message out without spending a lot of money. It also is a good opportunity to have the utility referendum debated. He said the City could put up some staff to debate the issue.

Mr. White told Mr. Heady that there is a policy in place for Channel 13 and it does not allow any politicking or debating on this government channel.

Mr. Heady asked Mr. White to provide him with the law that bars them from doing that.

7. Debate of Sale of Electric

8. 8/12/08

Mr. Heady tried to play a part of the August 12, 2008, but because of audio difficulties the sound could not be heard. He explained that the City Manager appeared before the County Commission to discuss the electric utilities. The City Manager told the County Commission that they needed to be careful of unintended consequences and that what they were dealing with was a very big issue that involved a lot of money. The City Manager said that just this morning he received notification that one of the bonding companies was going to call the bond, they wanted to settle it and they wanted to pay it in full. When he heard that one of the bonding companies had called the bond and that the City had received notification, he was concerned that the discussions could trigger some default clause in a bond and cause a bond to be called. He recently asked for a copy of this notification from the City Manager and he received a memo back from the City Manager saying that there were no documents relating to those comments. He wanted to know at this time whether that was a truthful statement and whether or not a bond had been recalled.

Mr. Gabbard explained that what he was referring to was in the situation with the bonds was with FMPA that deal with the assets, which included the Nuclear asset and Stanton 1 and Stanton 2. He tried hard to recall why this conversation came up and he was reminded by Mr. Lee, as well as their consultants and Mr. Sloan, that there were some concerns from FMPA about that. He asked Mr. Lee to come forward and briefly explain what transpired.

Mr. Lee stated that when the whole concept of selling the utilities came up there were some questions on whether there was some asset value on the St. Lucie Nuclear and Stanton 1 and Stanton 2. He received a call from Mr. Tom Readdy, from FMPA, who was confirming that they had a right to know what the City was doing because it could have a negative effect on those bonds. He said that it was just a courtesy call from Mr. Readdy.

Mr. Heady asked Mr. Lee that there was no calling of any bonds that he knows of.

Mr. Lee said no. He relayed this information to the City Manager that he received a courtesy call from the FMPA staff who had some concerns as they go forward with a possible sale, that they be kept informed.

Mr. Heady questioned if there was discussion at that time of a possible sale.

Mr. Lee answered yes. He said that they were calling for the sale of the utilities.

Mr. Gabbard added that the issue that was being discussed at the time was a vote in the Legislature to force a referendum to sell the electric utility system.

Mr. Lee explained that this referendum did not directly call for the sale of the Power Plant. What was before the Legislation (Stan Mayfield bill) was to create a Utilities

Authority. This is when discussions came up about transferring the assets to the Authority and how that would be done. He said that FMPA heard about this and said that they want to be involved in any of those discussions.

Mr. Heady continued talking about what was on the DVD and the next thing that came out was that there have been evaluations of the Power Plant done and there were some numbers thrown out and he asked to see these evaluations because they are in a position now where those evaluations are very important to them. When he asked for a copy of these evaluations he received a memo back from the City Manager saying that there are no documents/evaluations. He asked Mr. Gabbard if there were evaluations done at that point.

Mr. Gabbard explained that those numbers were provided to him by Mr. Sloan. There was no study actually done.

Mr. Heady said that those are estimates of the value by Mr. Sloan. He asked if there was anything in the files that would support those numbers.

Mr. Gabbard felt that the estimate that he quoted at the August 12, 2008 County Commission meeting was a pretty fair estimate and he would stand by that. At the time, he was trying to explain to the County Commission that this is a very complex process and there is a lot involved. He mentioned that Mr. Lee also spoke later at that same meeting. He said that he has been told by Mr. Tom Nason, former City Finance Director, that he did an estimate of the value of the Power Plant when he was employed as their Finance Director.

Mr. Heady asked the Clerk to see if she could locate the report that Mr. Nason did.

Mr. Heady mentioned that he was told in his questions on the OUC contract that the consultant had certified that the OUC contract that she had given to the Clerk was in fact the original that had been on the table in April when the City Councilmembers individually reviewed it. He asked the Clerk if she recalled Mrs. Hersey certifying that document. Mrs. Vock said that Mrs. Hersey did not certify anything.

9. Direction City Manager selection process

This item was not discussed.

E. Councilmember Ken Daige's Matters

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

Mr. Daige provided a written report (please see attached).

- 3. Comments**

11. ADJOURNMENT

Mr. Heady made a motion to adjourn tonight's meeting at 10:02 p.m. Mr. White seconded the motion and it passed unanimously.

/tv