

**CITY OF VERO BEACH, FLORIDA**  
**MAY 4, 2010 9:30 A.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 Greg Sempsrott of First Church of God 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**

Mr. White referred to Old Business and pulled items 9-A-3), 4), 5), 6), 8) and 9) off of the agenda. He said that these items have been on the agenda for the last six months, discussed and answered. He then referred to New Business and pulled items 9-B-2), 3), 4), and 5) off of the agenda because there is no backup material provided. He also pulled items 10-D-B), C), and E) (correspondence is discussed under 10D-1) from the agenda. He then made a motion to pull these items from the agenda. Mr. Abell seconded the motion.

Mayor Sawnick recalled that at their last meeting they discussed any items being put under Old Business or New Business should have backup material so the public has the opportunity to understand what business will be coming before the Council.

Mr. Daige asked the City Attorney to give his opinion on Old Business and New Business.

Mr. Charles Vitunac, City Attorney, explained that under Old Business are items that have been before the Council at a previous time and under New Business are items/things that are new to Council. He said under Old Business, if there is an item that they have discussed and not reached an agreement on, then it can be put back on the agenda at another meeting. Their rules do require that there be some type of backup provided so

that the public, staff and Council are aware as to what is going to be discussed and can be prepared for the item. He said to do otherwise, he feels is not transparent.

Mr. Heady stated that this is yet another attempt to reinitiate the “Heady” button. The items that the former Mayor wants to remove from the agenda are the items that he put on under Old and New Business. Then he also wants to delete some items that he (Mr. Heady) has under his Councilmember’s matters. He reiterated this is another attempt to reinitiate the “Heady” button. He thinks that the voters of this community knew exactly what they were going to get when they voted for him and that is honest, open, public business being conducted in the public eye. Which means they discuss things at the meeting for the public to listen to. The City Attorney feels that backup material needs to be provided for the members to know what the discussion is going to be about. He said that the only way to know what the discussion is going to be is to discuss it with a Councilmember prior to the meeting and that would be outside of the Sunshine. He doesn’t necessarily know where the discussion will bring them, but it certainly is a matter that is important to the public. These items (referring to the items that Mr. White wants removed) should not be removed from the agenda and he can tell them (Council) if these items are removed from the agenda that the only remedy for him will be to file a Federal lawsuit, which will cost the City a lot of money. The people in this community are entitled to hear the public business conducted in the public eye and he intends to do exactly that. It is clear that there are Councilmembers who will continue in their efforts to prevent them from knowing what is going on.

Mr. White added that he did not pull Mr. Heady’s items off of the agenda. He left items 9-1), 2) and 7) on the agenda and pulled the other items off of Old Business only because they have been discussed several times in the public eye and answered. He said under New Business, the items that Mr. Heady has put on the agenda does not include any backup material. He said some of the things that Mr. Heady wishes to discuss are already on the agenda (such as the golf course). He said that item 2B-4) tax reductions, will be discussed at their July budget meetings and item 2B-2) A Federal Case, there is no backup provided so no one knows what Mr. Heady is talking about. Then under Councilmatters, Mr. Heady can talk about his items, but he has correspondence down as item E) and that is already on the agenda as item 10-D-1). He said that under 10D-B) and 10D-C) there are two items, Liars, Cheats and Thieves and Bad info=bad decisions and if Mr. Heady wants to discuss these items under his matters then he is allowed to, but these are items that need to be pulled from the agenda because they are here to do business and do it in the public eye. He mentioned that over the last 13 years Mr. Heady has stood behind the podium and talked under Public Comments and he was a critic of the City. He brought some good ideas before the Council and the Council listened to him and gave him respect.

Mayor Sawnick asked Mr. White to keep on the topic.

Mr. Heady called for Point of Order.

Mr. Daige also called for Point of Order. He was sorry to interrupt Mr. Heady, Mr. White, and Mayor Sawnick, but he feels when Councilmembers are speaking that they are entitled to make their point. He does not think that any of them should interrupt one another. He wanted to hear what Mr. White has to say. He said that there is no time limit on how long they can speak on this issue right now. The Council elected to put a time limit under Councilmember's matters and with the rest of the agenda there is no time limit. All of them sitting on this dais have the same amount of power and he would prefer that Mr. White is allowed to finish his comments.

Mayor Sawnick stated that as the Presiding Officer, when the discussion starts getting into personalities he feels it is not proper decorum in running a business meeting and he will point that out.

Mr. Daige understands what Mayor Sawnick said in regards to personalities, but he did not detect that from what Mr. White was saying. He asked that Mr. White be permitted to continue.

Mr. White started to speak.

Mr. Heady told the Mayor that there were two Points of Order made. He asked the Mayor if he could be heard. Mayor Sawnick told Mr. Heady to proceed. Mr. Heady thanked the Mayor and then stated that he could not agree more with the comments just made by Mr. Daige and contrary to the Mayor's opinion, he did not feel that Mr. White was getting personal with him and was saying things that were perfectly appropriate. In fact, Mr. White criticized Mr. Heady at their last meeting for not attending more Committee meetings and he applauds him for doing that. He said that is exactly what Councilmembers need to do. If they see something that they believe to be wrong then they need to say so publically. He told the Mayor that his constant interruption of Councilmembers is inappropriate and he, for one, will not tolerate it.

Mayor Sawnick again stated that as the Presiding Officer, if he feels that things that are being said are inappropriate he can make a ruling and if Council wants to appeal the ruling that they can. He wants to make sure that they stay civil, which will help things in the future.

Mr. Heady took exception to the Mayor's ruling. He did not believe that Mr. White was being personal.

Mayor White continued by saying that the fact is that once you sit on the dais they (Council) become the problem solvers of the City and what they need to do is work as a team and try to get things done and not rehash things that have been in existence since 2005. They need to start getting some business completed. He said that with the proper backup under New Business, he would not have a problem hearing an item.

Mayor Sawnick said the reason that he will be voting in favor to remove these items off of the agenda is because backup material has not been provided.

Mr. Heady brought up the removal of the item for the golf course because it is already on the agenda. He said that when a Councilmember is given a deadline to put items on the agenda, he does not know what is or is not on the agenda. He put discussion of the golf course on the agenda because he felt that there should be discussion on it. The City Manager has also put it on the agenda under his matters which is fine. He said that redundancy is not necessarily a problem. It might only take a few seconds to address the item. He said that it probably would take less time to address the item than to debate on whether or not he should put items on the agenda. He said with respect to tax reductions he thinks that it is appropriate to have discussions on how they are going to reduce taxes and the direction that they should be giving the City Manager. He said other Councilmembers feel that what they must do as leaders in the community is not say a word until a budget is put before them. He thinks that Councilmembers should take an initiative (before July) and discuss things that are unnecessary and should be cut. He brought up item 9A-7), which is Debate on Sale of Electric, under Old Business. He felt that they needed to debate the sale of electric and the ramifications of doing this should be on the table, which means having a discussion. He can't discuss these things with other Councilmembers outside the Sunshine and this is the appropriate place to do it. He thought that because the public has so many concerns with their electric bills that this would not be something that they would object discussing. He could go through each of the items that Mr. White wants to pull from the agenda, but he thinks that the appropriate time to do it is when these items come up on the agenda. He certainly would tell other Councilmembers to remove things from the agenda that Councilmembers want to speak about is absolutely inappropriate. It drives government into back rooms. He is sorry that they, don't like the new language that he is trying to teach here and that is government in the sunshine, in the public eye, with the public listening.

Mr. White told Mr. Heady that he did not pull item 9A-7) off of the agenda.

Mr. Abell called the question.

Mr. Daige stated that he would like the City Attorney to provide them in writing with his definition of Old Business and New Business, as he stated earlier in the meeting.

The motion passed 4-1 with Mr. Heady voting no.

Mr. Abell made a motion to delete items 9-A-1), 2) and 7). The reason for this is because there is no backup provided, there is no transparency to the public, Council, or staff to know what these issues are without the proper backup material being provided. He said that some of these items appear to be request for information that could be supplied by the appropriate staff people. The motion died for lack of a second.

Mr. Daige made a motion to change the order that the items would be heard under City Manager's Matters. He said that the agenda would read 7-A) Director of Electric Utilities – Update on Utility Issues, B) County Commission Letter Requesting Joint Meeting, C) Consultants Competitive Negotiations Act Committee Report D) City-owned

Golf Course Property (Review of Draft Request for Proposals) and E) Police Department Pension Review. Mayor Sawnick seconded the motion.

Mr. White wanted to know the reason for the change.

Mr. Daige explained that in reading through the backup material there will be discussion on these items and he feels it would be better if this was the order that they were heard.

Mr. Abell wondered if there was anyone present for today's meeting to discuss these items and would this affect their schedule. He did not understand the need for the change.

Mr. Daige reiterated his motion to change the order of the items listed under City Manager's Matters. Mayor Sawnick seconded the motion.

Mr. Heady had no objections to the change or order, but it would seem to him that the City Manager should give his approval on changing the order.

Mr. James Gabbard, City Manager, had no problem with these changes.

Mr. White called the question.

The motion passed 4-1 with Mr. Abell voting no.

Mrs. Vock asked that item 4-B) be deleted from the agenda and under Proclamations that 2D-6) be added, which is Foster Care Month.

Mayor Sawnick made a motion to add on the agenda as item 2B-6) Foster Care Month. Mr. White seconded the motion and it passed unanimously.

Mrs. Vock noted that under item 2B-4) "Recreation Director to report on The Annual Junior Staff Volunteer Dinner" was placed on the agenda at the request of Councilmember Daige.

Mr. White made a motion to adopt the agenda as amended. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

## **B. Proclamations**

- 1. National Police Officers Week – May 9-15, 2010**
- 2. National Safe Boating Week – May 22-28, 2010**
- 3. Treasure Coast Women's 30 Year Anniversary**

Mayor Sawnick read and presented all three proclamations.

**4. Recreation Director to report on The Annual Junior Staff Volunteer Dinner – Requested by Councilmember Ken Daige**

Mr. Rob Slezak, Recreation Director, reported on the annual Junior Staff Volunteer Dinner that was held on April 26, 2010.

**5. Ms. Susie Sunkel to present the City with an Environmental Hall of Fame Award**

Ms. Susie Sunkel presented Mayor Sawnick with an Environmental Hall of Fame Award.

**6. Foster Care Month – May 2010**

Mayor Sawnick read and presented the proclamation.

**C. Public Comment**

**1. Mr. David Gregg – Discuss his proposal**

Mr. David Gregg mentioned that he and Mr. John Little came before the Council sometime ago with a proposal that they would be willing to negotiate with FP&L an outline of an agreement that would be satisfactory to the City at no charge. He said that he has received no comments back from Council. He then read a prepared speech and asked for a motion to vote up or down their request.

Mayor Sawnick suggested that at their next meeting he will put this item on under New Business. He said regardless of how the vote goes he is sure that Mr. Gregg and Mr. Little will be helpful in this matter and he appreciates everything that they have done.

Mr. Gregg wanted that motion made today.

Mr. Heady made that motion (to accept Mr. Gregg and Mr. Little's help with negotiating an outline of an agreement with FP&L).

Mayor Sawnick ruled that it was not appropriate to make that motion at this time.

Mr. Gregg withdrew his and Mr. Little's offer to help. He said that it is no longer on the table. If the public needs their help then they are willing to help them, but under their conditions.

Mrs. Tracy Carroll stated that she is mad each month that she has to write a check to the City to pay her electric bill because she feels that she is being vastly overcharged. She mentioned that there will be an election in November and that there was an Election last November. At the election last year two individuals were elected, Mr. Heady and Mr. Wilson. She said that Mr. Wilson was removed and the Council made the decision in January to place their buddy Mr. Daige back on the dais and go forward with the ways

things were going in the past. The citizens have another option and that is to have a referendum placed on the November ballot. She said that Operation Clean Sweep has been formed to bring relief to the City and County residents who are forced to write checks to the City of Vero Beach's electric company. She said at the Hibiscus Festival they presented the petition and in seven hours they had over 500 signatures (one person a minute was signing their petition).

Mr. Robert Walsh gave a citizen alert on some immigration matters. He said that the most important item before them now is the electric utility issue. He said that a Mayor who silences Councilmembers who wish to speak doesn't represent their citizens. He also said that there is not a Hillsprings Montana. He then went over time limits that other places use.

Mr. Bob Rumskey (spelling may not be correct) said that what he doesn't understand is when you live in the County, but still have Vero Beach City utilities.

Mr. Heady answered Mr. Rumskey's question by saying that there are jurisdictional agreements that determine this and some of those jurisdictions will be discussed in the near future as to whether or not they will remain.

Mr. J. Rock Tonkel commented that this has been an amazing morning. He sits back and reflects on what he sees and hears. He said first of all it is tragic not take up the opportunity to use the good will and knowledge of former Mayor David Gregg and former City Manager, John Little. He said that the Council treated Mr. Gregg badly. He thought that it was sad that Mr. Gregg made the decision that he did. He said it was amazing that there are few citizens in this community that take the time to educate the public. His main purpose in coming today was to introduce into the public records an article reported in the local paper on August 24<sup>th</sup> (please see attached). He then directed his comments to the City Manager. He noticed in the paper last weekend that Vero Beach has \$52 million dollars invested to meet current and future obligations of the City. He wondered if this would give the City Council the opportunity to reduce electric rates without affecting the City of Vero Beach. He asked that this be given consideration.

Mr. Heady told Mr. Tonkel that he did make a motion this morning in favor of Mr. Gregg's proposal, but no one seconded the motion. He also made a motion when Mr. Gregg first presented the proposal and he did not get a second to his motion at that time.

Mr. Heady told Mr. Tonkel that what he witnessed this morning was morally treasonable to the American public.

Mr. Joseph Guffanti told Council that they were in a panic mode. He would be only talking for three minutes or less because this time limit is still on the books. At the last meeting he expected to see an excerpt from the August 12, 2008 County Commission meeting, but there was a malfunction with the equipment in these Council Chambers so it could not be shown. He took the time to record and copy down the exact words that the City Manager said to the County Commission back in 2008. He said that if they are

going see the presentation then they should pay close attention to the demeanor and aura of emergency. He read to them exactly what the City Manager said. He felt that the statement made was very serious.

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

Mr. Charlie Wilson addressed the issue of the invitation that they received from the County to hold a joint workshop. He believed that the reason that they were not going to meet with the County was because it would endanger negotiations between the City and FP&L. He said that the truth shall set them free. He recalled that when he was sitting on Council a motion was made to have FP&L come and Mr. Abell voted against it. He said the question was asked to Mr. Abell that if he found that he could sell the electric system, pay all the debts, have no legal entanglements, lose no employees, would he do it. His answer was no. He was not surprised that they did not take Mr. Gregg up on his offer. He said that the number of people that he knows that want Mr. Abell, Mr. White, Mr. Gabbard, and Mr. Vitunac, negotiating a secret contract on their behalf is very small.

Mr. M.J. Wicker, a resident of Vero since 1999, was at today's meeting to talk about the golf course. He said that in the proposal (RFP) it calls for a lot of things. He provided Mr. Gabbard with a letter that was not part of the backup material (attached to the minutes). He read into the record his closing statement as it appears on his letter. He has seen a lot of changes in their community and losing the Dodgers was huge. He wants to bring back the golf course at old Dodgertown and not change anything. He asked Council to keep his letter in mind when they are making their decision on the proposal. This does not have to be complicated. He read the proposal (RFP) and it just seems that it can be a complicated matter if they go that route. The previous golf course was an operating viable business and it would be possible to open this new golf course in a couple of months.

Mrs. Pilar Turner was appalled by Councils' reluctance to open discussion under Old and New Business. She said this is an opportunity for Council to bring items up. She wished that they would reconsider that.

Mr. Heady thanked Mrs. Turner for her comments.

#### **D. Adoption of Consent Agenda**

Mr. Daige pulled items 2D-1) and 2D-3) off of the consent agenda.

Mr. Heady pulled items 2D-4) and 2D-5) off of the consent agenda.

#### **1. Regular City Council Minutes – April 20, 2010**

Mr. Daige referred to page 17 of the minutes and said that the word "electric" should be "elected".

Mr. Heady had some corrections that he would like to see made to the minutes.

Mrs. Vock told Council that she would make these corrections to the minutes and bring them back to Council at their next meeting for approval.

## **2. Treasure Coast Regional League of Cities Interlocal Agreement**

Mr. Heady noted that in the agreement it refers to a couple of areas as the effective date being April 1, 2007. He wondered if the effective date should be changed to today's date.

Mr. White explained that is the date that the Treasure Coast Regional League of Cities was created. He then went over the minor changes being made to the agreement. He said that the date that each of the municipalities approves the agreement will be the effective date.

Mr. White made a motion to approve the Treasure Coast Regional League of Cities Interlocal Agreement. Mr. Daige seconded the motion and it passed unanimously.

## **3. 18<sup>th</sup> Street Paving, Drainage and Sidewalk Improvements – Community Development Block Grant (CDBG) Project – Recommendation of Final Acceptance, and Approval of the Final Change Order and Final Payment**

Mr. Daige wondered if approving this final change order and payment had any effect on the grant for Jacoby and Piece of Pie Park.

Mr. Monte Falls, Public Work's Director, answered no. He said that this work is only for the 18<sup>th</sup> Street paving, drainage and sidewalk improvements. He said that Jacoby and Piece of Pie Park are a different project.

Mr. Daige made a motion to approve the final acceptance and final change order and final payment. Mr. White seconded the motion and it passed unanimously.

## **4. Police Department Exercise Equipment Purchase**

Mr. Heady mentioned that anything that they spend is an expenditure to the taxpayers. He said anyone that doesn't understand that they are facing some critical financial decisions is not paying attention. This item is for a new treadmill at the Police Department that will cost \$4,250.00. He said there is already another treadmill located in the Police Department's workout room. He said that the taxpayers are being asked to spend this money. He visited the facility this morning to see the usage of this treadmill and while visiting he talked with people who have used the facility who said that the facility is rarely busy with the exception of lunch time. In the expenditure of \$4,250.00 there is a note that the treadmill can be repaired for half of this cost. He thinks that every dollar they spend is a burden on the taxpayers and if there is a working treadmill already at the facility and the facility is not used to the extent where all the equipment there is

being used then they could save the taxpayers money by eliminating this second treadmill. He made a motion that they do that. The motion died for lack of a second.

Mr. Daige noted that in the memo provided by the Police Chief it talks about where the funding is coming from for the treadmill and it is not coming out of taxpayers dollars. He also said that the treadmill is being used by various City employees.

Mr. Don Dappen, Police Chief, explained that there are 12 City employees who are authorized to use the facility in addition to the Police Officers. He said the money that is being used to pay for this treadmill comes out of their contraband and forfeiture fund which can only be spent on certain items. He said that what they are doing is allowing the drug dealers of this community to pay for the fitness of Vero Beach Police Officers. The money can only be used for certain items and cannot be used to subsidize budgetary items that they would need every year. They use this money for things that they feel they need and that will benefit the Department. He said that these treadmills were purchased back in 1997 and they just replaced one in 2007. As far as the usage of the facility, it is used most before a shift change or after a shift change and at lunch time. He said by having this equipment it will keep a lot of their Officers in good physical condition. If they only have one treadmill, then that one treadmill will take a lot of usage and will start breaking down. He urged Council to approve this item especially since the money is coming out of their forfeiture fund.

Mr. Daige agreed that it was prudent that Council approves this request. He said that they want their Police Officers using good equipment and this is a great use of this money.

Mayor Sawnick made a motion to approve the request. Mr. Abell seconded the motion.

Mr. Heady expressed that any dollars in possession of elected/appointed officials are tax dollars.

The motion passed 4-1 with Mr. Heady voting no.

## **5. Settlement Agreement – Linda Tyner**

Mr. Heady asked why this City vehicle was down on Oslo Road.

Ms. Barbara Morey, Risk Manager, explained that there are City utilities along Oslo Road.

Mr. Heady noted that this case was settled by outside Counsel. He asked why they would need to have an outside attorney with all the attorneys that they have on staff.

Mr. Wayne Coment, Assistant City Attorney, stated that this claim was handled in-house. He reminded them that he is the only litigator in the office and he cannot do it all. He said if there are issues that they know they can defend then they will defend them. If this

had to go to trial then they would have had to hire an attorney who is knowledgeable in medical issues.

Mayor Sawnick made a motion to approve the settlement agreement to Linda Tyner. Mr. Daige seconded the motion and it passed unanimously.

At 11:13 a.m., Council took a ten-minute break.

### **3. PUBLIC HEARINGS**

- A) An Ordinance of the City of Vero Beach, Florida, renumbering and amending Chapter 30, Alcoholic Beverages, of the Land Development Regulations of the City of Vero Beach; providing for restrictions as to Location of Establishments dealing with or in Alcoholic Beverages; providing for exceptions; providing for consistency with Section 562.45(2) of Florida Statutes; providing for Method of Measurement of Separation Distances from Schools and Places of Worship; providing for Conflict and Severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, stated that under first reading there were questions brought up regarding what authority the City has in regulating this kind of business. He asked the Attorney to look at this in more detail. In reviewing the Florida Statutes, the City Attorney has determined that they don't entirely preempt the City from adopting its own regulations controlling both the time and location of such sales as long as it doesn't conflict with State law. In case of restaurants, which derive at least 51 percent of their gross sales from the sale of food and nonalcoholic beverages, the Florida Statutes allow the City to exempt such establishments from the 500 foot separation requirement. As this new information was not made known to the Planning and Zoning Board when the draft Ordinance was considered, Council may want to send it back to them for further consideration. Last week staff was contacted by a Representative of the Riomar Country Club requesting that the City Council adopt the Ordinance with amended language that restricts the sale and consumption of alcohol during regular school hours. The options for Council to consider would be 1) Remand the draft Ordinance back to the Planning and Zoning Board with guidance on any changes that should be considered by that advisory body; 2) Adopt the draft Ordinance as presented or with amendments; 3) Adopt the draft Ordinance as suggested by the Riomar Country Club, with the following amendment language to Section 60.16(b)(2): Restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, subject to the condition that the sale and consumption of alcoholic beverages shall not take place between 7:00 a.m. and 4:00 p.m. on school days, if the restaurant is located within 500 feet of a school and 4) Adopt the amended Ordinance as suggested by Riomar County Club, remand the Ordinance as amended back to the Planning and Zoning Board with guidance on any further changes that should be considered by that advisory body.

Mayor Sawnick was in favor of option three (3), not to serve alcohol when the school is in session.

Mr. Heady referred to the letter that they received from the Riomar Country Club, which indicates that St. Edwards School intends to close and the Ordinance precludes the issuance of a restaurant liquor license if it is within 500 feet of a school. He said that if Council decides to send the Ordinance back to the Planning and Zoning Board for their consideration, then it would prohibit Riomar from accomplishing their goal, which would not be helping their business. He made a motion to adopt the Ordinance using option three (3) as outlined by the Director of Planning and Development. He was told that they needed to first open the public hearing before a motion is made.

Mayor Sawnick opened the public hearing at 11:30 a.m.

Mr. Cal Davidson, President of Riomar Country Club, told Council that currently the Riomar Country Club does not have a liquor license and he would urge Council to vote in favor of the Ordinance using option three (3).

Mayor Sawnick closed the public hearing at 11:31 a.m., with no one else wishing to be heard.

Mayor Sawnick made a motion to adopt the Ordinance using option three (3) as outlined in Mr. McGarry's memo. Mr. White seconded 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.

**B) An Ordinance of the City of Vero Beach, Florida, amending Chapter 73, Article II, Drainage and Article III, Stormwater Management of the City of Vero Beach Code; deleting existing Article II, Drainage and replacing it with new Article II, Stormwater Management; deleting existing Article III, Stormwater Management and replacing it with New Article III, Construction Site Erosion and Sediment Control; creating New Article IV, Municipal Separate Storm Sewer System; providing for requirements, standards and review procedures for Stormwater Management Plans for Single Family/Duplex, Nonresidential, Multiple Family, and New Subdivision Development; providing for Requirements, Standards, and Review Procedures for Erosion and Sediment Control Plans for Construction Activity; providing for Florida Department of Environmental Protection Generic Permits for certain land disturbing activities; providing for Regulations for Discharges to the Municipal Separate Storm Sewer System; providing for conflict and severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry gave a Power Point Presentation concerning Stormwater Management.

Mr. Daige noted that this is in some POI districts that backup to residential neighborhoods. He said some of the buildings go up high because they have to because the drainage is put underneath the parking lot. He asked if this will help with the new drainage regulations on these smaller pieces of property so that they can do things differently with their drainage.

Mr. McGarry could not answer that. He said that Mr. Falls would need to answer that question.

Mr. Falls stated that it will not make it any easier for the property owners to lower those buildings. These people choose to use all of their open space and put the drainage underground.

Mr. Heady asked if there were some specific problems or circumstances that caused the need for this Ordinance.

Mr. McGarry answered yes. He said that they have had water quality issues that they have needed to address for a long time. He said that the City has some responsibility with the Indian River Lagoon and storm drainage going in there so they needed to take care of that. In the long term it is possible that the Department of Environmental Protection (DEP) will be putting requirements on this type of discharge. He said that DCA brought this to their attention while they were trying to adopt their comprehensive plan.

Mr. Heady said to answer his question there were no specific sites or big projects that caused this. Mr. McGarry said not to his knowledge.

Mayor Sawnick opened and closed the public hearing at 11:48 a.m., with no one wishing to be heard.

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

#### **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.**

Mayor Sawnick read the Resolution by title only.

Mrs. Peggy Lyon, Assistant City Attorney, reported that this Resolution comes to the City Council from a unanimous decision of the Veterans Memorial Island Sanctuary

Advisory Committee (VMISAC). It adds an additional area lying East of the Veterans Memorial Island Sanctuary to the oversight of the Committee only as it applies to memorials and plaques. She said in regards to the comments made by Mr. Heady at the last meeting they have excluded the road around the traffic circle. She introduced the members of the VMISAC who were present for today's meeting.

Mr. Heady thanked Mrs. Lyon, Ms. Loy and Mrs. Glenn for bringing this Resolution forward and removing the road around the traffic circle.

Mrs. Helen Glenn, Chairman of the VMISAC, was at today's meeting to ask Council to repeal Resolution 2008-30 and replace it with this new revised Resolution. The Committee feels it is necessary to have an over site on that area to insure that the area remains a sacred place. She expressed that the paved road that concerned Mr. Heady is not included in this Resolution.

Mr. White made a motion to approve the Resolution. Mr. Abell seconded 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.

**B) A Resolution of the City of Vero Beach, Florida, adopting the Military Leave Policy as an Amendment to the City of Vero Beach Personnel Rules; providing for an effective date.**

This item was pulled off of the agenda.

**C) A Resolution of the City of Vero Beach, Florida, adopting the Supplementation of Military Pay Authorized by Chapter 115, Florida Statutes for Public Officials and Employees of the City of Vero Beach who perform active Military Service as Servicemembers in the National Guard or a Reserve Component of the Armed Forces of the United States; repealing and replacing Resolution No. 2004-44; providing for an effective date.**

Mayor Sawnick read the Resolution by title only.

Mrs. Lyon explained that this Resolution provides elected officials and employees who are granted military leaves of absence for active military service full pay for the first thirty calendar days (currently twenty-eight days) as required by Chapter 115, Florida Statutes. The proposed Resolution continues to provide for supplementation of military pay of its officials and employees after the first thirty days of active military duty to bring total salary, inclusive of base military pay, to the level earned at the time they were called to active military duty. Such supplementation of military pay is discretionally, not mandatory, and has been provided by the City to its elected officials and employees performing active military service since Resolution 2003-07 was passed in January of 2003 and then re-adopted by Resolution 2004-44.

Mr. White complimented the City for supporting their Veterans and was in favor of passing this Resolution.

Mr. Heady referred to D2-C) of the Resolution where it states that life insurance will be reinstated within 30 days of an employee's return to work. He made a motion that the insurance be reinstated the day the employee returns to work. Mr. White seconded the motion.

Mrs. Lyon would need to check with Ms. Morey on this because there usually is a waiting period for insurance.

At this time, it was pointed out that this was not the correct Resolution that they were discussing.

Mr. White withdrew his second. The motion died for lack of a second.

Mr. Daige put out a thank you to all of their active military.

Mr. Daige made a motion to approve the Resolution. Mr. Abell seconded 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.

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

None

**6. CITY CLERK'S MATTERS**

**A) Reappointments to the Finance Commission**

Mrs. Vock reported that both Mr. Tom Nason and Mrs. Pilar Turner's appointments on the Finance Commission expire on May 15, 2010. Both members are interested in being reappointed to the Commission.

Mayor Sawnick requested that the Clerk advertise for more applications from people interested in serving on this Commission and bring it back to Council at a later date.

Mr. Daige wanted to make sure that all the volunteers who serve on their different Boards and Commissions are aware when they are recommending different things that they know where the funding for those things is coming from. He will be working with the Attorney on this and will keep Council updated.

**7. CITY MANAGER'S MATTERS**

- **Please note because of the change in the agenda some of the items were not heard as they appear on the agenda.**

#### **A) Director of Electric Utilities – Update on Utility Issues**

Mr. John Lee, Acting Electric Utilities Director, gave Council a Power Point presentation of where they are to date (please see attached). He expressed that they were still waiting to hear back from FP&L.

Mr. Heady commented that Mr. Lee mentioned that there will be a small increase that will be going to the customers. He wanted it to be clear that the increase is less than five-percent (an increase to the five percent portion of the total cost), which is not a big number in terms of cost to their customers.

Mr. Lee agreed with Mr. Heady's comment. He said that if Council is in agreement he would like to present something like this to Council at their first Council meeting each month.

Mr. Daige was in favor of receiving this information and having Mr. Lee present it to them once a month. He mentioned the FP&L transmission increase and said that if this happens it will not only be passed on to the City of Vero Beach customers, but also FP&L customers. Mr. Lee agreed that everyone's bill in the State will see this increase.

Mr. Daige recalled at their last meeting, Mr. White expressed that he did not like to see the word "Bulk Power Cost" on their utilities bill. He asked Mr. White if he knew of a better way to handle this or another term to use.

Mr. White explained that a lot of customers that he talks to does not like the term "Bulk Rate Power Cost." He felt that they needed to change the name. He has a home up North and when he received his utility bill from that home all the costs are shown on one line. He hopes that Council could come up with different solutions to make it easier for the public to read their utility bill and make people more satisfied with what they are receiving.

Mr. Abell thanked staff for coming up with this presentation and he looked forward to seeing it every month.

Mayor Sawnick suggested presenting this at the next Utilities Commission meeting.

Mr. Heady agreed with making it more palatable and said the way to do that is make their electric bills equal to or lower than FP&L. He doesn't think changing the name is going to help.

Mr. Lee recalled that when they did the Cost of Service study, the \$125 level is what was presented, but the problem was that FP&L was at \$107 and then they dropped down to \$92, which upset their customers. He noted that they are required by the Public Service

Commission (PSC) to show two separate lines on their bill or give an explanation. He said because they have seven different services that they provide they could provide some sort of explanation, but it would be at an additional cost to their customers because they would have to have a bigger bill.

Mr. White felt that there was room on the bill to insert an explanation.

Mr. Lee said that they could look at this. He said the fact is that their customers had belief on what was going to happen and it didn't happen. They are now dealing with facts and he would rather defend this the right way then to continue changing things on how they present the bill.

Mr. Dage made it clear that their utility bills are still too high and they need to do better to get them lower. He will go over some ideas that he has with the City Manager, which will include the explanation on what should be put on the bills. He will report back to the Council in the future on this.

Mr. Heady had some further discussion on this item. Mayor Sawnick asked him if it would be tied into their next item, which would be to discuss the County Commission letter requesting a joint meeting. Mr. Heady said that his comments will tie into what was just said by Mr. Lee. Mayor Sawnick told Mr. Heady that he could continue.

Mr. Heady stated that the question and statement was were the customers over promised and undelivered; he thinks the answer to that question is pretty obvious. He said that one of the problems is that they had this OUC contract that was secret and out of State for a couple of years and no one was able to see it. Then when the contract finally comes to the public's attention you see that the numbers in it.... At this time Mr. White called for Point of Order. He told Mr. Heady that he has talked about this over and over again. He reiterated that they could not have the contract here when they were negotiating because of confidentiality.

Mayor Sawnick agreed that they needed to move forward. He said some of the things that Mr. Heady mentions are things that he has brought up in the past. Mayor Sawnick was looking forward to the future.

## **B) Police Department Pension Review**

Mr. David Pusher, Chairman of the Police Pension Board, introduced Mr. Chad Little, Actuary for the Police Pension Board.

Mr. Gabbard expressed to Council that this presentation today was just for informational purposes.

Mr. Chad Little gave a Power Point presentation (please see attached).

Mr. Daige asked Mr. Little that in moving forward for the budget what kind of dollars are they looking at as far as the City having to contribute to the fund.

Mr. Little said that a lot depends on how much the Pension Board receives from the State.

Mr. Daige said moving forward with the new budget cycle let's say it is \$one million dollars that the City would need to contribute. He asked do they have to give it all in one lump sum.

Mr. Little said no they could do it quarterly. He expressed that the plan is in very good shape and there is no funding deficit to be dealt with.

Mr. Pusher added that the three million dollar deficit could be made up with investment returns and it is not necessarily the City's liability.

### **C) City-owned Golf Course Property (Review of Draft Request for Proposals)**

Mr. Gabbard presented Council with a draft RFP, which is basically the same as what was issued in 2007 to seek proposals for the renovation of the golf course. He said things have become a little more complicated. The issue is the parking arrangement with Minor League Baseball (MiLB) that carried over from the LA Dodgers when they purchased the property back in 2005. He has received a letter from Joe Baird, County Administrator, (please see attached) that outlines some of the concerns that he has. He recommended that Council look at the letter and the RFP. He plans to meet with the County again and will be bringing this item back to Council at their next meeting. He said that when they received the lease for the nine acres from the County at the time of purchase, MiLB was not in the picture, and because MiLB now leases the facility there is an area outside the nine acres, which if they are going to do something with the golf course then this issue needs to be resolved. He explained exactly where these areas are located. He encouraged Council to call him and talk to him if they have any questions.

Mr. Daige commented that he has some concerns with the current agreement. He has been in contact with the City Attorney and does see some restrictions in the current agreement that he would like to share with the current Council. He will make his thoughts known to Council in a memo before this comes back to Council.

Mayor Sawnick felt that after meeting with Mr. O'Bryan and Mr. Baird on Monday he came away with the feeling that in order for the golf course to happen there would need to be some team efforts made. He would like to see the golf course restored to the way it once was.

Mr. Heady mentioned that when this first came up he made the suggestion that instead of staff spending a lot of time on this that they get the proposals from whoever is interested and look at the proposals first. He said one of the things that they hear constantly is the cost of government and taxes. It seems to him before they present these kinds of documents it would be nice to know what it is that the interested parties are interested in

doing. He said in looking at this letter from Mr. Wicker it is clear that what he wants to do is restore the golf course to its original Dodgertown Golf Course. He said one of the first things that he did after being elected was to bring it to Council's attention that there was some interest in doing this by certain entities and those entities have not shown any real interest since he has brought this back to Council's attention. He thinks that they are spending tax dollars on putting a lot of things together when the entry level question is whether or not the interested parties have a viable proposal, which is what they should be looking at.

Mr. Heady asked Mr. Gabbard if he was the City Manager when the golf course was purchased. Mr. Gabbard answered yes. Mr. Heady then asked if the Council was aware they were buying a golf course, but they were only buying a portion of a golf course at the time. Mr. Gabbard stated that Council was aware that they were purchasing 36 acres and were going to get an additional nine acres that would be leased to the City so that they could have a golf course if that is what they chose to do with the land.

Mr. Gabbard stated that yes they did know because part of the deal was a lease back from the County for a dollar a year.

Mr. Heady referred to the section on the map that MiLB has and it cuts out part of the first fairway and asked if that section is being used by MiLB for any purposes. Mr. Gabbard said no. He said that when this piece of land was going to be developed by a developer the LA Dodgers held that piece out as a buffer. He said when the County leased the City the nine acres it was for the purpose of the restoration of the golf course. At that time there were no issues and it was owned by the County. But since that time MiLB has leased the baseball facility and that piece of land falls under their control. If the City wants to use this piece of land they will now need to negotiate with MiLB, along with the County. Mr. Heady noted that the Dodgers didn't use the golf course for parking. Mr. Gabbard told him that they used hole number one routinely for overflow parking. Mr. Heady said that Mr. Gabbard mentioned that there were some carryover provisions. He asked were these provisions in the Dodger's contract that carried over to MiLB. Mr. Gabbard said that he did not use the word carryover, but explained that when the Dodgers sold the land to the County, the County had a parking agreement with the Dodgers. He said remember that the County owned the facility while the Dodgers were still there and they wanted guaranteed parking. Also, in terms of the lease that they obtained from the County on the nine acre piece there is a parking agreement that is part of that. Mr. Heady referred to the proposal by Mr. Wicker and asked if that was the only proposal that is before the Council at this point. Mr. Gabbard explained that there is another group, the Wadsworth Foundation, who has expressed some interest. However, they have not presented a document like Mr. Wicker has.

Mayor Sawnick stated that once the City Council looks over the proposal then they will give some direction to the City Manager.

Mr. Daige asked when the City of Vero Beach purchased the land for \$9.5 million dollars, how many acres did they buy. Mr. Gabbard said 36 acres. The City has control of the 36 acres, plus the other nine acres.

Mr. Abell noted that this is a complicated issue. He said for anyone who was not on the Council at the time or is interested they can get the history and talk to the City Manager concerning the property. He said that the nine acres and areas around the pond and areas further south around the pond was used for parking when the Dodgers were here.

Mr. Heady stated that if they are going to get some proposals then they need to allow those people who are interested to use their own expertise and spend their time and energy putting a proposal before Council rather than Council putting out criteria, which limits the proposal that could possibly come before them. He said that they need to let it be known that they have a golf course and anyone interested in developing it should bring them a proposal by the next meeting, and then they can look at the proposals and make a decision on whether or not they want to go forward before spending tax dollars on coming up with the criteria.

Mayor Sawnick requested that they take a five-minute break and hear Mr. Zimmermann's item first before discussing the items under Old Business.

Mr. Heady pointed out that Mr. Wicker wished to be heard again and asked if they could listen to him.

Mayor Sawnick wanted to move forward with taking a break.

#### **D) County Commission Letter Requesting Joint Meeting**

Mayor Sawnick reported that they (him and the City Manager) met with Commissioner Peter O'Bryan and County Administrator Joe Baird yesterday. He informed them that once the City hears back from FP&L and gets more communication and figures then that would be the time to compare actual numbers and hold a joint meeting. The track that they are on right now is the right track.

Mr. Heady asked the Mayor to define communication.

Mayor Sawnick said that when they hear back from FP&L on whether or not they are interested in purchasing their electric utilities. He said right now they are discussing how they should respond to the letter that they received from the County.

Mr. Heady stated that with regards to how they were going to respond to the County Commission, he made it clear that they are not only City residents, but they are County residents also and the County has requested a joint workshop. He made a motion that they have this joint workshop. The motion died for lack of a second.

Mr. White agreed with the Mayor that they need to know what the numbers are before they sit down and talk to the County Commission.

Mayor Sawnick made a motion to wait until they here from FP&L before having this joint meeting with the County. Mr. White seconded the motion.

Mr. Heady commented that if they are going to get answers to serious problems that they are facing then they need to discuss those items openly and in the public eye. He amended the motion to have a meeting with the County Commission. The amendment died for lack of a second.

Mr. Abell felt that to meet with the County at this point would be ridiculous. He said that FP&L has not expressed an interest in purchasing their electric utilities, nor has any other power providers. It does not make any sense to talk about something when they don't have figures.

Mr. Heady appreciated Mr. Abell's comments that they have nothing to discuss until the deadline. He said it was a serious mistake to wait to the deadline when they are going to discuss this. It is clearly not the right move. It has been demonstrated that those kinds of decisions are not well thought out. The intelligent way is to discuss those things at a public meeting.

Mr. Abell made it clear that at no point did he say wait to the last minute. He doesn't know what Mr. Heady is talking about.

The motion passed 4-1 with Mr. Heady voting no.

Mr. Lee encouraged the Council to read the "Evaluation of Impact" report that was done in the 1970's. He plans to bring the report up at the next Utilities Commission meeting.

#### **E) Consultants Competitive Negotiation Act Committee Report (Rob Bolton)**

Mr. Rob Bolton, Water & Sewer Director, told Council that what they have in front of them today is the findings/proposal from GAI Consultants. He said that back in October 2009 they had a joint meeting with the County and out of that meeting the CCNAC Committee was formed. He appeared before Council in November to get approval for the RFQ for a consultant to be hired and the RFQ went out and they received proposals from five consulting firms and GAI was the top consultant firm. They met with GAI on April 15<sup>th</sup> and some ideas on the proposal and scope of work that was consistent with the original RFQ and the wishes of the Committee. He said that GAI put together a proposal and presented it to the entities. Since the original proposal, Mr. Tom Cadden, Chairman of the Competitive Negotiation Act Committee, met with GAI and he requested that the Phase 1 work be split into Phase 1-A) and Phase 1-B). The Committee met again and this was agreed upon by the Consultant and most of the Committee to first go with Phase 1-A) which would consist of gathering information from the facilities, the agreements that they have among the different entities, the financial background they have for all of the

different entities which would enable the Consultants to determine possible scenarios. Then they would sit down and have interviews with each of the elected officials and members of staff. The Consultant has posed a questionnaire that they would ask each individual, they would be taking notes and then come back with a report as to whether some sort of consolidation could occur. Then once this is complete they would move forward with Phase 1-B) of the proposal. At this point he said that it is open to discussion.

Mayor Sawnick made it clear that Indian River Shores had originally requested going this way and he is still in favor of going forward with this. He said that right now they are only approving going forward with Phase 1-A).

Mr. Bolton expressed that they are not asking you to determine who would pay for what. He is just here to discuss approval of the scope, then they will sit down with the Committee on a fair way to pay for it.

Mr. Daige recalled that CCNAC met yesterday and he asked Mr. Bolton to touch on how the vote went.

Mr. Bolton stated that the meeting was held yesterday at 2:00 p.m. and it was opened by Chairman Cadden for some discussion on the scope of work. He said what happened was that there was a vote taken and it was 4-2 with the two County members voting against. He felt that the scope identified what they needed to know. Mr. Cadden felt that they did not need to spend any more money if it is not the will of the different elected officials to move forward.

Mr. Daige was in favor of moving forward as suggested by Mr. Bolton.

Mr. Heady felt that in the future that the documentation needs to be readable.

Mr. Abell made a motion to take Mr. Bolton's suggestion and approve Phase 1-A). Mr. Daige seconded the motion and it passed unanimously.

## **8. CITY ATTORNEY'S MATTERS**

None

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

\*Please Note: Items 9A-1), 3), 4), 5), 6), 8), and 9) were pulled off of the agenda.

#### **1. Date for presentation by Dr. Faherty and Glenn Heran – Requested by Councilmember Brian Heady**

Mr. Heady mentioned that Dr. Faherty and Mr. Heran have gone throughout the County and given presentations on the City electric utilities and is a presentation that Council should entertain having to see the information that they have. He said it is important to do that. He made a motion to set a date in the short term to have them make a presentation to the Council. The motion died for lack of a second.

## **2. Discussion on changes to City Council meetings – Requested by Councilmember Brian Heady**

Mayor Sawnick suggested to Mr. Heady that he list the items that he would like to discuss under Old Business for the next meeting. He said also Council has a right to appeal any ruling that he makes if they don't agree with it.

Mr. Heady thanked the Mayor for his suggestions on how he should be effective. The discussion under Old Business is a discussion on changes to City Council meetings. He said at the last meeting there was a proposal made by Councilmember Abell on changes to their meetings and there was discussion by Council and when his opportunity came up to discuss this item the Mayor refused to allow him to discuss it. He felt that was appalling. He said that if they are going to make changes or have discussions then every Councilmember should be afforded the opportunity to do this. In addition, on one of the items to be changed he asked the Mayor if there were any cities doing this and the Mayor said yes there were and he asked the Mayor to name some and the Mayor didn't and he asked the Mayor to just name one city and he mentioned Hillsprings, Montana. So after the meeting because he was unfamiliar with Hillsprings, Montana and the Mayor didn't provide any backup on that Town, did do some research and found out that there is no Hillsprings, Montana. He said that if you are going to make good decisions, the way that you make good decisions is by having good information and when a Councilmember gives bad information to other Councilmembers then you will wind up in the final analysis of making bad decisions. He said in addition, the Mayor said that he had correspondence and he asked the Mayor to provide him with the correspondence that would be of public record and the Mayor said that his correspondence was "verbal." He did not think that the Mayor's command of the English language is such that he believes that correspondence is verbal. He thinks that what happened was that the Mayor did not give truthful answers about Hillsprings, Montana or truthful answers about really being in possession of correspondence from members of the community. When he (Mr. Heady) was a citizen he used to stand at the podium and say three words, "liars, cheats and thieves" should not be in charge of governing agencies. The reason he made that comment was because he does not think that they should lie, cheat or steal from the public. When they give the public bad information that they know not to be true that is lying to them, it is cheating them and stealing from them. He feels that they should stop running their meetings that way.

Mayor Sawnick stated that Mr. Heady's next item was 9A-7) Debate on Sale of Electric. He said that Mr. Heady has brought this up multiple times before. He asked Mr. Heady if he wanted to explain what he was asking for and they can take some action on it.

Mr. Heady stated that before they move on there is a possibility to take action under Old Business and that under item 9-2) he wanted to make a motion. He made a motion that he be afforded an opportunity to discuss those things and ask questions in regards to the Mayor's input at the next meeting. He said at this meeting many of his items were removed from the agenda (13 items in total) and he thinks that if one Councilmember is entitled to a discussion that all Councilmembers are entitled to a discussion. He would like to make a motion that they add these things to the next agenda without the possibility of pulling them off. The motion died for lack of a second.

- 3. Still waiting for written answers from City Manager – Requested by Councilmember Brian Heady**
- 4. OUC Contract – Requested by Councilmember Brian Heady**
- 5. 50MM penalty – Requested by Councilmember Brian Heady**
- 6. November Elections – Requested by Councilmember Brian Heady**
- 7. Debate on Sale of Electric – Requested by Councilmember Brian Heady**

Mr. Heady mentioned that there was a lot of discussion within the community as to whether or not Vero Beach should sell their electric utilities and what we should do about moving forward. He has heard from the Mayor and others to wait until FP&L comes back with their comments. He thinks that they have heard that before, they were told to wait until OUC comes in effect in January and then they would see rates equal to or lower than FP&L's. When they are in a position of doing something as significant as selling the electric, he thinks that there should be a public debate held and they should discuss different things, set up the parameters and know what they are looking at. He made a motion to set up a date and a time that they could sit down and have that debate on the sale of the electric with presentations from members of the community who may have something to contribute and perhaps that would be the appropriate time for a presentation from Dr. Faherty and Mr. Heran. The motion died for lack of a second.

Mr. Daige wished to make comments on the debate of the sale of the electric utilities. He wanted the public to know that there are a lot of people who don't like the OUC contract and there are a lot of people who do like it. He said that Councils in the past elected to move forward and there was no doubt that they needed to exit FMPA. The Council who sat up here before (including himself) relied on expert testimony and experts in the electric field. Going forward they have talked about selling the utilities in part or in whole. They are in a waiting pattern now and waiting to hear back from FP&L. He said so far none of the individuals who have spoke at the podium are certified in the field of electric and utility matters. This Council has to rely on facts when moving forward. In the event that FP&L comes forward with some sort of paperwork they will look at it. As far as having people give presentations and getting into a debate with the general public he is not favor of doing that. He will always rely on the experts so he can move forward with some wise decisions. He reiterated that he still is not happy with the bottom line of the bills and wants to continue to see them being lowered. He said if a Councilmember is wrong in their judgment they could actually have the City ratepayers paying more than

what they are paying now. He again cautioned Council that when testimony is presented it is presented by experts.

Mr. Abell agreed with the comments just made by Mr. Daige.

- 8. 8/12/08 – Requested by Councilmember Brian Heady**
- 9. Direction City Manager selection process – Requested by Councilmember Brian Heady**

These items were pulled off of the agenda.

**B. New Business**

- 1. Expend Funds from the Tree and Beautification Commission – Requested by Chairman Karl Zimmermann**

Mr. Karl Zimmermann, Chairman of the Tree and Beautification Commission, was before Council today to ask permission for the Commission to expend up to \$413 from the Tree and Beautification fund to purchase plaques for dedicatory trees.

Mr. White made a motion to approve the request. Mr. Abell seconded the motion and it passed unanimously.

- 2. A Federal Case – Requested by Councilmember Brian Heady**
- 3. Golf Course – Requested by Councilmember Brian Heady**
- 4. Discussions on tax reductions – Requested by Councilmember Brian Heady**
- 5. Honest Services Fraud – Requested by Councilmember Brian Heady**

These items were removed from the agenda.

**10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

**A. Mayor Kevin Sawnick's Matters**

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

Mayor Sawnick reported that on April 21<sup>st</sup> he spoke to a class at Indian River State College, then on April 24<sup>th</sup> he attended the Indian River Day of Service, also on April 24<sup>th</sup> he attended the Mayor's beach cleanup at Mulligans.

Mayor Sawnick commented that at their next meeting he will be bringing forth a proposed Resolution saying that the City is opposed to off-site drilling. He then continued with his Committee Report. He said that on May 1<sup>st</sup> he had the opportunity to ride on the proposed Amtrak train and there will be future workshops on this matter

(schedule available in the Clerk's office). Also, on May 21<sup>st</sup> there will be a Coffee with the Council.

Mayor Sawnick recognized the importance of having backup provided when they have items on the agenda. He recalled that he may have named a City that has time limits that was incorrect. He told Mr. Heady if he wanted a list of places that do impose time limits, then it could be provided. He said that research is important to see how other cities are handling things. He looks forward to working together with all of the Council.

**3. Comments**

**B. Vice Mayor Sabin Abell's Matters**

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

Mr. Abell agreed with Mayor Sawnick's comments concerning providing backup material. He pointed out that they have exceeded the four hours that they spent at their April 20<sup>th</sup> meeting. He would like to see Council be one-hundred percent informed when they come to these meetings.

**C. Councilmember Tom White's Matters**

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

Mr. White reported that he attended the Volunteer Junior Staff dinner, he installed new officers for the Italian American Club, and he attended the Hunter Club banquet. He asked Council to approve the Mayor sending a congratulatory letter to the police officers who were given awards at the Hunter Club banquet. He then mentioned the census forms and noted that Indian River County had an overall return rate of 77%.

Mr. White commented that the City of Ft. Pierce is still involved with FMPA and they have the fourth highest utility rates in the State of Florida. He said that if the City of Vero Beach were still contracting with FMPA then they would also be high on the list.

Mr. Daige was in favor of the Mayor sending a letter to the two Police Officers as just mentioned by Mr. White.

**3. Comments**

**D. Councilmember Brian Heady's Matters**

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

Mr. Heady stated that President Theodore Roosevelt said to declare criticism wrong is morally treasonable to the American public. He expressed that what happened earlier in this meeting by the majority of this Council to bar a Councilmembers from bringing up important issues falls within the President's definition of morally treasonable.

- B. Liars, Cheats and Thieves**
- C. Bad info=bad decisions**
- E. Correspondence**

These items were pulled off of the agenda.

- A. Mayors continued abuse of power**
- D. Other Mayors in county**

Mr. Heady stated that under correspondence, he sent a memo to the City Manager requesting that he put in writing what statements he made that stunned him and that were inaccurate. These statements were made at a County Commission meeting and he has asked every meeting since if the City Manager could identify with specificity any single statement that he said that stunned him or any single statement that he said was inaccurate. The City Manager's constant refrain has been to go back and look at the meeting. Mr. Heady noted he said several things like his name, which was not inaccurate and he doubted that it stunned the City Manager. He again asked the City Manager to identify with specificity anything that he said that stunned him and anything he said at that meeting that was inaccurate.

Mr. Heady stated that the real problem that they have is often elected officials or staff just say things that are not truthful. He again brought up Hillsprings, Montana. He said that Hillsprings, Montana does not exist and the correspondence that the Mayor claimed was verbal he does not believe the Mayor's command of the English language is so poor that he thinks correspondence is verbal. He said what really happened is that we had an elected official that stated the first thing that came to his mind whether it was truthful or not to support his point of view. He said the Mayor has stated that they need to provide backup, but for that particular item the backup that the Mayor states he has or researched was never provided. Mr. Heady commented that he did not need the backup because he thinks that in this City what they need to do is conduct public business in the public eye and he will continue to fight for that whether or not the majority of the Council wants to shut him up or not. That will not stop him from asking that the public business be conducted in the public eye.

Mr. Heady commented that at the last meeting he had the 8/12/08 County Commission meeting that he wanted to play and he still would request that this happens. This item was pulled off of this agenda by the majority of the Council and he will put it back on for the next meeting. He said that it is important for this body to see it and discuss it. He feels that the comments that were made when you see the DVD will trouble them and if they don't then he feels that they are neglecting their obligations as an elected official.

Mr. Heady stated that one of the things that he had on his agenda, which was removed was "A Federal Case." He said the reason that he put this item on the agenda was because if the City Council continues on the path to silence this elected official, then the only remedy that he has is to make a Federal case out of these issues and to get Councilmembers and staff under oath and ask them questions and have depositions taken. He said it is clear from the action taken by the Council at the beginning of this meeting that is exactly the path that they want to send him down and he does not think that it is the best path, but it is pretty clear that is the only way that he is going to get Councilmembers to answer in a public forum where their answers can be proven. He will see that he does exactly this. He said that it is not a threat, just a matter of fact on what he is going to do.

Mr. Heady brought up at the last meeting there was some questions brought up concerning the 8/12/08 meeting and the City Manager said just that morning he received notification concerning bonds. However, at the last Council meeting the City Manager said that he didn't receive notification at all and what he received was a telephone notification. Mr. Lee then came up to the podium and said what he received was a courtesy telephone call from FMPA staff who had some concerns of a possible sale.

Mr. Heady stated that in restricting Councilmembers comments at the last meeting, the Mayor said that other Mayors in this County had suggested this to him. He said that in his research he cannot find any documentation that any other Mayor in this County, in any community, has suggested that they should be restricted on public debate on public issues. He does not know where this came from and there are no documents that prove and demonstrate that this is correct. He said that if the Mayor has something to demonstrate like mentioning Hillsprings Montana, and his so called correspondence, he would make a public records request that these things be delivered to him.

Mayor Sawnick would make sure that the City Clerk provides a copy of the minutes from the last Mayor's meeting.

Mr. Heady brought up Honest Services Fraud and expressed that the City Council should be aware of the provisions of Honest Services Fraud. He reiterated that when you don't tell the public the truth, when you make resolutions and motions to shield or hide from the public, that you are in very dangerous territory in respect to the provisions of Honest Services Fraud.

- E. Councilmember Ken Daige's Matters**
  - 1. Correspondence**
  - 2. Committee Reports**
  - 3. Comments**

Mr. Daige requested to the City Manager to put in writing his comments and thoughts that were made to the County Commission at their 8/12/08 meeting to get it on the record once and for all so that they can put this issue to bed.

Mr. Heady felt that they should play the tape at the next meeting and they could resolve everything at that meeting.

Mr. Daige stands by this request that he is making to the City Manager.

Mr. Daige asked the City Attorney if an individual Councilmember could take the City to court. And in the event that a Councilmember does that, can they have at their disposal City funds in order to do that.

Mr. Vitunac stated that a Councilmember has a right to file suit in Federal Court, but it would have to be done at their own expense.

Mr. Daige read his report into the record (please see attached).

## **11. ADJOURNMENT**

Mr. White made a motion to adjourn today's meeting at 2:09 p.m. Mr. Abell seconded the motion and it passed unanimously.

/tv