

**CITY OF VERO BEACH, FLORIDA  
NOVEMBER 16, 2010 6:00 P.M.  
REGULAR CITY COUNCIL MINUTES  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**1. CALL TO ORDER**

**A. Roll Call**

Mayor Jay Kramer, present; Vice Mayor Pilar Turner, present; Councilmember Craig Fletcher, present; Councilmember Brian Heady, present and Councilmember Tracy Carroll, present. **Also Present:** Monte Falls, Interim City Manager; Charlie Vitunac, City Attorney and Tammy Vock, City Clerk

**B. Invocation**

The invocation was given by Father Michael Edwards of St. Helen's Catholic Church.

**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**

Mrs. Carroll made a motion that because of duplication of items 9B-1) and 9B-13) having to do with FP&L and item 9B-8) having to do with the sale of the electric utilities, that they add them together under item 9B-1).

Mr. Fletcher was opposed to this because under item 9B-8) discussion of selling the utilities, he plans to make a motion that they in fact do that.

Mr. Heady was opposed to removing any items that are under City Council Matters.

Mr. Fletcher would like the agenda to remain as presented.

The motion died for lack of a second.

Mrs. Carroll made a motion that because of duplication of items 9B-14), 9B-3), and 9B-4), which all had to do with financials, that they group them together.

Mrs. Turner had no problem with combining items 9B-3), 9B-4) and 9B-5).

Mr. Heady was opposed to removing any items off of the agenda that Council has placed on the agenda. He said that if they get to a particular item and it is a redundancy, then Council can address it at that time.

The motion died for lack of a second.

Mrs. Turner made a motion to adopt the agenda. Mr. Fletcher seconded the motion.

Mrs. Tammy Vock, City Clerk, requested that item 2B-2) “National Hunger and Homelessness Awareness Week” be added under proclamations.

Mrs. Turner amended the motion to include this item. Mr. Fletcher seconded the amended motion.

Mr. Heady asked that a report on the chili cook-off be added to the agenda.

Mrs. Carroll asked to add to the agenda item 9B-23) to clarify the Code in terms of how agenda items are brought forward by the City Council and the requirements necessary to place items on the agenda.

Mr. Heady clarified that included in the additions on the agenda were, the proclamation on Homeless week, the Chili cook-off and discussion on the requirements to place items on the agenda.

Mrs. Carroll clarified that the item she added regarding items placed on the agenda be heard as item 9B-23).

The amendments were made to the motion and it passed unanimously.

## **B. Proclamations**

- 1. Christian Heritage Week – November 21-27, 2010**
- 2. National Hunger and Homelessness Awareness Week**

Mayor Kramer read and presented both of the proclamations.

- 3. Chili cook off**

Mr. Heady thanked everyone for helping with the chili cook-off. He especially thanked Mayor Kramer’s wife.

Commissioner Bob Solari stated that the County Commission had a great time at the event and was glad that the City participated.

## **C. Public Comment**

Mr. Charlie Wilson referred to an article that was recently in 32963 regarding the Power Plant. He said that a lot of people were up in arms regarding what has been alleged. He asked Council what they plan on doing. He said that there was a potential there for a Federal crime. He explained that if their records were altered and pieces of equipment are missing then they need to know. He felt that the City should request every sheet of paper that Ms. Sue Hersey, Consultant, has that she developed that was paid for by the City so that it cannot be used in her business with other cities. He said assuming the City Attorney is the most competent City Attorney in the world, has the best work ethic in the world, and has tremendous advise to give Council, he still cannot give Council advise because he has a conflict of interest on 90% of the items that were on tonight's agenda. He asked that the City Attorney think about recusing himself as the City Attorney because he cannot give advice on the OUC contract, FP&L, personnel issues, etc., because of a conflict of interest.

**1. Mr. Larry Wilke to speak about Florida Power and Light (FP&L).**

Mr. Larry Wilke was not present for the meeting.

**2. Mrs. Helene Caseltine, Director of Economic Development, will be discussing Economic Development in Indian River County.**

Mr. Bill Penny, Chairman of the Economic Development, explained to the Council how Economic Development works in the Indian River County.

Mrs. Helene Caseltine, Director of Economic Development, gave a Power Point Presentation, which included goals, marketing, incentives, targeted industries in Indian River County, recruitment tools, revised local jobs grant criteria, revised Economic Development Element, reducing impact fees, project process, Tax Abatement Referendum, funding for Economic Development, adoption of the Life Sciences Accord, and she discussed what successes that they have had.

Mrs. Carroll asked of the jobs that they feel Economic Development brought to the County, have any of them been in the City.

Mrs. Caseltine answered yes.

Mrs. Carroll asked have there been comments that Mrs. Caseltine would like to share regarding people they bring into the County and perhaps also drive through the City that may affect the decisions the Council makes to help with Economic Development. She asked if there has been any comments that the City has problems or that there are concerns with locating businesses within the City of Vero Beach.

Mrs. Caseltine said that she has not heard that from businesses she has been working with.

Mrs. Carroll thought that a large portion of the Enterprise Zone lies within the City limits. She asked if they were currently being successful in having outside businesses look at locating within the Enterprise Zone and within the City limits.

Mrs. Caseltine said that there have been inquires, but it has been a quiet year.

Mrs. Carroll asked if they have fielded any interest from Aviation industries concerning utilizing the Enterprise Zone at the Airport.

Mrs. Caseltine said that they have had inquiries from aviation companies that were not necessarily related to the Enterprise Zone, but because of the Vero Beach Airport, which is in the Enterprise Zone.

Mr. Heady said regarding supplying prudent industrial land, when government gets involved that means tax dollars. He said that he was not a big proponent of spending tax dollars on making sites available.

Mrs. Caseltine said because the infrastructure was in place, that was what made the decision for the CVS Warehouse and Distribution center to locate there. So it did help to create 2,798 jobs.

Mr. Heady said that the CVS project was built before the approval for the one-million dollar second phase of that. He said regarding advertising target markets, he would be more impressed if target markets were from Peeking rather than from Boston. It troubled him that one municipality or one governing agency in one state spends a lot of taxpayer dollars to see what they can do to steal companies from other states and at the same time they spend tax dollars seeing what can be done to give incentives to companies to move overseas.

Mrs. Caseltine said that in our partnership with Enterprise Florida, the State of Florida has offices in approximately 13 countries and part of their responsibility is to promote Florida and Florida businesses. She said that they do work with those foreign offices to make sure that they know about Indian River County and this part of the State.

Mr. Heady referred to the initiate with respect to suspending impact fees. He said that when they suspend impact fees, what they really do is a transfer of tax and someone pays for it. Suspending of impact fees was not a favorite of his. He would rather see governing authorities reduce their expenses rather than transferring the tax from a company coming in onto the backs of those who live here now. The tax abatement is the same kind of thing. He felt that if they really want to solve some of the problems then governing authorities need to stop spending taxpayer's money. He asked what is the total dollar amount they receive from the County.

Mrs. Caseltine said that they receive \$119,332 from the County.

Mr. Heady said that could be an area where they can cut some money. He said that when the City got involved with the Chili cook-off, rather than spending taxpayer dollars, they received donations. He would rather that they find different sources of income rather than from the taxpayers.

Mrs. Caseltine said that they also receive funding of about \$50,000 from private sector partners. She said that they do try to leverage those dollars as best as they can.

Mr. Heady said one of the things businesses look at is the tax rate in the area. He said that every time they have somebody that asks for money, that increases the tax rate. He would much rather see private sector picking up the cost rather than taxpayers. Particularly when we are in this economic crunch where taxpayers are already overburdened. He said that in the local job grant that was approved he saw that there were new jobs created. He asked was there a financial analysis done to show the cost and benefit ratio of what was spent and what they are getting.

Mrs. Caseltine said that they do look at the capital investment. She said that she would provide a copy of the applications to Council.

Mr. Heady said that his question was if there has been any financial analysis done. If there is an analysis he would like Council to receive a copy. He noticed that Piper is listed as having 850 employees. He asked is that the current number of employees.

Mrs. Caseltine answered yes, as of several weeks ago.

Mrs. Turner thanked Mrs. Caseltine for her presentation and for the work the Economic Development group is doing. She felt that they would have more support from the Council. She would like to look into what they could do in order to streamline the business licensing and processing. She felt that the creation of new jobs increases the tax revenue. Therefore, there is a direct return on that. She said that she would investigate the City contributing to the Economic Development during the City's budget cycle.

Dr. Stephen Faherty congratulated the new Council on their election. He then read a prepared statement (please see attached).

Mr. Heady asked to get consensus from the Council to put the payment on hold for FMEA until the City Manager and Acting Utilities Director can bring back to them some cost benefits analysis and then they can decide if it is something that they want to pay.

Mayor Kramer said that he would like to see it suspended until the next meeting.

It was the consensus of the Council to suspend the payment with the exception of Mr. Fletcher who was in disagreement.

Mr. Heady asked that the City Manager bring back any draft documents to their next meeting.

Mr. Vitunac said the fact that something is in draft form does not mean that it is not a public record. He said it is the City's policy that drafts are public records.

Ms. Cindy Swartz said there was a USDA funded fruit and vegetable program in Indian River County for two years. The funding ran out and they deduced the funding through the social economic ratio of free and reduced lunches. The only school that qualified this year was Fellsmere Elementary. She wrote a grant to "Refresh Everything Dot.com," who gives out one point three million dollars a month to the winning grants, which goes by votes. She said that her grant is called "Restart the Fresh Fruit and Vegetable Program in Vero Beach Schools." She explained that to vote for a grant for Vero Beach, they would need to go to the website [www.refresheverything.com](http://www.refresheverything.com). She noted that the votes continue through the end of November and everyone over the age of 13 can vote and they can vote every day.

Mr. J. Rock Tonkel said that he was present for tonight's meeting representing 1,300 people in Grand Harbor, who supported Operation Clean Sweep. He noted that their position has not changed. All of the things that they have talked about over the course of the past year are etched in stone. He was heartened to hear Mr. Fletcher indicate that he was going to make a motion to sell the utilities to FP&L. He hoped that the rest of Council would support his initiative. He said that they were looking for a different result and looking to Council to solve their problems as ratepayers.

Mrs. Linda Hillman, 2315 18<sup>th</sup> Avenue, said that she knows how big this Council is on backup information. She passed out some information to the Council (on file in the City Clerk's office). She said this information was to familiarize everyone on what has been going on in Original Town. She briefly gave the history of the County Go-line buses. She felt that the new location for the buses at the Veterans Services location would also be a problem area. She asked the City Attorney to explain Section 74-56 of the City Code.

Mr. Vitunac asked Mrs. Hillman to meet with him and with Mr. McGarry tomorrow to go over it.

Mrs. Hillman said Council is here because they were elected. She was elected to be the President of her Neighborhood Association so that she could be the face for all the neighbors. There are some neighbors who are not in favor of the buses moving and they can come up and speak. She said that Mr. Tom White (former Councilmember) said that City Council is elected by the taxpayers and it is the responsibility of the Council to research the problem and negotiate for the citizens and the neighborhoods. She said that this is a big burden for the neighbors.

Mayor Kramer said that he would like to sit in on the meeting when Mrs. Hillman meets with the City Attorney.

Mrs. Hillman said that she would call the City Attorney and make an appointment to meet with him on Friday.

Mrs. Carroll referred to the letter from Mr. Falls dated November 2, 2010, which stated that the buses were no longer being parked where they were and are now being moved to the County Administration Building.

Mr. Falls said that staff has been continually working with Mrs. Hillman, Indian River County, and the Senior Resources to resolve this issue. He said that the City has suggested some alternate sites, which they were told that there were some issues with those sites. They have looked at other hubs around the County and are trying to figure out why it works in these areas and not where it is currently located. He said that he has gone over there and watched the activities of the hub. He reported that every hour about eight buses come in there in a ten-minute time span and unload and people change buses. It is really a connection point for the buses and it doesn't really serve as a bus stop. He said that it was more of a transfer point.

Mrs. Hillman was very appreciative of what staff is trying to do. She heard that her neighborhood is being called a "nimby" neighborhood, which stands for "not in my back yard."

Mr. Fletcher asked why the buses left Pocahontas Park (former hub).

Mr. Falls said that there were some issues with traffic.

Mr. Fletcher asked why they would move the problem to a residential area.

Mr. Falls said that they are still working on getting a temporary site plan approved by the County. He said that the City did not select the site where it is now located.

Mrs. Carroll understood that there were problems with Pocahontas Park because families came forward who witnessed homeless people sleeping there and there were serious safety concerns for the children in the Park.

Mr. Dave Barnett, 1936 41<sup>st</sup> Avenue, spoke in favor of the buses staying at the location where they are presently located. He said that they were trying to blame all the crime on these buses. He has ridden these buses and there are school children riding on them, working people riding them, and numerous elderly people riding them. He would welcome the buses to his neighborhood because it would probably lower the crime rate in his neighborhood. One thing he has not heard anyone say was anything about is the Workforce Solution bus that sits at that location all day. He then talked about the high crime rate in his neighborhood.

Mayor Kramer said that he was going to go down there and experience it for himself so he can get a feel of what is going on.

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

Mr. Heady pulled items 1, 2, 4, and 5 off of the consent agenda.

Mr. Fletcher made a motion to adopt the consent agenda as amended. Mrs. Turner seconded the motion and it passed unanimously.

**1. Regular City Council Minutes – November 2, 2010**

Mr. Heady said that he would get with the City Clerk on changes to be made to the minutes.

**2. Commercial Lease Agreement between the City of Vero Beach and The Honorable Debbie Mayfield for the Rental of City Hall Office Space**

Mr. Heady asked what the space cost the City.

Mr. Falls said the only cost the City has is for the utilities that the City provides. The rent charged is \$185 per month and is the rate that the City has been charging Representative Debbie Mayfield and her predecessors. It is well below market, but it is what the City has offered to the Representatives to make it more convenient for their constituents.

Mr. Heady said that is pretty cheap rent and the City residents are picking up a district office that covers much more than the City. He asked is there anything that Representative Mayfield could do to increase this.

Mr. Falls said if Council directs staff they could negotiate some additional things for the lease space.

Mr. Heady asked Mr. Falls to see what he can do and to bring it back before Council at their next meeting.

Mayor Kramer wondered if it provided the City a benefit in having the Representatives located at City Hall.

Mr. Fletcher said it has been convenient over the years in having them there.

Mrs. Carroll said that there is staff in Representative Mayfield's office to meet with the public and to set up appointments. She said that this is Representative Mayfield's only office other than the office that she has in Tallahassee. She felt that it was more convenient for residents to meet with her here than if she had an office somewhere else in her district.

Mr. Falls asked Council if they wanted him to try to negotiate something closer to market value.

Mayor Kramer felt that there was probably some benefit having them here.

Mr. Fletcher said that it has been a benefit when legislation issues come up.

Mrs. Carroll felt that this was appropriate. She made a motion to accept the Commercial Lease Agreement between the City of Vero Beach and Representative Debbie Mayfield. Mrs. Turner seconded the motion and it passed unanimously.

- 3. Solid Waste Franchise Agreement – Haulin Trash, Inc.**
- 4. Joint Participation Agreement – FDOT FM No. 428609-1-78-01-  
Dredging of Vero Isles Canal**

Mr. Heady felt that they needed to rethink the storm water dumping into canals or the lagoon. He felt that they need to reverse that and send water to some kind of retention or reuse ponds. The continued cost to the taxpayers, not only in dredging, but also the harm to the lagoon could be offset if they rethink what they do as far as stormwater.

Mr. Heady made a motion to approve Joint Participation Agreement – FDOT FM No. 428609-1-78-01 Dredging of Vero Isles Canal. Mr. Fletcher seconded the motion.

Mr. Fletcher said that when dredges go in a lot of times the corporations that are doing the dredging will dredge too much. He didn't see anything in the contract concerning that and he requested that Mr. Vitunac put something in the contract, which he assured him that he would.

Mr. Falls noted that this contract was administered out of the Public Work's Department. He said that what they were accepting here tonight was a JPA to allow the City to receive \$100,000 from the DOT. He reported that when DOT repaved State Road 60 the City had them install sediment traps on all the outfalls that discharge into the canals so this will not be a recurring problem.

Mrs. Carroll said that she met with Mr. Falls because she was concerned that they were approving something without financial data. She reported that Mr. Falls stated that prior to approval Council would have accurate financial data.

The motion passed unanimously.

## **5. Monthly Capital Projects' Status Reports**

Mr. Heady referred to the the Bay Drive and River Drive bridge replacement and the Water Treatment Maintenance building and Field Services Complex. He wanted to point out that in the current economic climate that they just do projects that are absolutely necessary. He then referred to the Storage Reservoir and Injection Well Pump Station. He asked for a total on all the projects that were related to this project.

Mr. Heady made a motion to approve the Monthly Capital Projects' Status Report. Mrs. Turner seconded the motion and it passed unanimously.

**3. PUBLIC HEARINGS**

None

**4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING**

None

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

- A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 73, Article I, Flood Damage Prevention of the City of Vero Beach Code; Providing for New Definitions and Revisions to Clarify and Update the Existing Text; providing standards for regulating placement of Manufactured Homes and Recreational Vehicles in Special Flood Hazard areas; providing for conflict and severability; providing for an effective date.**

The City Clerk read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, reported that the draft regulations they have before them is in response to issues that were raised during the City's community assistance visit. He explained that these are visits by either FEMA or by the State for communities who participate in the National Flood Insurance Program. Several comments made had to do with the City's Ordinance that failed to address mobile homes. These revisions were placed in Ordinance. He reported that during the visit, the City explained to them some of the issues they were having with the Building Department. He noted that they built in some further steps so they can pick up on any problems. He reported that this Ordinance was recommended for approval by both the Department of Emergency Management and the Planning and Zoning Board.

Mrs. Carroll referred to the statement "all recreational vehicles must be on a site for fewer than 180 consecutive days." She asked is that telling a property owner that they cannot have their pop-up RV on their property any longer than half a year.

Mr. McGarry answered no. He explained that is if they are being used as a residence. He said people are not allowed to spend the night in their RV at home, but they can have it on their property.

Mrs. Carroll questioned if a resident had friends or family members who visit them in their RV and park it in their driveway.

Mr. McGarry said that is not a problem, but they are not suppose to spend the night in the RV.

Mrs. Carroll said it states that the RV must meet all the requirements for new construction including anchoring and elevation standards.

Mr. McGarry said that is when an RV becomes a permanent residence.

Mrs. Carroll asked where in the City do they have a problem with flooding.

Mr. McGarry said along the ocean front and the river.

Mrs. Turner asked how was the additional permit fee of \$75.00 established.

Mr. McGarry said that it costs the City extra to do reviews and inspections for this. He said that this is a cheap rate and is the average rate to recoup some of the costs.

Mayor Kramer made a motion to approve the Ordinance on first reading and set the public hearing for December 7, 2010. Mr. Fletcher seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes and Mayor Kramer yes.

**B) An Ordinance of the City of Vero Beach, Florida, amending the Text of the Land Use, Traffic Circulation Element and Capital Improvements Element of the City of Vero Beach Comprehensive Plan by creating a Policy to Ensource the Location of an AmTrak Passenger Rail Station in the Downtown; revising the level of service standard for A1A North of State Route 60 (Beachland Boulevard); Correcting Omissions; and Clarifying Language describing Roadway Level of Service Standards; providing for an effective date.**

The City Clerk read the Ordinance by title only.

Mr. McGarry reported that the Ordinance was heard by the City Council in August and was then transmitted to the Department of Community of Affairs. He said there were two parts to the Ordinance. The first was Exhibit A, which presents amendments to the land use and traffic circulation elements regarding multi-modal facilities and passenger rail service. The second was Exhibit B, which deals with amending the level of service revisions to State Road A1A north of Route 60, traffic circulation and capital improvements element. He reported that the DCA did raise one objection, which had to do with the proposed policy dealing with changes in land development regulations. He said that they want to get this adopted this year because it will affect how many amendments they can do next year.

Mrs. Carroll said it states that the data they based this on was conducted in September, 2009 and in May of this year the next service volume was created. Both of those are not during their season. She said if this data was generated in January or February she would be very concerned that these numbers would be much greater and throwing the City into non-compliance.

Mr. McGarry said that these numbers were all adjusted to be peak season. He said that it does change all the time.

Mr. Fletcher made a motion to approve the Ordinance on first reading and set the public hearing for December 7, 2010. Mrs. Carroll seconded the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes and Mayor Kramer yes.

## **6. CITY CLERK'S MATTERS**

### **A) December City Council Meeting**

The City Clerk reported that it has been customary in the past to cancel the second meeting in December do to the holidays. She asked Council if they wanted to hold the December 21, 2010 meeting or if they would like to cancel it.

Mr. Heady said judging from the number of issues they have before them tonight, it looks like December will be busy. He felt that it was far enough ahead of the holidays that they could hold a meeting that day.

Mrs. Turner requested that they defer this item until the end of tonight's meeting. Council agreed.

### **B) Council Appointments to Different Committees**

Mrs. Vock reported that she tried to place everyone on the Committees that they chose to serve on. If Council agrees to the appointments she would forward the information to the different committees.

Mr. Heady said that he would like to serve on the Treasure Coast League of Cities.

Council unanimously approved all of the Committees in which they will serve on this year.

## **7. CITY MANAGER'S MATTERS**

### **A) Interim City Manager Position**

Mr. Falls reported that on September 21, 2010 he was appointed to the position of Interim City Manager. On October 5, 2010 the City Council approved an agreement that he put together with the help of Mr. Robert Anderson, Human Resources Director. He said that there is only one Councilmember remaining on the current City Council and he felt that it was important that the seated Council be able to select who they want to lead them.

Mrs. Carroll made a motion to accept Mr. Falls to continue in his position as Interim City Manager. Mr. Fletcher seconded the motion.

Mr. Heady said that he enthusiastically supported Mr. Falls' approval, but he did object to pages one and two of the attachments (work agreement). Some of the things in there he did not know that they needed to be put into a temporary position. He said that he did not see any need for the last two pages of the agreement. He noted that he was fine with the rest of the agreement.

Mayor Kramer did not have a problem with the way things are now. He felt that they would need more time to get an idea of what the City Manager position would be like from the inside out. As it sits, he felt that the Interim position was quite comfortable to him.

Mr. Fletcher asked is it true that the City signed a contract to look for a new City Manager.

Mr. Falls answered no. He said that this is an item listed later on the agenda for discussion.

Mr. Heady asked to cancel the request for a headhunter. He felt that this Council could save the taxpayers \$25,000 by holding off for a while and see how this City Manager works.

The motion passed unanimously.

## **B) Pain Management Clinics**

Mrs. Peggy Lyon, Assistant City Attorney, was present to bring Council up to date on what is going on with the County and Pain Management Clinics. She reported that there has been a tremendous increase in fraudulent pain clinics, which has led to an excessive dispensing of controlled pain medication, increased deaths and increased crime. Prescription drug deaths are now the fourth leading cause of death in the United States. The Florida Board of Medicine reported that an average of seven patients a day are reported of dying from prescription drug overdose, which far exceeds the number of people dying from illegal drug use. She said in an attempt to get a handle on the illicit "pill mills," the Florida State Legislature acted in 2009 and in 2010 to pass Statutes regulating pain clinics to place rules and regulations, which they are currently working on. She reported that the Pain Clinic Legislation requires registration with the Department of Health of all private owned management clinics. Beginning this month, the Department of Health is required to inspect the clinics annually. She reported that the State can cease records without a subpoena. If violations are found the Department of Health can revoke or deny the pain management clinics registration and issue fines of up to \$5,000 a day. Another issue that recently popped up is the issue of pharmacies popping up near pain clinics and dispensing pain medication without the restrictions of the State Statute. She reported that she attended a County-wide meeting on October 14,

2010 to discuss issues relating to pain management clinics within Indian River County. She said the meeting was attended by representatives of local governments across the County. They explored the possibility of a County-wide effort. She said that the six month moratorium the City Council adopted on June 1, 2010 ends on November 28, 2010 and if no further action is taken by the City, the County's moratorium will be in effect in the incorporated and unincorporated areas of the County through June 7, 2011. It was staff's recommendation to allow the City's Ordinance to sunset on November 28, 2010 and go under the County Ordinance. She said that she had articles that she gathered from various newspapers from across the State and would be glad to give Council a copy.

Mr. Heady asked which would be a more strict regulation. He asked would continuing the City's Ordinance pose more a problem for a "pill mill" or would they be less inclined to look at Vero Beach if the City went with the County Ordinance.

Mrs. Lyon said the City's Ordinance has no exceptions. The County Ordinance has four exceptions. She noted that they don't want to cut out legitimate pain management clinics. The City Ordinance does not have any out at all and she has been concerned about this. She liked the fact that the County Ordinance also includes some of the State requirements that would not take effect until 2012. She also liked the idea of them being under one umbrella.

Mr. Heady asked rather than allowing their Ordinance sunset, could they do something to incorporate those provisions that increase the provisions that Mrs. Lyon likes.

Mrs. Lyon said they could, but it would not be the same across the County. She would like them to throw their hat in the ring with the County. She said that the County is working on an Ordinance that would be given to them in December, which is only a few weeks away.

Mr. Heady asked are they leaving themselves open where there is a few weeks window for a pain clinic to come in.

Mr. McGarry said there is one clinic that meets all the requirements and is eligible to come in (Doctor that has appeared before Council in the past). He said that the current City Ordinance punishes everything including the "pill mills" and the legitimate ones.

Mrs. Carroll said there were members of the public that spent a long period of time with a number of their patients that appeared before Council previously. She asked if they were approved.

Mr. McGarry said they are aware of the situation and would be eligible.

Mrs. Turner thanked Mr. McGarry and Mrs. Lyon for keeping on top of this.

Mr. Fletcher said that he did not hear staff's recommendation.

Mrs. Lyon asked that Council allow the City Ordinance to sunset on the November 28, 2010.

Mr. Heady said if they allow this to sunset then they would be allowing the one Doctor that appeared before the Council to open his clinic. He asked would they also be creating a window of opportunity for someone else to come in.

Mrs. Lyon said the City would still be protected through the method of the business tax receipts.

Council took a ten-minute break at 8:21 p.m.

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

None

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

### **B. New Business**

#### **1. FP&L – Requested by Mayor Kramer**

Mayor Kramer asked Mrs. Carroll for an overview on what has happened this week with FP&L.

Mrs. Carroll reported that Mrs. Amy Brunjes of FP&L requested to meet with each of the new Councilmembers. She reported that the meetings were set up on December 1<sup>st</sup> at 9:00 a.m. with Mrs. Turner, 10:00 a.m. with Mr. Heady, 11:00 a.m. with herself and 1:00 p.m. with Mayor Kramer. Following the meetings, Mr. John Lee, Mr. Steve Maillet and Mr. Falls would be available to discuss the information. She asked Mr. Fletcher if he scheduled a time to meet with Mrs. Brunjes.

Mr. Fletcher said that he would not meet with her because he felt that they should all meet together (open Council meeting).

Mrs. Carroll asked Mr. Vitunac if they could all meet together.

Mr. Vitunac answered yes. He thought that it was the request of FP&L to meet individually.

Mrs. Carroll said that she received the information about the times and the suggestion of the meeting from the City Clerk. She asked Mr. Falls if Mrs. Brunjes requested to only meet with the Council individually.

Mr. Falls answered yes. He said that FP&L called and asked for individual meetings with the Councilmembers.

Mrs. Turner said that if they choose to meet with FP&L as a whole Council, then that meeting would have to be publicized and recorded.

Mayor Kramer said it was his understanding that when they meet privately with FP&L, they (FP&L) might want to discuss things that they don't want to discuss in a public meeting.

Mr. Fletcher said then he would not want to hear it. He said for transparency reasons he would want to have the meeting in the public.

Mayor Kramer understood what Mr. Fletcher was saying, but referred to the bidding process.

Mr. Vitunac said in the bidding process there are certain things that can be secret (not made a public record). He noted that this was not a bid process.

Mr. Heady said one of the things that he has heard often from Councilmembers who were on the last City Council was that he wasn't doing his homework properly because he wasn't meeting with staff or the City Manager prior to a meeting. He said this is an entity who wants to sit down and meet with him so he is willing to sit down and meet with them. He was not going to make any special deals nor does he have the authority. He said it would take the vote of the Council to approve any contract. If a particular Councilmember doesn't want to meet with FP&L that is their choice. He said that he had no problems meeting with FP&L or any other power provider that wants to make an offer to the City.

Mrs. Carroll said item 9-B8) on tonight's agenda is a request by Mr. Fletcher and it looks like they would be setting a policy, which she felt might bind the Councilmembers from discussing any decisions that may affect their meetings with Mrs. Brunjes on December 1, 2010.

## **2. On-Line Check Book – Requested by Mayor Kramer**

Mayor Kramer said an example of what he would like is all the outgoing cash flows of the accounts printed up and made available to the public.

Mr. Steve Maillet, Finance Director, provided Council with a quick check register so that Council can see if the layout is something that they would like to see (on file in the City Clerk's office) then he could make this available. The final page in the whole package would be a separate report of the wires done in the last year.

Mayor Kramer assumed that they would have the ability to track all the outgoing cash flows through this method. He asked are there any other methods money is drawn from the accounts.

Mr. Maillet answered no.

Mayor Kramer said that he would like to have an agreement of Council on the policy that they start doing this on a monthly basis so that the public sees where the money is going.

Mr. Fletcher asked Mr. Maillet if there was anything that trips this or is it all included in the report.

Mr. Maillet said that was everything.

Mr. Fletcher asked where they would find the purchases made on City credit cards.

Mr. Maillet said the wire payment was the total of the credit card payments.

Mr. Fletcher asked how long has it been since the City put their financial services out to bid.

Mr. Maillet answered about 15 years.

Mr. Fletcher said it was closer to 20 years. He asked that Council consider the fact that they might want to go out and see what the financial services are in the future.

Mayor Kramer said that he would like to see credit card breakouts if there is an easy way of doing that. He said that Wachovia bank has the ability to send reconciliation statement back. He asked is it possible to get that back on CD and have the City Clerk certify it and put it in the records. He asked that they send the City Clerk a CD.

Mayor Kramer asked Council for an agreement from Council that this was something that they should do.

Mr. Heady was concerned about the CD they were discussing. He asked is there any information on the CD that is proprietary.

Mr. Maillet answered no. He noted that it would contain the front and back of the checks.

It was the consensus of the Council that this was something they wanted to do.

### **3. Request Monthly Financial Reports – Requested by Vice Mayor Turner**

Mrs. Turner said that this was for Council to receive monthly financial reports for the General Fund and the Enterprise Fund. She asked for Councils' concurrence in sending

these to the Finance Commission by email. She said that it was very important that Council receives regular standard reporting formats because this is the only way they would be able to develop a trend analysis to help them in setting policy and direction from Council.

**4. Quarterly Financial Reviews – Requested by Vice Mayor Turner**

Mrs. Turner said that she would like to set up a quarterly financial review in January.

Mayor Kramer asked Mrs. Turner if she wanted to set this up as a policy.

Mrs. Turner answered yes.

**5. Ordinances must have a Statement of Financial Impact – Requested by Vice Mayor Turner**

Mrs. Turner said that she has drafted a short sheet that staff currently addresses, but this would give them one place to go through that is a budgeted item and sufficient funds to complete this item (on file in the City Clerk's office). She noted that a financial analysis should be presented with each project and she would trust the judgment of the Finance Director that the information would be proportional to the matter at hand.

Mrs. Turner made a motion that these requests be accepted and that they become policy (items 3, 4 and 5). Mr. Fletcher seconded the motion.

Mr. Fletcher said that some of the Ordinances they pass would have a vague impact on City tax dollars.

Mr. Maillet said they could put in information such as there is no financial impact. He said that he would like to send Council the City's monthly general ledger for the next few months.

Mrs. Carroll said that she would rather have that information on-line.

Mrs. Carroll said it was mentioned that the financial information be provided even if there is a zero cost outlay. She would be interested in items that would save the City money so if there is a negative impact on the budget that is even better.

The motion passed unanimously.

**6. Request (10) Ten year Proforma Statements for Water and Sewer – Requested by Vice Mayor Turner**

Mrs. Turner explained that having attended the Indian River Shores meeting on the franchise agreements it became clear to her that none of the parties had sufficient data to make decisions that benefit their constituents. She said that the City's priority is getting

the financial data on the water and sewer system. She reported that she met with the City Manager and they are waiting for the data on the City's assets in Indian River Shores. She reported that they are proceeding to get this data.

Mr. Rob Bolton, Water and Sewer Director, said that he would bring something forward to the City Council at their next meeting. He said that they have a five-year plan that is pretty much a proforma, which shows their projected revenues and expenditures.

Mr. Heady asked Mr. Bolton to bring the information to Mrs. Turner prior to bringing it before the City Council.

Mayor Kramer asked Mrs. Turner if she is okay with being the point person for water and sewer issues.

Mrs. Turner answered yes.

Mrs. Turner reported that during today's County Commission meeting, Commissioner Davis requested that their Attorney send a draft agreement to the City. It is their interpretation that the Franchise Agreement with Indian River Shores does not allow them to speak directly to Indian River Shores without a release from the City of Vero Beach.

Mr. Heady asked is there any Councilmember who would object to the County discussing the water and sewer issue with Indian River Shores. He said that he would not.

The Council had no problems with it at this point.

**7. Request of Resolution to Create City of Vero Beach Youth Advisory Board – Requested by Councilmember Carroll**

Mrs. Carroll requested a Resolution to create a Vero Beach Youth Advisory Board. She has spoken a number of times to the previous Council in regards to the lack of utilization and lack of having a welcoming mat out for the youth of their community. She took a look at the census data in 2000 and in 2000 in the City of Vero Beach there were almost 18,000 residents and 18% of those were under the age of 19. She said that 20% of the households in Vero Beach at that time had a child under the age of 18 and 28% of the population of Vero Beach were between the ages of 18 and 44 were most likely to have children at home. This leads to a figure of over 45% of Vero Beach is under the age of 45. She felt that a lot of people feel that our community is made up of retirees. However, this data shows that their community is a vibrant area where many young families, children and youth reside. It is her recommendation that they create an Advisory Board to discuss matters that impact their City youth, such as things involving recreation, traffic around schools and parks, community events with participation and the welfare and safety of their children in their community. The secondary goals would have the members serve as liaisons in schools and community organizations with events geared towards youth activities to increase participation with their City and also to utilize the

Mayor and Council at school and community events in order to teach their students the value of public service. She has come up with a composition for this Youth Advisory Board. It could be made up of high school students, college students and adults involved with youth activities throughout their community. She provided Council with backup material on this (on file in the Clerk's office).

Mrs. Turner felt that it was a great idea to get their youth involved. However, she still would like them to do a comprehensive review of all of the existing boards and commissions. They also needed to look at the staffing levels and check with the City Clerk to see if she is able to take on another board.

Mrs. Vock asked when the Youth Advisory Committee would meet. Mrs. Carroll said probably in the late afternoon around 4:00 p.m. and they would meet monthly or on an as needed basis.

Mrs. Carroll commented that in the past there has been some discussion that their Advisory Boards have not been used adequately or quickly enough to have their input on many issues. She served on the Recreation Commission and that Commission was very concerned that decisions were being made by Council without bringing various issues to them. She felt that a Youth Advisory Board was necessary in their community.

Mayor Kramer asked Mrs. Carroll if she could go over a few examples of the things that this Youth Advisory Commission would likely promote or advise the Council on. Mrs. Carroll said that they would advise them on issues with recreation, ball fields, the cloverleaf at Dodgertown/Vero Beach Sports Village, issues around the marina facilities and whether or not they are being utilized by the sailing opportunities, issues involving their schools and safety around the schools, etc. Mayor Kramer asked if they had any idea what the Board's cost the City.

Mrs. Vock expressed that there are some Boards who do not meet very often and may not be needed anymore. She said that may be the solution if they disbanded some of those Boards it would enable them to create this new Youth Advisory Commission.

Mr. Fletcher suggested that on their next agenda that they put an item on the agenda to review the existing Boards and discuss whether or not they are still needed.

Mrs. Carroll noted on the agenda, Mr. Heady has put on discussion of the Finance and Utility Commission. She wondered if those items could be discussed at the next meeting as well, with Mr. Heady's approval.

Mr. Heady wanted to talk about those two Commissions tonight.

Mrs. Carroll did not mind tabling this and discussing all of the Commissions at their next meeting.

Mrs. Turner added that they need to look at each of these Commissions and give them a real definite mission statement and a reason to exist.

Mrs. Carroll added that if an issue comes up where one of their Advisory Commissions should review a matter, then Council needs to table the discussion of the matter until their Advisory Commission has had time to meet about it and give them their recommendations.

Mr. Heady asked Mrs. Carroll if this Commission could be under the existing Recreation Commission.

Mrs. Carroll answered no. She said that there are a lot more things that impact the youth of their community other than just recreation.

Mr. Heady wondered if rather than creating another Board, if the Recreation Commission could be tasked to handle the things that Mrs. Carroll has included. Mrs. Carroll answered no.

Mayor Kramer brought up the Sunshine Law with the Advisory Boards.

Mr. Vitunac said that they are as much under the Sunshine Law as the City Council is.

Mayor Kramer wondered if there would be a conflict if they have people under 18 years old serving on the Commission.

Mr. Vitunac answered no. He said that they would still be covered under the Sunshine Law and the penalties involved if they don't obey it.

Mayor Kramer noted that would be a concern of his not knowing if these youths would have the complete understanding of the Sunshine Law and being subject to penalties.

Mrs. Carroll recognizes this and said that on the application it would require a parent's signature.

Mayor Kramer stated that they would table this item until the next meeting. He complimented Mrs. Carroll on how well this was put together.

Mrs. Carroll commented that she will be bringing up later on in the meeting the types of data that she would like to see prepared to place items on the agenda.

**8. Discussion of the "Selling" of the Vero Beach "Electric Utilities" – Requested by Councilmember Fletcher**

Mr. Fletcher wanted to get a consensus from the Council on their feelings on selling the Power Plant. He said that if they want to sell the Power Plant then they need to tell staff that yes they want to sell the Power Plant. This will in turn say that is Council policy.

He said that the way you control the City staff is to declare policy. In general do they want to sell the utilities, which would mean the Power Plant and the Transmission and Distribution Plant all together. He does not want them to sell the property that the Power Plant currently sits on because of its enormous value. He made a motion to declare the policy of the City of Vero Beach that it is in fact to divest themselves from the Utilities Department of the City of Vero Beach. Mrs. Turner seconded the motion.

Mayor Kramer commented that he has been looking at different ways of attacking this problem and one of them was pulling back all of their resources into the City and relying on Stanton I and II in St. Lucie, which is the cheapest of the power and allowing Indian River Shores and the County to go to FP&L and then the Power Plant would be dealt with separately. He said that his intention is to send a message to FP&L that there is some competition with the offer that they might bring forward. A message could be sent to FP&L that this is not something that is a done deal before they even get to the table. Perhaps they could by pass that temptation to lowball for their utilities from FP&L. He wanted to have the freedom to explore some of these other opportunities and see a message sent to FP&L that they want to talk to them, but perhaps that they are not the only competition.

Mr. Fletcher stated by passing that this motion it won't handicap him from doing those things. He expressed that this was not something that was going to happen overnight. It will be a three to five year plan. He said staff would need to get with Council to come up with a business plan of how they would carry this out. He felt that staff needs to have the intent set down for them that they are going to sell the Power Plant.

Mayor Kramer agreed that big changes were in order and they should communicate to staff that now is the time that big changes are going to happen. As far as policy goes, he has no problem with setting the policy and the direction of selling this Power Plant is going to happen and is a desire of this Council.

Mr. Fletcher noted that he spoke to City staff and explained to them in very clear terms that they can get on board with this and help them, but if they don't want to do that then possibly they need to exercise their opportunities towards other career paths.

Mrs. Carroll asked the Clerk to repeat the motion. The Clerk read the motion. Mrs. Carroll asked Mr. Fletcher if he would mind modifying the motion to add the verbiage that if a contract came through that was a financial benefit to the City of Vero Beach. She said that it sounds like that he is ready to sell for any dollar amount. Mr. Fletcher explained that this is just a policy statement and it has nothing to do with selling at any dollar. All it means is that staff with City Council guidance is going to form a business plan and the business plan would be wherever they find the best option. Mr. Fletcher had no problem amending the motion to reflect this. He amended the motion to include as long as it is a financially stable deal/financially beneficial to the City. Mayor Kramer seconded the amendment to the motion.

Mrs. Carroll commented that selling the property where the Power Plant is now located would require a vote of the City voters. Mr. Fletcher said that is correct. He said that if they were to sell the land it would be very complex because the bond holders would have to be satisfied.

Mrs. Carroll brought up that the Mayor mentioned that perhaps there might be some competitive bidding. She noted that FP&L completely surrounds them and it is simple for their lines to be connected right to their grid. Also, in terms of a possible sale to any other community, that would probably be the worst case scenario because they would then be tied to whatever way they would choose to bill them. She feels that FP&L at this point and time will provide them with the best of both worlds. She said which is the ease of access and the lowest prices in the State of Florida. Her biggest concern was the information that appeared in the newspaper that employees of the City are not sharing all of the numbers and she asked Mr. Falls to let them know what the situation at the City has been.

Mr. Falls noted that after the Council has had their one on one meetings with FP&L on December 1<sup>st</sup> he has scheduled meetings after the Council has met to ask them if the Representatives from FP&L if they have received all of the information that they have requested from the City, then he will report back to Council. He read the same article and didn't know where the source of those facts came from. He said that it could have been from a discrimination complaint, but all of the things that were brought up will be looked at.

Mr. Heady stated that with respect to a motion to sell the Plant they are not going to get a yes vote from him. He feels that it is clear that with the election, the citizens of this community were all in favor of doing something with the utilities, but he thinks that first they need to understand what they are doing. He noted that the Mayor mentioned a couple of things that are some possibilities that need to be looked into. They have FP&L coming for a reason and after the meeting on December 1<sup>st</sup> it will give them some more information and they will understand where they are headed. He mentioned that following the meeting with the Council the City Manager has said that he and staff will be meeting with Mrs. Brunjes. He suggested that the Mayor or a designated Councilmember also attend that meeting. Mr. Falls had no problems with that at all. Mr. Heady said that if the Mayor wants to sit in on the meeting that is fine, if not he would be happy to or any other designee. He just doesn't see that staff doesn't have a very clear understanding that this Council is here to do something to resolve the electric issue. Before he is willing to just vote on a conclusion to sell the utilities, they are not even close to receiving enough information. He thinks that this is probably something that they need to workshop.

Mayor Kramer felt that the spirit behind the motion is to make sure that staff has a clear direction of what Council wants. If this policy goes through then yes they all want to see a sale happen.

Mr. Heady said don't include all. He said that he has not made up his mind that yes he wants to see a sale. What he wants to see is the high utility bills come down and as he sees it today his best guess that the only way they are going to do that is to sell to FP&L. However, for him to vote on a motion that their intent is to sell the Plant without a whole lot more information then that would be irresponsible.

Mayor Kramer pointed out that the audience is the staff. They are just making this statement to staff and not making it to an external party.

Mr. Heady commented that anything they do in this meeting is making it to the whole world, every external party.

Mr. Fletcher made a motion to call the question. Mrs. Carroll seconded it.

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

**9. Discussion by Mr. Vitunac on the Status of the Consultant, Ms. Sue Hersey of Boston, that the City hired as a Utilities Contract Specialist – Requested by Councilmember Fletcher**

Mr. Fletcher asked what is the status with Sue Hersey's contract.

Mr. Falls reported that last week he met with Mr. Lee and they reviewed the work that he has done for the City of Vero Beach. Under the terms of her work agreement they sent her a notice to wrap up the tasks that she was doing for the City and thanked her for her services and told her that if they needed her services in the future that they would engage in a work order that Council will approve. He said this will be effective ten days after Mrs. Hersey receives the letter.

Mayor Kramer requested that they include in the letter to retrieve all of the documents that Mrs. Hersey has pertaining to Vero Beach business.

Mr. Falls said that he could send another letter and work with the City Attorney in reviewing the contract to see if those documents would now become their ownership.

Council agreed that if those documents are sent here another expense will occur.

Mr. Heady stated that with respect to those documents, there was a contract discussed on April 7, 2008 by the City Council and later on that day a redacted version was delivered to the Finance Commission, Utilities Commission and Councilmembers and they all received the redacted version. Then at the April 15, 2008 City Council meeting there was a vote on the contract that they discussed, the redacted version and that was approved with one change that was requested by then Councilmember Ken Daige. That was the only change to the contract discussed on April 7, 2008 and voted on at their April 15, 2008 meeting. Then on April 16, 2010, former Mayor Tom White signed the signature page for that contract. He (Mr. Heady) did not see this contract until he was elected.

When he was shown the contract from the file it did not match the redacted version. It is a different document that is attached to the signature page. He could demonstrate to this Council how this is accurate. In terms of contract law, he believes the contract that the Council voted on is the only contract that can be in full force and in effect. He would like from Mrs. Hersey before they close out her work order, to see an unredacted version of that redacted contract. He has asked for this before and has been told at these Council meetings that it has been shown to him, which he said is nonsense. Again, he wanted a copy of the redacted and the unredacted version given to each Councilmember. The City Attorney and then City Manager, Jim Gabbard insisted that he was given the document and that it was in the file. He asked whether anyone would certify that document in the file that it was the unredacted version and no one would do that. The City Clerk confirmed that she could not certify that the document in the file is the unredacted version. He noted that if you match the two documents side by side it shows that they are clearly not the same. He said that this document is very important because he thinks it is the document that was voted on and it is the document that needs to be attached to the signature page. Again, he just wanted to make sure before they close Mrs. Hersey contract that this document is available for the public and the City Council.

Mr. Fletcher agreed with Mr. Heady that as a part of the close-out that the document needs to be here and they can touch it (the unredacted copy).

**10. Discussion by the Interim City Manager or his agent of the “Condition of the Power Plant, Combined Cycle Units” – Requested by Councilmember Fletcher**

Mr. Fletcher said that he would meet with the City Manager and discuss this item with him.

**11. Discussion of OUC Contract – Requested by Councilmember Heady**

Mr. Heady noted that they just discussed this. He is still waiting for a copy of the contract.

Mrs. Carroll asked Mr. Heady what was his goal with getting both of these contracts and looking at them side by side.

Mr. Heady explained that on April 15, 2008 the Council voted on a contract and that is the contract that should be attached to the signature page. If the Council votes to approve a contract then they need to have that contract attached to the signature page and that needs to be the contract that is in effect.

Mrs. Carroll asked Mr. Vitunac if he knew of any changes that took place between those two dates.

Mr. Vitunac went over the history of the OUC contract. He said that at a Council meeting he went over all of the changes that were made to the contract and he would be glad to go over the changes again.

Mr. Heady did not want Mr. Vitunac to go over the 115 changes that were made to the contract. What he wants is the contract from April 7, 2008. He has been asking for it for almost a year now and it still has not been produced. He was told that it was in Mrs. Hersey's possession. They flew her down here and she supposedly had it and said at a meeting that she had it and waved it in her hands. Mr. Heady said the document still has not been produced and the Council did not approve a different contract. The Council approved a contract on April 15<sup>th</sup> and that is the only contract that has been approved and is legally enforceable.

Mr. Vitunac agreed with Mr. Heady that Mrs. Hersey came to one of their meetings and said that in her hand was the actual document. That document was given to the Clerk.

Mr. Heady requested that each Councilmember receive a copy of the redacted contract and the unredacted contract.

Mayor Kramer suggested sending a request to OUC and request from them to see the contract that they are operating under.

The Clerk told Council that she would provide them with the redacted and unredacted contract that she has in her contract file.

Mr. Charlie Wilson agreed with Mr. Vitunac that he was right in saying that he did go over this with the Council who was the same Council that favored that contract. The main thing that Mr. Heady is after is the Mayor of the City of Vero Beach has the authority to sign contracts approved by the City Council. The fact is that Tom White signed a contract that was not voted on by the Council.

Mr. Heady corrected Mr. Wilson. He said that Tom White signed a signature page. He asked Mr. White when he signed it were there any changes to the contract. Mr. White answered no.

Mr. Wilson told Mr. Heady he was correct. He continued saying that they have a billion dollar contract, which they don't have. The one person that has that contract is Mrs. Hersey. The City Attorney is up to his neck in a conflict of interest concerning this contract. He suggested that they have another City Attorney advise them on this issue.

Mrs. Carroll wanted Mrs. Vock to produce the documents that she has. If she does not have those contracts then she wanted the City Attorney to get those contracts for them so that Mr. Heady will feel comfortable with the information.

Mr. Vitunac said that staff could do that.

Mr. Wilson commented that he reviewed both of the contracts, side by side, and they did not match. In one circumstance they changed the type of equipment. Instead of saying the generator, they said the Plant. He said that multiple times they changed the turnover date to the effective date. He said that Council needs to be concerned that the City and the City taxpayers are going to be liable if Council has approved something that was not appropriately done. With those redacted documents we have no idea if those numbers have changed.

Mayor Kramer commented that if they move forward and keep poking holes at the OUC contract, what happens if the OUC contract dries up and goes away. Then they would be looking at buying open power on the market and their utility rates would spike up. He felt that this issue was very important, but the timing of it is even more important to coincide with the sale.

Mr. Fletcher stated that this was a simple request and this is that they want to see the documents.

Mr. Joseph Guffanti spoke and said that the public wants to see that document.

**12. Councilmember Sponsor for Agenda Items – Requested by Councilmember Heady**

Mr. Heady mentioned that often they see things that pop up on the agenda and Council is not aware of where they came from. He feels anything brought before the Council should have a sponsor. He gave an example of the Red Light Camera. He said it appeared on the Council agenda and he wondered where it came from. If they are going to do something in the City then there needs to be a Councilmember to sponsor everything that comes before them and have their name next to it. If the items come from one of the Charter Officers that is fine as long as it has a name attached to it.

Mr. Heady made a motion that anything that comes before the Council that is going to cost tax dollars or change policy have a Councilmember or Charter Officer sign off on it. Mr. Fletcher seconded the motion and it passed unanimously.

Mr. Vitunac suggested that Council look at the different policies that Council has adopted in the past (book is located in the City Clerk's office).

**13. FP&L Progress – Requested by Councilmember Heady**

Mr. Heady stated that they will find out more on the progress being made by FP&L at the December 1<sup>st</sup> meeting.

**14. Financial Analysis – Requested by Councilmember Heady**

This item was discussed earlier in the meeting by Mrs. Carroll.

**15. Fiscal Year 2011-2012 Next Year Budget – Requested by Councilmember Heady**

Mr. Heady mentioned that one of the things that he tried to do last year, early in the year, was to ask for some input by the Finance Commission and Council before they got to the July budgets. He was met with resistance and the next thing he knew it was July and the budget was being thrown in front of them and there was little or nothing that Council could do other than approve it. He felt that this Council has the inclination and the ability to have a real impact on next year's budget. He would like to very early in the game start discussions (maybe at every meeting) on next year's budget. This way the City Manager has some direction and understands the will of the Council. The Council needs to be in control of the budget and give some direction way before July.

**16. Discussion of Finance Commission – Requested by Councilmember Heady**

**17. Discussion of Utilities Commission – Requested by Councilmember Heady**

Mrs. Turner reiterated that at the next meeting they need to take a look at the different Commissions and give them mission statements and reconstitute these Commissions with people that are willing to attack these issues and provide Council with framework for their budget.

**18. Putting Citizens First – Requested by Councilmember Heady**

Mr. Heady was proud of the way Mayor Kramer has already handled public comments and has allowed the public to speak. Then they look at their Advisory Board agendas and see that public input is put at the end of the meeting. It seems to him that they should send a message to their Advisory Boards that they are here to serve the public, which means we put them first and he would like to send them a directive to move citizen input to the beginning of their meetings.

Mrs. Carroll agreed with Mr. Heady. She recalled that there was a Finance Commission meeting and Utilities Commission meeting held where public comments were not allowed and a vote was taken without any public input. She felt that they should bring this forward at their next meeting when they discuss the Commission/Boards.

**19. City Manager Search – Requested by Councilmember Heady**

Mr. Heady wanted to put the City Manager search on hold. He feels that they have so many things on their plate and they clearly have a City Manager that has demonstrated that he has the willingness and ability to work with the Council. He said that this is one issue that they can put on the back burner for at least the next couple of months.

Mr. Falls explained that the contract with the search firm has not been signed. They held off so that this Council could make a decision on how they wanted to move forward in filling that position.

Mr. Heady made a motion that we (Council) put that contract on hold for three months. Mayor Kramer seconded the motion and it passed unanimously.

**20. Heady versus City of Vero Beach Lawsuit – Requested by Councilmember Heady**

Mr. Heady recalled that at the last Council meeting the outside Counsel hired to handle the Heady versus City of Vero Beach lawsuit told the Council that the suit was dead and gone and could never be revived. He said that was not accurate and the Council was not being told the truth. He said that is a serious issue for him. If they hire Counsel and they stand in front of them and lie, he has a serious problem with that. He said that the lawsuit can be appealed and the lawsuit was not decided on merits rather than on procedure. He did not ask the right way, which he did not think that you have to ask the right way to have your constitutional protections assured. He was not sure at this point what to do. He didn't know whether he should file an appeal or whether they can get some consensus from this Council that the restrictions that were placed on certain members of the public were wrongful. If he could have this type of consensus then he would drop the appeal.

Mayor Kramer understood that it probably was not a good idea for them (Council) to comment on this lawsuit.

Mr. Vitunac explained that the lawsuit is still active until the time the appeal runs out. He received a memo from their outside Counsel recommending that they not go after Mr. Heady for attorney's fees. He said that it is a 50/50 proposition and they probably would not get it. He recommended not pursuing this issue. However, if Mr. Heady files an appeal they will have to continue fighting that. Mr. Vitunac did not think while the case was active that any actions of guilt should be admitted.

Mayor Kramer would like to treat this as a dead issue and not go after any fees.

**21. Golf Course – Requested by Councilmember Heady**

Mr. Heady reported that at their next meeting he expects that there is going to be an individual there who has tried very hard to present it to the last Council and was met with opposition from the former City Manager and was continually put off. This individual has private investors that are willing to restore the historic golf course. The current plan is more geared towards putting a clover leaf of baseball fields over there for Little League. If they agree that it will be clover leaf property then availability of the old historic golf course is gone. So on one hand what they have is the clover leaf of Little League fields that cost taxpayer money and then on the other hand they have a group of investors who want to put the property back on the tax rolls and they want to restore the golf course. It seems to him in terms of financial analysis, before they continue down this path of giving up property to Minor League Baseball (MiLB) that they should consider some things. He passed out copies of two different maps (on file in the Clerk's office). He continued by saying that there should be some financial analysis done on how giving up a third of a ten-million dollar purchase for one dollar a year is a good financial

move for the taxpayers. He said that the current plan will give up one third of the golf course that they spent ten million dollars on and when they bought it what they told the taxpayers they were going to do was restore it. Here they have a group of investors that want to put the property back on the tax rolls and spend their money to restore it.

Mrs. Carroll asked Mr. Heady if he was saying that these investors want to purchase the golf course and put it back on the tax roll. Mr. Heady answered no. Mrs. Carroll thought that to put property back on the tax roll that it had to be owned by a private citizen. Mr. Heady said that it will be going back on the tax roll, which is the proposal these investors have had out there for a long time. Mrs. Carroll reiterated if they were not purchasing the property then it was not going back on the tax rolls and continues to be City property. Mr. Heady referred to the City Airport where you will find a lot of property that is basically on the City tax rolls because it is being used commercially. He told Mrs. Carroll that she would need to talk to the City Attorney about how this works.

Mr. Vitunac explained that the Property Appraiser taxes the leasehold interest when someone for profit rents City land.

Mr. Fletcher supported Mr. Heady in this matter. He wanted to see this golf course saved and put back into shape as a National Monument. He said that this is the first place where there were black Dodgers who could not play where white people played and had to play on this particular golf course and it needs to be put on the National Registry.

Mayor Kramer commented that when he was looking at this issue and talking to Mr. Falls about it, what came up was the whole drive on this issue which was not baseball, but a lot of this has come about because of the widening of Aviation Boulevard and some drainage that will need to be done.

Mr. Falls told the Mayor that he was correct. He said that this is a complex issue that they have been working on for a long time to find a solution that would work with all of the parties involved. The Aviation Boulevard project is Phase one of a multi-phase project that is under design right now. It runs through the City limits and is a project devised through the MPO because it has regional impacts. It is being funded with FDOT grants and traffic fee funds collected within this County. What this project will do is alleviate traffic from the State Road 60 corridor. As they worked through the design of this project there was a need for five or six retention ponds to serve the additional improvements and one of those ponds was to be located just to the South of those two practice fields. This was the site that was selected because it was the most convenient to the corridor and the ultimate discharge from this pond will be the main relief canal. When they started working the details out with the County and the County met with their tenants, MiLB, to discuss the location of the ponds, MILB had in their business plan to build some youth athletic fields, which is referred to as the clover leaf in the location of the southernmost practice field (he showed this on the screen). This became problematic for the Aviation Boulevard site because the only other pond sites available were some of the sites at the Airport property. They then went back and asked the consultant what it would cost for a redesign and they received a figure of about \$65,000 to do the redesign.

Then they looked to find alternate sites to build this clover leaf and MiLB chose their best location. This was brought before the Council and they approved the location and instructed staff to go forward with the negotiations. Staff worked to come up with a deal with the County. The County came up with another recommendation on where to build the ball fields. This was not MiLB's first choice and then the County Commission directed the County Attorney to negotiate with the City to come up with the best deal. Mr. Falls said that he is meeting with the County Attorney the first of the week to put together deeds of actually trading some land with the County. When they are finished it would leave the City with a parcel that is rectangle in shape (he showed where this is located). If this is done it will preclude reconstruction of the golf course in the condition that it existed before it was closed down by the Dodgers.

Mr. Fletcher did not feel that the golf course has to be exactly the same as it was, it just needs to be a golf course on the National Registry.

Mayor Kramer was concerned that they would incur a \$35,000 a year penalty because they would have to take Airport land out of a potential lease for a mitigation pond.

Mr. Falls explained that if they did that with the FAA restrictions they have to be compensated for the use of this land. There would be a recurring cost to someone for that leasehold. These things have not been researched because the City felt that they had resolved the issue of the retention ponds.

Mayor Kramer commented that his point was that if anyone wanted to take the golf course land as is then the City would have to find a place for the pond and pay for mitigation someplace else.

Mr. Falls reiterated as they discussed earlier if the Airport land was a privately owned parcel and they were going to build a retention pond on the privately owned parcel the project would incur an expense to purchase that parcel or to lease that parcel on an annual basis. He said that if there is going to be any change to the location of this pond it should be paid for through the funding source.

Mayor Kramer wanted to know what the cost is in moving that mitigation and if it is such a huge amount that the planners can't overcome then this is probably not worth talking about. But, on the other hand he does not want to say "no" unless there is a reason to say "no."

Mr. Fletcher asked what price do you place on history.

Mr. Heady said they want to give up a third of a ten million dollar project to build baseball fields when baseball fields already exist.

Mrs. Carroll asked Mr. Heady if he heard the presentation that Mr. Callan has made where he said that it was necessary for the financial operations of the Sports Village in order to provide for softball and Little League tournaments. Based on his financial data

and the use of the historic Dodgertown facilities for a number of times of events they cannot make it work without having these softball fields.

Mr. Heady asked how long has the Sports Village been there. He was told two years. He continued by saying that a couple years ago when they came up with a plan, it was a plan that was financially viable without this clover leaf. Now, two years later they are saying their financial plan is no longer any good and they want us to give them this property.

Mrs. Carroll asked are they giving this property away or are they doing a trade.

Mr. Falls explained that when they purchased the land they purchased the area that is kind of the flag shaped parcel. They did not purchase the parking parcel. This is the portion that the City paid the ten-million dollars for that everyone refers to. When they exchanged the deeds with the County for the land they leased from them, it was for one dollar a year. It was not part of the ten-million dollar purchase. So if they trade deeds with the County, they will be trading dry land for dry land. What they are giving up is their rights to the leasehold of those ten acres.

Mrs. Carroll thought that the Sports Village had plans for using parking on the practice fields for large events.

Mr. Falls explained that they have worked with MiLB to come up with a plan to show how their parking requirements could be met on all of their property and none of the City property would have to be encumbered. However, in their negotiations with the County Attorney, he has said that as long as it is a compatible use they would allow that to continue. These documents are being drawn up and will be brought before the County Commission and City Council for final approval.

Mrs. Carroll stated that the way she sees it is this trade is an equivalent trade. They would end up with a contiguous shape property, which would still have about 90% of the original golf course left.

Mr. Fletcher recalled that he voted no against the Dodger deal when this came up a number of years ago because he knew that it was not any good. If MiLB is given this deal now then they will come back in another five years and ask for more. He did not feel that this was a good deal.

Mr. Heady commented that when the City purchased the golf course, at the time he spoke to Mr. Joe Baird, County Administrator and he said that he didn't think that the City understood that they did not purchase the whole golf course. Mr. Baird said that he could get the City out of the fix that they are in by leasing them that portion and the County agreed to lease that portion to them for one dollar a year. The idea that they don't own it is nonsense. He said of course they do. They might not have title to it, but they have rights to that entire golf course. If they do this deal with MiLB what they are doing is giving up one-third of the property. They currently own the entire golf course. He expressed that he does not want MiLB to fail at all.

Mr. Fletcher agreed with Mr. Heady that those clover leaf fields over there are empty probably 75% of the time.

Mr. Vitunac explained that the nine acre parking property was leased to the City by the Dodgers and not by the County.

Mr. Falls added that there is a portion (1.8 acres of land) that lies between Holman Stadium that is not part of that leased property. If they were to reconstruct the golf course back to its original shape then they don't have any rights to that parcel.

Mr. Heady wanted Council to understand what was happening and the potential that they might have with this investment group. He asked that they be put on the agenda for the next meeting and they will come with a proposal.

Mr. Falls asked the Council if they wanted staff to continue negotiating with Indian River County or do they want to put the whole process on hold until they make some decisions.

Mr. Heady wanted to see the whole process put on hold.

Mayor Kramer wanted to keep it alive. He wanted to get to a process where they can come to a consensus and choose which project is better.

Mr. Falls disclosed that on Friday morning at 9:00 a.m. he had a meeting with the County and his Public Work's staff to try to finalize the details for Aviation Boulevard. He said that there are some time constraints with getting the five million dollar grants from FDOT and if they miss that window there is five-million dollars of infrastructure funds that could be in jeopardy. At this point he did not have the last date in order to receive the money.

It was the consensus of Council to continue with negotiations, but the County should know that they are looking at other alternatives.

## **22. Pension Plans – Requested by Councilmember Heady**

Mr. Heady stated that they needed to pay for benefits in the year that they are earned and that is not what they have now. They promise employees that they are going to give them pensions in 15 to 20 years, but they are not putting money in to pay for those benefits. However, they accomplish this goal it will be a Council decision. The fiscally responsible thing to do, in consideration of their children and grandchildren, is that if they are going to offer employees benefits is fine, they just need to pay for them in the year that they are earned. This would probably be more in line of Defined Contribution.

## **23. Discussion on the Requirements to place items on the Agenda**

Mrs. Carroll mentioned that this meeting was a long one because they talked a lot. She said that they talked about a lot of issues, things that happened in the past, talked about the Code and just basically chatted. She said a lot of this information shared tonight could have been written down and provided to Council prior to the meeting so that they all could have come in prepared to discuss the specific issue. If they would have had all this information prior to coming to the meeting tonight they would not have needed to be updated verbally on all of the discussion. Also, members of the public would have known exactly what topics they were discussing and then provided their comments. She also noted that she was not aware that the City Clerk had a “policy book” in her office.

Mrs. Carroll referred to the City Code, Chapter 2.08 (d), where it states that the Council shall determine its own rules and order of business. Under the Code it also states that all matters on the agenda are to be placed on the agenda and shall be delivered to the City Clerk. It states in the Code that backup should be provided by citizens bringing items to the Council, but it doesn’t say that the Council are required to have backup. She made a motion that this Council be required to provide backup documentation for each agenda item to include what the exact public need or issue is, the relevant City Charter or Code references to the issue, any past decision of Council (last twelve months) or the reference dates, a statement of the proposed solution and any additional documentation, such as census data, public records, non-profit reports, other municipalities, etc.

Mayor Kramer said that he probably would be adding some things to that list.

Mrs. Turner seconded the motion for discussion. She agreed with Mayor Kramer that she would like the opportunity to review the list that Mrs. Carroll has brought up and make some modifications and suggestions to it.

Mrs. Carroll stated that if that is the decision of Council then they can table this item and bring it back at their next meeting. She said that what she did not want to see on the next Council agenda is another list of 23 items. She encouraged all the Council members to provide backup material on their items if they have any for the next meeting.

## **10. INDIVIDUAL COUNCILMEMBERS’ MATTERS**

- A. Mayor Jay Kramer’s Matters**
  - 1. Correspondence**
  - 2. Committee Reports**
  - 3. Comments**

Mayor Kramer passed on reporting on his Committees.

- B. Vice Mayor Pilar Turner’s Matters**
  - 1. Correspondence**
  - 2. Committee Reports**
  - 3. Comments**

Mrs. Turner mentioned the many seasonal visitors that they have in Town and they should be greeted warmly.

- C. Councilmember Brian Heady's Matters**
  - 1. Correspondence**
  - 2. Committee Reports**
  - 3. Comments**

Mr. Heady complimented Council on the great job that they did with the Chili cook-off and the two trophies that they won.

- D. Councilmember Craig Fletcher's Matters**
  - 1. Correspondence**
  - 2. Committee Reports**
  - 3. Comments**

Mr. Fletcher passed on reporting on his Committees.

- E. Councilmember Tracy Carroll's Matters**
  - 1. Correspondence**
  - 2. Committee Reports**
  - 3. Comments**

Mrs. Carroll passed on reporting on her Committees

## **11. ADJOURNMENT**

Mrs. Turner made a motion to adjourn tonight's meeting at 10:38 p.m. Mrs. Carroll seconded the motion and it passed unanimously.

/tv