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CITY OF VERO BEACH, FLORIDA
DECEMBER 4, 2012 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

Mayor Craig Fletcher, present; Vice Mayor Tracy Carroll, present; Councilmember Pilar Turner, present; Councilmember Jay Kramer, present and Councilmember Richard Winger, present **Also Present:** James O'Connor, City Manager; Wayne Coment, City Attorney and Tammy Vock, City Clerk

B. Invocation

Reverend Scott Alexander of the Unitarian Universalist Fellowship of Vero gave the invocation.

C. Pledge of Allegiance

Mayor Fletcher led the Council and the audience in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mrs. Tammy Vock, City Clerk, requested that item 3-C) be pulled from today's agenda and heard at the January 8, 2013 City Council meeting.

Mrs. Turner made a motion to approve the agenda as amended. Mrs. Carroll seconded the motion and it passed unanimously.

B. Proclamations

None

C. Public Comment

1. Mr. John Igoe, Transactional Attorney, to review FMPA Transfer Agreements.

Mr. John Igoe, Transactional Attorney, asked Council to let him give some remarks then he will open it up to questions. He referred to the backup material for this item. He said that he would be happy to address these letters, but he did not want to negotiate indirectly with Florida Municipal Power Agency (FMPA) through any dialogue this morning. He

said that he would answer questions, but if they get into too much detail he is going to back off. He has been operating under the assumption that the City Council wants them to facilitate the City's exit from the City's utilities. Everyone knows that this is a complicated transaction with multiple parties involved. He said that there are some major hurdles that they have tackled and put behind them, but there are some major hurdles that still must be tackled to get to the closing. He said one of the next major hurdles is to get the approval required from FMPA. He does intend to meet with FMPA to seek their guidance on the overall approval process. He referred to the backup material and Mr. McMahon's letter that highlights a number of risks and issues on the FMPA entitlement agreements, none of which are a surprise to him. They have been aware of them from the beginning. They are familiar with the issues and are prepared to sit down with FMPA to seek their guidance. He wanted to run through some of the issues that were flagged by Mr. George Christopher. Mr. Christopher implies that they don't have a working relationship with FMPA. Mr. Igoe said that is not the case. They met with FMPA in person several months ago and there have been several telephone conversations. Their game plan all along has been to complete the exit cost transaction documents and then meet with FMPA. He said that Florida Power and Light (FPL) and Orlando Utilities Commission (OUC) have been meeting since October 16th to iron out some of the complex details in the proposed three year power purchase agreements between FPL and OUC for Stanton I and Stanton II projects. He said that the agreements have not been finalized yet. Everyone involved agrees that they all need to see the final Power Purchase Agreements (PPA's) in order to finish the tax analysis. They will have their analysis in hand when they sit down and meet with FMPA. In his letter, Mr. Christopher implied that Mr. Igoe's firm doesn't have tax counsel with the experience necessary to work with bond counsel for the issuers. For the record he said that his firm has participated as bond counsel in over 1,500 tax exempt bonds and notes. Their firm was ranked as the number one bond counsel in the United States for competitive bond issues in 2011. Mr. Rick Miller has over thirty years experience as a municipal finance attorney and the attorney assisting him has over twenty years experience. Mr. Igoe continued by saying that they have had discussions with OUC and FPL about the tax exempt status of the FMPA bonds and the proposed three year PPA's and the private use exemption makes that possible. Their bond counsel agrees that this is a viable path for implementing the PPA's without jeopardizing the status of the FMPA bonds. He said there are a lot of details that have to be worked out and he looks forward to discussing this with Mr. McMahon when the PPA's are completed. Mr. Igoe said that when they negotiated the term sheet and the MOU and then the transfer agreements with OUC and FPL they were under a tight deadline. Initially, their plan was to get the drafts negotiated between OUC and FPL and then send them over to FMPA and get their input. However, there was not enough time to do that. In the backup material, Mr. McMahon and Mr. Christopher state that the exit documents ignore the fact that FPL is a private utility. He said they are fully aware that FPL is a private utility and the City is exiting the utility business. The City could not ask FPL to assume its obligations because that would jeopardize FMPA's tax exempt status of bonds. Under the exit agreements the City would be paying OUC to assume its PPA's under its entitlements. In the backup material, Mr. McMahon suggests that the transfer agreements do not comply with section 28(c) of the PPA's. He said that this is one area that he does not want to negotiate from the podium. However, he is fully prepared to

discuss it with FMPA. They actually started the dialogue before October 16th. Mr. McMahon has invited them for a discussion on this issue and they are going to pursue his invitation. He said in the letter Mr. McMahon states that action will probably require the approval of all other power participants. They recognize that is a possibility and hope to address this with FMPA. The last issue in the backup letter addressed the all requirements power contract and their plan on that remains the same. The plan, on behalf of the City is to ask FMPA to waive the notice period for the withdrawal to coincide with the closing of the transaction. He wanted to make it clear that they have a relationship with FMPA and are going to meet with them. They are just waiting for FPL and OUC to complete the PPA's.

Mr. Winger commented and told Mr. Igoe that he hopes that he is wrong and that Mr. Igoe is right. He pointed to a pile of documents, which consists of OUC and FMPA agreements. He reiterated that he hopes that the comments made by Mr. Igoe prove to be accurate, but he has some great doubts. He has the responsibility as an elected official to state that. He commented that there are two (2) sets of agreements. There are agreements having to do with Stanton I and Stanton II and with OUC. Then there are the all requirement agreements. He said in looking at the bonds there is a transactional obligation (who takes the power and who pays for it on a monthly basis) and in this case with these bonds they are secured by the revenue of the Vero Beach Power System, which is produced by the assets of that particular system. He agrees that OUC, under the PPA's would be paying the transactional obligations, but the problem is what happens to the bonds. He said that the security for the bonds is the revenue for the system. If they no longer have the system the bond holders no longer have the security. He said that really is the issue here. The bonds under these agreements, the assets can be sold to another public utility and that public utility with FMPA's consent can take over both the transactional obligations and the bond obligation. The question is whether you can sell the assets to FPL. He would think that this will take some time to resolve. It will probably take an IRS ruling on the status of the bonds. It is clear that FMPA, in its sole discretion, gets to decide what is done in terms of a waiver. The agreements say that because they filed late in the all requirements that a waiver has to be granted to everyone in the future. He said that it is not only for the all requirements agreement, but any other agreement that FMPA has. He was happy that Mr. Kramer was going to give a presentation to the Utilities Commission next week at their meeting. He thinks that this transaction is a significant risk and personally feels that this is a deal stopper. He likes the idea of selling the County customers and keeping the City customers. Then later on when all the hurdles are cleared they can sell the City customers.

Mr. Igoe did not view this as a show stopper. He said that FMPA is helping them find eligible members to assume their obligations and FMPA has not given them any indication of resistance.

Mrs. Carroll told Mr. Winger that she wanted to reaffirm the fact that this Council interviewed many attorney firms throughout the State of Florida, when they chose their Transactional Attorney. They were fully aware at the time the legal ramifications of the FMPA contracts, as well as the other contracts binding the City of Vero Beach to various

power usages and what it would cause them. The Council was fully aware that it would take a long time to get out of these contracts. She said what this law firm is doing right now is charting new ground in the complexity of this negotiation. She trusts Mr. Igoe and his team of attorneys and they are more qualified to look at these issues then Mr. Winger and this one attorney that resides in the City of Vero Beach. She said that it was embarrassing for her, as a Councilmember to have a member of the Council to present a letter written by a local small town attorney that is questioning the vast amount of work that the entire team that Mr. Igoe's firm is producing for them. She believes it was out of line for the basis of one letter that they have a need to have this discussion and Mr. Winger raising these concerns about someone with Mr. Igoe's background and his team who have been working hard for the City on this issue. She fully trusts the Transactional Attorneys that they have hired.

Mr. Winger noted that he was not on Council when this firm was selected and he would not have selected them. This firm has cost the City twice as much as other attorneys would have charged them. He hopes that what Mr. Igoe has said is right and that they are successful. He is fully prepared to go through the documents that he has with him today and the backup letter. He is respecting Mr. Igoe's comments that he does not want to do that today. He said that one of his objectives as a City Councilmember is too try to make this Council more transparent and to try to bring more of the facts to the public. He believes that is his responsibility.

Mr. Kramer referred to the all requirements project and said that Mr. Igoe has admitted failure in getting the notices out and presumably if he does not get the waivers that it will cost them another year. He asked Mr. Igoe what is his plan to get the waivers to make sure that this transaction happens on January 1, 2014.

Mr. Igoe stated that he is going to ask FMPA for the waiver. He said with the all requirements contract, the City has not purchased any power since January 2010. He said that there has been some discussion whether or not there might be termination costs and so far FMPA has not told them that there will be any termination costs.

Mr. Kramer requested Mr. Igoe to ask sooner than later. He also wanted to know about the tailor swaps and whether or not that plays into the all requirements project.

2. Mrs. Phyllis Frey to discuss Central Beach Traffic Patterns.

Mrs. Phyllis Frey had not arrived for the meeting when this item came up.

Ms. Annie Rogers, 3626 Indian River Drive East, read a prepared speech concerning the proposed traffic plan for Beachland Elementary School (please see attached).

Mr. Wayne Coment, City Attorney, explained that this is a quasi-judicial matter that will be going before the Planning and Zoning Board on January 3rd for a public hearing and this Council could be hearing this matter on an appeal. He said that quasi-judicial means that they cannot consider anything that comes outside of the hearing. This would be an

ex-parte communication and anyone else that speaks on this matter would be having communication with the Council and the proponent of the site plan is not at the meeting to respond and ask questions. He explained the proponent being the School Board or their representative. It would not be fair to hear these kinds of things without the School Board being present. He told Council that they can let people speak, but he would not be asking questions and having interaction with them. He said if the matter does come before the Council on an appeal these presentations would have to be disclosed to the applicant (School Board) so they can find out if any of these things effected Council's decision in the matter, because they are to only make those decisions based on what they hear at the public hearing.

Mrs. Carroll said so for me to refute some of the comments just made by Mrs. Rogers would be totally inappropriate.

Mr. Coment explained that the discussion would have to be disclosed at the hearing if this comes to Council as an appeal and the applicant would be able to question Mrs. Carroll about the discussion. It will not remove the presumption of it being improper.

Mrs. Carroll commented that after hearing what Mr. Coment just said, this would not be the appropriate time to bring these comments to them since it will be a quasi-judicial hearing. She said that it may be more appropriate to those concerned to make these comments to the Planning and Zoning Board and then if an appeal is brought to Council then that would be the time for Council to hear these comments.

Mr. Kramer added that these people can still make their comments, but the Council cannot have any interaction with them. He said that he has worked with members of this group before and talked about this issue. He asked if that will need to be disclosed.

Mr. Coment answered yes and the School Board's representative would be able to ask him about the conversations at the time of the appeal.

Mrs. Carroll mentioned that she has talked to many people about this issue for a couple of years now. She didn't think that she would be able to go back and list all of those people that she talked to.

Mr. Coment stated in general that should not be a problem. The problem arises when this is now an actual application for a site plan and will be going before the Planning and Zoning Board for consideration. He said that if the outcome is appealed by the School Board or opponents to the application it will end up before the Council. The law says that Council must only consider what they hear at the hearing.

Mrs. Carroll made it clear that as of right now the application has been made so the time period has started where they cannot have this information effect them and can only base their decision with the information that is presented to them at the quasi-judicial hearing.

Mr. John Castor asked if the School Board will be present for the Planning and Zoning Board meeting on December 6th.

Mrs. Vock informed the public that the Planning and Zoning Board meeting has been cancelled and this matter will be heard at their January 3, 2013 meeting at 1:30 p.m.

Mr. McGarry added that the School Board's Representative, Mr. Scott Sanders, would be willing to meet with anyone from the public who had some concerns on this matter and discuss it with them.

Ms. Lisa Bowles, Date Palm Road, was very concerned that the new plan will bring traffic to their residential street. She wants the children to be safe, as well as having a safe neighborhood.

Mr. Fletcher suggested that she needed to go to the School Board and meet with them.

Mr. Coment commented that if the Planning and Zoning Board approves or denies the application and the decision is not appealed then that will be the final decision and if the case is not appealed then it will not come before Council.

Mrs. Carroll wondered if Mr. Coment could draft a letter and send it to the School Board Chairman letting them know how some of the members of the public feel about this plan.

Mr. Coment said that he could do that, but explained that Mr. McGarry has been working with the Representative from the School Board on this matter.

Mr. McGarry suggested that those people who are concerned should talk to the School Board representative to see if these things could be ironed out.

Mrs. Carroll commented that it was brought up that there are a lot of school buses speeding when they drive down Date Palm Road. She asked if they could put a speed limit sign in that area and limit the height (limbs of trees being hit by the buses).

Mr. O'Connor said that they can post the speed limit signs in this area, but limiting the height would be another issue.

Mr. Brian Heady stated that the School Board is the most restrictive governing body in this County. As far as ex-parte communication, concerned individuals can give testimony at a quasi-judicial meeting. He has attended many of the meetings when this matter was discussed and he did not feel that the School Board was very cooperative. He has watched the School Board bull doze down two different schools in this area and then bus students to Beachland Elementary, which has become over populated. The City Council should be outraged with what the School Board has done to their neighborhood schools. Mr. Heady thanked Mrs. Turner for helping the Veterans. He told Mrs. Carroll that she may think that the comments made by Mr. Winger were embarrassing. However, he thinks that it is wonderful that he spoke up and it is not embarrassing at all

when one Councilmember says something that is counter to what another member on the City Council might think is embarrassing. He appreciated when Mrs. Turner votes no for things because the financial analysis is not included. He thought it was out of line when citizens come to the podium and ask questions and they do not receive an answer. He said at the last meeting he attended he asked the Council who voted in favor of a contract about a payment of $20 million dollars and he wanted to know what the payment was for. He said that Mrs. Turner told him what one of the payments was for and Mrs. Carroll told him that it was inappropriate for him to ask questions and that he was out of line. He said that he still has the same question.

Mrs. Carroll told Mr. Heady that their Code specifically states that a member of the public can talk about things on the agenda or other items appropriate to the community, but it is not appropriate to discuss things personally with one Councilmember. She would hope that as a former Councilmember that Mr. Heady would know that is in the Code.

Mr. Heady said that you can read the Code anyway you want. He said when a City Councilmember votes in favor of something then it is fair for the public to know the reason why. He again asked what was in their mind when they voted yes to give away $34 million dollars.

Mayor Fletcher added that the Charter directs that people at the dais will speak to the Council as a general body and not individually. He said that Mr. Heady was attacking an individual.

Mr. Heady asked Mr. Fletcher why he thought it was an attack.

Mayor Fletcher asked Mr. Heady to finish his comments and reminded him that this was a business meeting.

Mr. Heady thought it was appropriate for the public to ask the City Council why they voted the way they did on an issue.

Mr. Richard Schulman, 551 Cypress Road, commented that the relationship of the School Board to the community surrounding Beachland School is that the School Board basically ignored everything they had to say. He doesn't place much hope in the continued discussions with the School Board. He thinks that the matter will have to be settled in other forums. The School Board is very unresponsive. He has only lived in Vero Beach for 2 (two) years and there are major draws for residential purchases. He was happy to hear the issue of the energy costs that was discussed. He thought demolishing elementary schools and bussing children to other schools is devastating to the schools and the children. School children don't want to spend a lot of time on buses and it also increases traffic. He hoped that Council would do their part to rein in an out of control School Board.

Mrs. Carroll asked Mr. Coment to provide them with a document that looks at what the City's rights are to modify or influence the School Board's decision for schools and neighborhoods within the City limits.

Mr. Coment explained that the School Board has to comply with the City's zoning laws. The School Board has their own building code that they have to comply with. They own all the property that is being called the "Beachland Woods" and the School Board has the right to build on that property at anytime as long as they comply with the City's zoning laws and go through site plan approval.

Mr. O'Connor expressed that citizens can also appeal the Planning and Zoning Board's decision.

Mrs. Nancy Cook, 710 Riomar Drive, commented that the School bus transportation pattern is on a main thoroughfare. She thought that the traffic should stay on the main thoroughfare and not go into the neighborhood in order to get to the front of the school.

Mr. Charlie Wilson stated that he was happy that one of the Councilmembers brought up the issue of transparency. He said that this is the first time that he has heard, and it has been confirmed, that the Councimember is working behind the scenes with Mr. Christopher. Mr. Christopher is part of the Indian River Neighborhood Association (IRNA). Mr. Christopher and his organization supported previous Councilmembers that got them here. The fact is that at least individual Councilmembers are working with an organization and attorney whose job is to prevent the sale of the electric utility. They negotiated a fair price to sell the utilities and apparently now a fair price is not good enough. Now they are having this back door effort to sabotage negotiations between the City and FPL. He mentioned that later on in the agenda he knows that the referendum is going to be discussed. He said that he was not convinced that there was a need for a referendum. He said if they put a referendum on the ballot now, he guarantees it will not be the final referendum. He said for five (5) years they have been struggling with these negotiations and the public has sent clear messages as to what they want to have happen. They are getting frustrated because no matter how many times they tell Council what they want it doesn't happen. He suggested that if they are going to have a referendum then lets make it winner take all and a final referendum. He said that when the attorney writes this referendum there has to be some risks on behalf of those who don't want to sell the utilities. He said if they are going to have a referendum that they need to make sure that they include procedures that will make it the final referendum on this matter and that it is put into the Charter. He personally would like to see a vote for all of the ratepayers (survey or what he refers to as a referendum by mail).

Mr. Coment expressed that the State law only allows in a municipal election that registered City voters may vote.

Mr. Wilson asked Mr. Coment if he has told the public that there is no requirement for a referendum. Mr. Coment answered yes and said that if Council wanted to send out a

survey then that could be sent out to all of the ratepayers. But, if they were going to hold a referendum then there are State laws that come into play.

Mr. Wilson expressed that after five (5) years he is getting tired of this discussion. He noted that they still don't have answers to very basic questions including the $20 million dollar "Vitunac" penalty. They still don't have answers to the unsigned/unread contract page and how contracts were changed (referring to the OUC contract). He gave some history of an incident that happened in the Keys where a contract was signed and afterwards there were changes made to the contract. He said that contract was voided. He does not want to interfere with the negotiations that are taking place and thought that the Transactional Attorneys were doing a good job. He asked this Council at a future meeting to ask the City Attorney to bring forward an official request to the Florida Department Law Enforcement (FDLE) asking them to look into this matter. Unless they (Council) want to hide something, then full transparency would be a report requested by this Council to FDLE as to the situation having to do with the bid, signing and the penalty having to do with the contract that they are in currently.

Mrs. Carroll asked Mr. Coment if he could provide Council with a document that is required for an FDLE exploration into this issue. She was not one-hundred percent sure what this Body produces and what they do for the City. She just wants to see a general outline of what it takes for the FDLE to look into a matter.

Mrs. Turner expressed that there may be members of IRNA who are opposed to this sale. But, she was endorsed by IRNA when she ran for City Council and she has consistently been in favor of selling the utilities.

Mr. Winger added that he is not a member of IRNA.

Mr. Herb Whittall, 19 Park Avenue, felt that they should negotiate the price being offered by FPL for the utilities and try to get closer to $20 million dollars. He also mentioned that Florida City Gas has a line into Miracle Mile so there is a possibility of getting gas into the City. This would be something for them to be look at in the future.

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

D. Adoption of Consent Agenda

1. **Regular City Council Minutes – November 13, 2012**
2. **Organizational Minutes – November 13, 2012**

Mrs. Carroll made a motion to adopt the consent agenda. Mr. Kramer seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

A) **A Resolution of the City Council of the City of Vero Beach, Florida, adopting a Revised Schedule Providing Fees and Charges for Use of Recreation Department Facilities and Equipment and for Participation in Recreation Programs and Providing Revised Hours of Operation; Providing for an Effective Date – Requested by the Recreation Director**

Mayor Fletcher read the Resolution by title only.

Mr. Rob Slezak, Recreation Director, stated that these were the proposed rates and fees for 2013.

Mayor Fletcher asked if there had been input from the public on these new fees.

Mr. Slezak explained that the public, as well as the different organizations that have events at Riverside Park, gave some input.

Mr. Winger asked for an update on Little League.

Mr. Slezak reported that the Recreation Commission met with the Little League representatives at their last meeting and they are looking at the rates that the City currently charges them. The Recreation Commission wanted to know what the overall increase was for the other programs that they offer and it came out to be around 20%. The Little League currently pays $150.00 per team and he is going to propose an increase of $30.00, which would be $180.00 per team, which is roughly a 20% increase. They are also looking at other ways to cut their expenses and looking at their utility costs and ways to reduce them. Mr. Slezak expressed that this group has been trimming their expenses since 2007 and hopes to get their electric rates down 20%.

Mr. O'Connor added that it will be many years before the Little League will break even with the City.

Mrs. Carroll asked from when this first was proposed, which was about six months ago, have there been any recommendations to modify the rates.

Mr. Slezak answered yes. He said that initially they were looking at charging a vendor fee for each vendor of an event. However, the clubs did not want to go that route and asked what the bottom line fee was going to be and that they would rather pay the increase that way. He reiterated that there was a lot of input from the public and from the different organizations and clubs that pay these fees to hold different events in the City.

Mayor Fletcher opened and closed the public hearing at 11:10 a.m., with no one wishing to be heard.

Mr. Winger made a motion to approve the Ordinance. Mr. Kramer seconded the motion and it passed 4-1 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll no, and Mayor Fletcher yes.

B) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 34, Article II, Division 2, relating to Burglar Alarms; by amending Section 34-48 relating to Alarm Permit Requirements; Providing for Conflict and Severability; Providing for Codification; and Providing for an Effective Date. – Requested by the Police Chief

Mayor Fletcher read the Ordinance by title only. He opened and closed the public hearing at 11:12 a.m., with no one wishing to be heard.

Mrs. Carroll made a motion to approve the Ordinance. Mr. Kramer seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

C) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 58, Article II, Division 4, relating to the City of Vero Beach Police Officer's Retirement Fund; by amending Section 58-97 relating to Employee Contributions; amending Section 58-98 relating to the Definition of Compensation and amending Section 58-108 Relating to Credited Service; Providing for Conflict and Severability; Providing for Codification; and Providing for an Effective Date. – Requested by the Police Department

This Ordinance was tabled and will be heard at the January 8, 2013 City Council meeting.

D) An Ordinance of the City of Vero Beach, Florida, comprehensively amending Chapter 73, Article I, Flood Damage Prevention of the Vero Beach Code of Ordinances; Providing for Adoption of Flood Hazard Maps, designation of a Floodplain Administrator, and Adoption of Procedures and Criteria for Development in Flood Hazard Areas; Providing for Conflict and Severability; and Providing for an Effective Date. – Requested by the Planning and Development Director

Mayor Fletcher read the Ordinance by title only.

Mr. McGarry noted that there was a correction that needed to be made on page 28. The date should read *September 30,* 1977. He also looked at other properties that the City owns that may be in the flood zone.

Mayor Fletcher opened and closed the public hearing at 11:14 a.m., with no one wishing to be heard.

Mrs. Turner made a motion to approve the Ordinance with the amendment made to the Ordinance (date, September 30, 1977). Mr. Kramer seconded the motion and it passed 5-

0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

E) An Ordinance of the City of Vero Beach, Florida, amending Section 22-181, "Standard Technical Codes," of the City of Vero Beach Code; Providing for Adoption of Local Administrative Amendments to Chapter 1 of the Building Officials Association of Florida Model Administrative Code and Adoption of Local Technical Amendments to the Florida Building Code required for Implementation of the National Flood Insurance Program; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning and Development Director

Mayor Fletcher read the Ordinance by title only.

Mr. McGarry reported that by adopting this Ordinance it will allow local administrative amendments to Chapter 1, Building Officials Association of Florida Model Administrative Code, to coordinate the administration of the City's floodplain regulations with the Florida Building Code.

Mayor Fletcher opened and closed the public hearing at 11:16 a.m., with no one wishing to be heard.

Mr. Kramer made a motion to approve the Ordinance. Mrs. Turner seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

None

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

A) An Ordinance of the City of Vero Beach, Florida, designating the Ocean Drive/Cardinal Drive Commercial Overlay District by amending the Official Zoning Map of the City of Vero Beach; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning and Development Director

Mayor Fletcher read the Ordinance by title only.

Mr. McGarry put the map up on the computer that shows the overlay district. He explained that this Ordinance only deals with the map change.

Mayor Fletcher asked Mr. McGarry if a notice has been sent out to the surrounding property owners.

Mr. McGarry explained that will be done before the public hearing, which he would like Council to schedule for January 8, 2013.

Mrs. Carroll noted that she provided Council with a copy of the Vision Plan (on file in the City Clerk's office) that was adopted on February 24, 2005, which includes the plans for this area. She is happy to finally see this before Council, since it was adopted in 2005.

Mrs. Nancy Cook stated that she was a member on the Vision Committee. She noted that a couple of weeks ago she provided Council with a book (Agenda 21 Behind the Green Mask), which is where she found out where visioning came from. When she was on the Visioning Committee, she was very ignorant and thought that it all sounded good. Then she came across this book and realized all that is in the book had happened to her in the visioning process. There was a technique of manipulating outcome by asking questions that already had answers, showing pictures and being asked to put red and green dots on things that the Committee liked and did not like. The women who wrote this book worked as a Property Appraiser in California. She noticed property values were going down in areas and after doing some research she noticed that all of these areas affected were being affected because of these kinds of plans where the consensus was important, but not the individual. Private property rights were being badly damaged by the outcome of planning that sounded good. She said that some of the things in this proposed overlay district might be good things, but her problem with it is that it is twenty-five pages of regulations for private property owners. She thinks maybe the reason that this has taken so long to get to this stage is because people are not aware there are so many issues to deal with. She discussed the number of stories allowed on one street versus another, after hiring an attorney, they found out that it was a taking of property. While discussing if they could have 3/2, 3/2 the height limit has been agreed upon. There is no argument with 35/15, but then the Ordinance only limits three stories and when the Vero Beach Spa and Resort was built they were able to have four stories. She still does not understand why in this overlay Ordinance that they have to have so much regulation. She felt private property rights are the bedrock of America. She feels that the private property owners should have more say. She also feels that the people who own property should be able to rent their property for the highest and best use that will serve the community. She did not think that the Council could be in favor of the rights of the collective versus the rights of the individual and find much success. If they are concerned with the rights of the individual and private property owner then they will benefit the collective. She did not think that was what they were looking for and to be their legacy. The private property owners are responsible for its uniqueness, its identity, and the things that make them different from everywhere else in Florida. If everything is regulated, then long term it will all look just the same. She said they are trying to push retail on Cardinal Drive and it doesn't work. She said other people have tried it and businesses had to move and go other places. However, banking institutions work in that area. She brought up again that she does not know what happened to the fourth floor and she is in favor of 35/15 and totally opposed to an Architectural Review Commission (ARC) for the reason that it puts another layer of government between the property owner and the ability to do anything

with their property. She was in favor of the people vested to know the outcome of their properties. One of the things in this Ordinance is that if you do anything on Beachland Boulevard you have to plant Oak trees. She didn't think Oak trees thrived very well close to the salt air. She mentioned that if the Holiday Inn can't have four (4) stories then they are at a disadvantage to compete. She had some concerns with Council moving ahead on this.

Mrs. Carroll commented that right now they are discussing the overlay district map and a number of questions that Mrs. Cook brought up are matters dealing with item 5-B). She was told that was correct, but there was not a problem with discussing both of these items together.

Mr. Winger asked what the purpose of the overlay district is.

Mr. McGarry explained that the overlay district is intended to institute what came out of the Master Plan (adopted in 2007) and the Vision Plan (adopted in 2005). The plan calls for a more storefront pedestrian district then what they have now and there are a lot of incentives in the Ordinance to accomplish this. He said that the Planning and Zoning Board has held five (5) workshops and two (2) public hearings to address this issue. In the end the Planning and Zoning Board approved the Ordinance unanimously.

Mr. Winger said that he understands it will provide more regulations.

Mr. McGarry stated that it provides incentives and what is outlined in the Vision Plan, but they are not forcing people to do something and that was the whole intent of the Ordinance.

Mr. Winger felt that it did add more regulations and he was leery about that. He did not have a problem with Holiday Inn coming before them with plans to redevelop when they are ready to.

Mr. McGarry explained that under the current Ordinance the Holiday Inn could not redevelop. He said that they are limited by the regulations in place now.

Mr. Brian Carmen, IRNA, stated that this Vision Plan is not a Vision Plan anymore. He felt that Council should look at this and operate under the existing law. They don't need any more regulations. He doesn't think that this plan serves a purpose and things can be looked at on a case by case basis.

Mrs. Turner told Mr. Carmen that as the Representative for IRNA that she thought they were promoting the Vision Plan and incorporating it into the Code was their main drive.

Mr. Carmen agreed that at one time that it was, but now it does not serve the business community.

Mrs. Carroll read some things out of the Vision Plan and said that is what has been developed by the Planning and Zoning Board in the seven (7) different meetings that they have held.

Mr. Winger asked if they could talk about both items together.

Mayor Fletcher suggested that they talk about this Ordinance first.

Mrs. Phyllis Frey, 275 Date Palm Road, shared the private property rights versus sustainable communities (she read a prepared speech). She told Council if they needed further information besides the information that she has given them to please call her.

Mrs. Turner agreed with Mrs. Frey that what was going on with 750 is frightening and they should opt out completely from that program. However, when she is looking at the Vision Plan that this was a program that was funded locally, within Vero Beach and there have been seven (7) Planning and Zoning Board meetings, and they are trying to do their best to protect property rights. She expressed that she is a proponent of protecting property rights.

Mrs. Carroll asked Mr. McGarry to touch on the fact if he was being influenced by a global conspiracy theory.

Mr. McGarry explained that with local planning they are planning for themselves and not waiting for regional or government planning. They go through the proper process to find out what are the needs of the community versus the property rights. This is an effort that the local community wanted to have and move forward with. He said that if it doesn't work then they get rid of it.

Mrs. Carroll mentioned that this was brought forward by members of the public before 2005 and was something desired by our City and not duly influenced by the State or Government.

Mr. McGarry added that as far as he knows this has all been driven locally. When he was hired by the City one of the tasks that he was given was to implement the Vision Plan.

Mrs. Cook stated that she felt one-hundred percent sure that the facilitators hired for the visioning process were like the ones facilitating the charette that was held last month by the County. She again asked what happened to the fourth floor.

Mrs. Turner made a motion to move the discussion of the overlay Ordinance to January 8, 2013. Mrs. Carroll seconded the motion and it passed 4-1 with Mr. Winger voting no, Mr. Kramer yes, Mrs. Turner yes, Mrs. Carroll yes and Mayor Fletcher yes.

B) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 62, Nonresidential Districts by creating Article XIII, Ocean Drive/Cardinal Drive Commercial Overlay District; Providing

for Development and Building Design Standards; Providing for Development Incentives; Providing for Conditions of Approval and Waivers from use requirements; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning and Development Director

The City Clerk read the Ordinance by title only.

Mr. McGarry explained that in this Ordinance that the Planning and Zoning Board agreed to make some things mandatory. However, there has been flexibility developed into the Ordinance. There was a lot of discussion on the three (3) story limits and it was settled on because they were trying to set a store front look effect and if they allowed someone to go to four (4) stories with the height limits then they could get a form that did not fit with the rest of the development. However, he said that on the East side they gave the Hotels much more flexibility and could be looked at being allowed to go to four (4) stories.

Mrs. Carroll asked if there were any properties West of the oceanfront that are currently at four (4) stories. Mr. McGarry answered yes, that there was one. Mrs. Carroll did not believe that there was. She said currently according to their Code that a property owner could build to four (4) stories with an unlimited height of each story. Mr. McGarry explained that they have a maximum height of 35 plus 15, which they have to meet but they could conceivably do four (4) stories.

Mr. McGarry pointed out that the Ordinance would be incentive based. He went over some things that the Planning and Zoning Board got rid of. The whole idea is give some guidance and incentive to the property owners. This will give some larger properties in the district to be compliant, but not have to go back to whatever the FAR is for that hotel. They want the ARC to look at the design elements. He reminded Council that this will be a quasi-judicial hearing when it is heard.

Mrs. Carroll recalled that the Council reconstituted the ARC and gave them certain guidelines as to what their responsibilities are.

Mr. McGarry will be bringing those guidelines to Council in the near future to approve.

Mr. McGarry continued by saying that the larger Hotels on the East side they gave much more flexibility in redevelopment. The important thing when giving the development incentives is to try to get active uses on the ground floor, but this is only necessary if someone wants additional floor area. He expressed that no one is being forced to have retail on the ground floor.

Mrs. Carroll recalled hearing that real estate would no longer be allowed on the bottom floor. She asked Mr. McGarry if that was correct. Mr. McGarry stated that was not correct.

Mrs. Carroll then brought up the requirement to plant Oak trees on Beachland Boulevard.

Mr. McGarry said that this would be required when someone is doing a street zone, which would be required if they are under the development incentive side. The reason was because there is an Oak tree canopy going down that street and the Planning and Zoning Board wanted to continue with that.

Mrs. Carroll wondered about the salt intrusion in the soil and the trees growing. Mr. McGarry said that was discussed by the Planning and Zoning Board, but they agreed to leave it in the Ordinance.

Mrs. Carroll disclosed that she spoke with Mr. Ken Kaleel, an attorney representing the Holiday Inn, after one of the Planning and Zoning Board meetings.

Mr. Mark Mucher, 617 Indian Lilac Road, and a member of the Planning and Zoning Board, wanted to give Council a couple of items that were brought up at some of the meetings that he thought they would like to have some background on. He said that since everything is now three (3) stories that Council may want to consider just going back to the 35 feet and dropping the reference too stories. He asked them to look at whether or not they want to make this whole overlay district mandatory or optional. He said one of the things that no one can do under the Ordinance is build something under today's Code once this Ordinance is adopted.

Mr. McGarry said that they could go back to the optional approach, but if you start vesting everything then why bother with the district.

Mrs. Carroll asked what would be the ramifications of modifying the Ordinance and going back to 35 feet.

Mr. McGarry said that 35/15 is in their regulations. This Ordinance talks about storage, which their current regulations do not talk about. The storage was left in to have a similar/compatible type of look.

Mrs. Nancy Cook asked Mr. McGarry about the setback of the second floor and if it could come out over the build-to-line on the first floor. She said then the third floor must be set back six feet from the second floor. Mr. McGarry told her that it is six (6) feet from the build to line.

Mr. Ken Keleel, Attorney representing Holiday Inn, said that his client wants to work with the City of Vero Beach and comply with the Ordinance that they come up with. They support what the City has now. They do have some comments on the four (4) stories and don't want to see the City go down to 35 feet. They would like to have four (4) stories. He said that his client is used to building first class hotels. They would be able to design a 50 foot structure that would be conducive to the community and he encouraged Council to allow them to do that. His client is in the business of making sure that they design a nice structure. He said that there is another hotel down the street (Vero Beach Hotel and Spa) that is four (4) stories and there doesn't seem to be any problems.

Mrs. Carroll asked Mr. McGarry to explain if they have a 35 foot height regulation with the 15 foot embellishments, how Vero Beach Hotel & Spa was granted approval for four (4) stories.

Mr. McGarry could not tell Mrs. Carroll exactly how it happened, but said that it was vested.

Mrs. Carroll proposed that they not spot zone, but allow same capability to other hotels.

Mr. McGarry said that it would be his recommendation that the large hotels would be allowed to have four (4) stories and 35 feet.

Mrs. Turner made a motion to move this Ordinance to a future public hearing on January 8, 2013. Mrs. Carroll seconded the motion.

Mr. Winger found himself agreeing with some of the comments made by Mrs. Cook. He could go through this document and there are at least a dozen things that he does not like. He said that they have gone along fine up to now and he doesn't think that Council needs to move this Ordinance to a public hearing.

Mrs. Carroll expressed that this matter has been going on since 2005 and they are finally addressing it.

Mr. Kramer was in favor of giving property owners as much freedom as they can to expedite their property rights. He doesn't think that they need more regulations. If Council passes this there are mistakes that could be made.

The Clerk polled the Council on the motion and it passed 3-2 with Mr. Winger voting no, Mr. Kramer no, Mrs. Turner yes, Mrs. Carroll yes, and Mayor Fletcher yes.

Council took a lunch break at this time and the meeting reconvened at 1:30 p.m.

6. CITY CLERK'S MATTERS

A) Committee Appointments

Council discussed their Committee Appointments for 2012-2013.

Mrs. Turner volunteered to remain as their Representative on the FMPA Board. She noted that there are other organization meetings that she attends: Mental Health Coalition, Senior Steering Committee, the Florida League of Cities Board of Directors and the Florida League of Cities Policy Committee.

Mr. Winger volunteered to serve on the County Executive Roundtable (now called the Interagency Coalition of Indian River County).

Mrs. Carroll volunteered to serve as the City's Representative liaison to the Chamber of Commerce.

Mrs. Vock reported that Indian River Shores has selected Mr. Bill Grealis to be their Representative for the Town of Indian River Shores on the City Utilities Commission.

Mrs. Carroll noted that she has revised and updated their Board and Commission application form. She instructed the Clerk to provide a copy of the modified application to the Council to see if they approve the revised application. The Clerk went over the openings that they presently have on their Commission/Boards.

Mrs. Carroll asked Mrs. Vock about the year-end reports from the different Commissions.

Mrs. Vock reported that the Commissions are working on their reports and that she has received most of them and will be providing them to the Council by their next meeting.

Mrs. Vock recalled that at their last meeting, Mrs. Carroll brought up having the Council serve as a liaison to some of their Commission and Boards.

Mrs. Carroll instructed Mrs. Vock to send a copy of the different Commission/Boards to the Council and let them review the list and they will discuss this at a later date.

7. CITY MANAGER'S MATTERS

Mr. O'Connor commented that when Mr. Igoe was speaking earlier he forgot to ask Council for an extension in his contract for additional funds. The money spent to date is around $650,000 and Mr. Igoe would request that be increased to $750,000. Mrs. Carroll made a motion to approve the request. Mrs. Turner seconded the motion and it passed 3-2 with Mr. Winger and Mr. Kramer voting no.

Mrs. Carroll had some concerns with two of the Councilmembers voting no to the motion.

Mr. Kramer explained his reason for voting no was because he does not have confidence in their Transactional Attorney (Mr. John Igoe).

Mrs. Carroll did not believe at this point they could hire another attorney to come in and take over.

A) Officer John Morrison to give a presentation on Uneighbors

Police Chief David Curry introduced Officer John Morrison.

Officer Morrison gave a Power Point presentation on "Uneighbors," which is a new program that they are using to notify residents of recent crime activity, breaking news and crime prevention tips.

Mrs. Carroll questioned whether people's emails were public records when using this program.

Officer Morrision answered no. He said that all the personal information given is registered for this program and will only be for Uneighbors and not sold to any businesses and the information is exempt under the Public Records Act.

Mr. Shawn Andresis, Representative from Uneighbors, reported that they now have almost every agency in Brevard County and Indian River County using Uneighbors. He explained that the program is supported through partnerships with local businesses. The product has been out for almost a year now. They backup all the information that they receive and give it to the agency if they need it. He explained that this is a web-base system hosted on a site that is secure. The intention of this program is for the agency and the community to help stop crime. He has now taken the program all over the State and is in the process of setting up 77 more agencies in the State of Florida to be on Uneighbors.

At this time, Council had some other items to be discussed under City Manager's Matters.

Mr. Winger asked when St. Lucie would be back on line. Mr. O'Connor did not have the answer.

Mr. Winger asked about the Police Pension Ordinance. Mr. O'Connor explained that the Ordinance will be heard at their January 8th meeting for a public hearing.

Mr. Winger asked about the status of Rocky Joyner coming and speaking to them. Mr. O'Connor reported that they are looking at having Mr. Joyner coming sometime in January to make a presentation to Council.

Mr. Winger then asked about the old Recreation Admin Building. Mr. O'Connor said that the Recreation Department is in the process of moving all of their things out of that building.

Mr. Winger wondered if Mr. O'Connor had met with the County about the water at South Beach. Mr. O'Connor reported that he did meet with County staff about the South Barrier Island and they discussed some more options and alternatives and gave the new County Utilities Director a briefing of where they are in the process and their expectations.

Mr. O'Connor reported that he met with Ft. Pierce Public Utilities last Tuesday and they talked about transmission lines and the possibility of making some exchange of parcels.

Mrs. Carroll wanted to see the Press do a story on Uneighbors to let their residents know that the program is available. Chief Curry told her that the Press Journal has already done a story.

Mrs. Carroll brought up the sand replacement needed at Conn Beach due to beach erosion.

Mr. O'Connor reported that FEMA denied Federal approval of funds for the dune erosion. However, they did receive an emergency permit to place sand under the boardwalks to protect the boardwalk and the streets. They want to make sure all the funding provisions are reviewed before doing any work.

Mrs. Carroll suggested making another application to the Tourist Development Council asking for funding, but also take it before the Beach and Shores Preservation Commission.

Mr. O'Connor said that they could do that. He recalled that last year when they went before the Tourist Development Council that there was a line item in the budget for dune restoration and they were told at the meeting that the County didn't mean to allocate money for dune restoration.

Mrs. Carroll suggested that they try again. Mr. O'Connor would get the necessary paperwork to Mr. Winger so that he can take it before the Beach and Shores Preservation Commission.

Mr. Kramer asked Mrs. Carroll if she would work on a Resolution concerning this matter for Council to vote on.

Mrs. Amy ~~Brunje~~ Brunges, Representative from FPL, stated that St. Lucie is back on-line (question asked earlier by Mr. Winger). She said that it went back on-line on November 23rd.

8. CITY ATTORNEY'S MATTERS

A) Sample Code Enforcement Lien Reduction policies/procedures

Mr. Coment expressed that Council has been seeing a lot of people coming before them asking for a reduction in the code enforcement lien that has been placed on their property. Council asked him to look into some polices or procedures for when these items come before them. He said one of the reasons that they have seen so many cases lately is because people are buying houses that have been foreclosed on and these properties have liens on them. What he did at Councils' request was to look at other cities and counties to see what they have done. He said most of the cities/counties require that an application is filled out for a reduction for the fine. Some places require an application fee and some require that they have to pay any outstanding recording costs involved

before they will be considered. He said most will either have an administrative person, which would in our City's case be the City Manager or send it to the Code Enforcement Board for their recommendations and then it comes to the City Council for consideration. Then it is up to the City Council to decide if they agree with the recommendation or want to do something different. He said another option is to allow the Code Enforcement Board to address these requests and make the final decision and someone could not appeal it to the Council. Mr. Coment told Council that if they want to formalize a procedure and require an application then he would work with the Planning and Development Director in determining the cost to process the application. He said one of the things that is always important is that the violations on the property have been corrected. He asked Council if they wanted the requests to go to the City Manager or the Code Enforcement Board.

Mrs. Carroll asked for a spread sheet of what penalties should be expected to be paid, etc., so that they can look at visually what other cities are doing.

Mr. Coment referred to the information that he provided to the Council from the City of Sunrise where they charged someone 15% of the face of the lien, plus all of the costs involved and showed that the property has been cleaned up. He said that was the only City where he found had a set amount for the lien. The other municipalities just have set criteria that they would be considered then the governing body would decide how much, if any should the lien be reduced.

Mrs. Turner noticed that the City of Sunrise excluded unsafe structures or property maintenance from being eligible for an appeal. She said that would be the majority of anything that would be appealed in the City of Vero Beach.

Mr. Kramer liked the idea of the Code Enforcement Board handling this and then Council would be available for an appeal if something gets out of hand.

Mayor Fletcher wanted the City Council to maintain the appeal authority. He would like to see a list of the gravity of the violation, the time it took the violator to clear the property, etc. He could see giving someone a break if this is their first violation.

Mr. Coment explained that most cases coming before the Council will be new owners who want to clear up the title on the property so they may have had nothing to do with the violations. However, they know the liens are there when they purchase the property.

Mr. O'Connor suggested having an appeal form that would come to his office and then he would make a recommendation to the City Council. This would give Council enough information before making a decision on the case.

Mayor Fletcher liked Mr. O'Connor's suggestion and said that he wants that decision to be made by either Council or a Charter Officer.

Mayor Fletcher asked Mr. Kramer if he was in agreement with the City Manager's suggestion.

Mr. Kramer said that he would agree with it as long as they receive the details before the case is brought to them.

Mr. Coment said the other jurisdictions that he looked at did require an application process and providing the reasons why someone should be given relief.

Mayor Fletcher instructed the City Attorney and the City Manager to come up with that criteria and do an Ordinance authorizing the City Manager along with his designee to make those decisions or comments before the matter comes before the Council.

B) Discussion of golf carts on city streets; draft ordinance

Please note this item was heard before item 8-A).

Mr. Coment reported that this was brought forth originally because of discussions with the City Manager and the Police Chief. He said that there is a 1984 Ordinance that has never been appealed, but is not in their Code book. So there is a golf course Ordinance that is still active for the Riomar area that allows golf carts on City streets. There is a designated golf course crossing in this area. He has not heard back from the Public Work's Department on whether or not they confirmed with the Florida Department of Transportation as to whether they are allowing that as an authorized crossing. What he did with this Ordinance was take what they already had and put it in the Code so that it would be easier for their Police Officers to enforce it. Mr. Coment said that this is allowed by State law as long as they adopt the streets that are going to be designated and set up the rules and regulations that will be applied.

Mrs. Carroll questioned if the law states that the streets have to be designated.

Mr. Coment stated that the law says that they have to designate the streets. They have done that and tried to stay with the streets that are on the map attached to the original Ordinance. They did add, at the request of Riomar, the streets on the West side of A1A where there are also members that operate golf carts. He said there is one little section shown on the map that is a private road that the City doesn't have any control over. They also were trying to verify that the sidewalk in this area is wide enough pursuant to State Statues that requires that the sidewalk be eight (8) foot wide. He thought that originally the sidewalk was used by golf carts.

Mrs. Carroll asked if they had any communication that this was actually a request of FDOT back in 1984.

Mr. Coment recalled that he did see some correspondence from Mr. John Little (former City Manager) to the Riomar Country Club asking them to seek approval from the FDOT.

Mr. Joe Collins, Attorney representing Riomar Country Club, confirmed everything that Mr. Coment has said. He explained that all they (Riomar County Club) want to do is replace an Ordinance that is already in existence. He said that it was important to the Club that this be confirmed.

Mr. Coment said that he would be bringing this Ordinance to Council. He just wanted to discuss it at today's meeting to see if Council had any changes.

Mrs. Carroll commented that she has been researching this for the last few months and has been asked why golf carts cannot be used by everyone in this beachside community. She said having golf carts allowed in beachside communities is very common in Florida. This would be a good way for the environment and for the community to transport family members and individuals for short distances without having to jump in the car and use the gas and find parking. She would disagree with saying that this capability would only be able to be utilized on these specific streets in the Riomar neighborhood. She felt that could be spot zoning and giving only that neighborhood the capability of driving golf carts around, as opposed to opening this up to the beachside community. She talked to Mr. Coment about this and whether another designated crossing could be made and approved by FDOT. She noted that there are a number of streets, such as Beachland Boulevard, where they would not want a crossing because that could be dangerous. She suggested that this matter be tabled until they can research some other possibilities to open this up to other areas, not just the Riomar Country Club area.

Mr. Collins pointed out that there is an Ordinance in existence right now and all he would like them to do is move forward with this Ordinance for first reading. He said that they have been working on this for two (2) years to get to this point and he encouraged Council to set a first reading for this Ordinance.

Mrs. Carroll asked if there have been any members of the Riomar Country Club who have been cited by the Police for driving golf carts on the streets of Riomar to get to the golf course.

Mr. Collins said that there have been some people stopped and there has been some confusion, but no one has been cited. He reiterated that Riomar County Club, the City of Vero Beach, and the Police Department, have all been working hard to get to this point.

Mayor Fletcher wanted to hear from the Police Chief. He has some reservations about turning this into a golf cart community.

Chief Curry explained that this Ordinance is in existence because of the proximity of where the golf course is located and where the people live adjacent to the golf course. He said that there has been some confusion with some of the newer Police Officers who were not aware of this Ordinance. So staff wanted to reestablish the Ordinance for this golf course community and make sure that it was on the books. He made it clear that the

Police Department is opposed to allowing golf carts outside of this area and for people wanting to use golf carts for recreational purposes.

Mrs. Turner asked how this is handled for the Vero Beach Country Club area.

Chief Curry explained that with the Vero Beach Country Club there is only one member that owns a golf cart and also the Country Club resides in the County.

Mayor Fletcher asked that under State law for a vehicle that uses State roads, aren't they required to have head lights. Chief Curry answered yes if the vehicle is being used after sunset. However, there is certain equipment that is required if vehicles are operated during the daylight hours.

Mayor Fletcher was totally opposed to expanding the Ordinance other than for the Riomar Country Club.

Mr. Winger agreed with staying with this Ordinance and the map that has been used in the past. He felt that this Ordinance was an improvement in reference to the 1984 Ordinance and that it has been grandfathered in.

Mrs. Carroll believed that the map shows that the area includes one quarter of the ocean side area. She feels that only allowing one area in their community to have this benefit is a benefit to the wealthy property owners in this area.

Mr. Kramer suggested hearing from the public at their January 8th City Council meeting and see where this goes.

Mrs. Carroll believed that this Ordinance was set up for only if you live on those streets that you are allowed to drive your golf carts.

Mr. Coment explained that you don't have to live on those streets. This Ordinance just designates those portions of the streets as permissible to operate a golf course on them.

Mrs. Carroll gave some examples of when you could use the golf carts.

Mr. Coment added that older versions of the State Statue specifically said that it could be only within one mile from the golf course and that you had to be going to and from the golf course. However, this was taken out of the Statutes. He said that the City can make this Ordinance more restrictive then the State Statues if that is what Council wants.

Mrs. Carroll expressed that her point was that they are giving benefits for people living on those streets.

Mr. Winger made a motion to move this Ordinance to first reading as written. Mr. Kramer seconded the motion and it passed 3-2 with Mrs. Carroll and Mayor Fletcher opposing.

9. CITY COUNCIL MATTERS

A. Old Business

1) Referendum for the sale of the electric utilities – Requested by Mayor Craig Fletcher

Mayor Fletcher stated that in the past he has resisted voting for a referendum, but now he feels it is time to consider having one. He read his prepared comments into the record (please see attached).

Mrs. Carroll thought that where it reads "Do you want to sell the electric utilities" that the word utilities should be singular.

Mr. Charlie Wilson agreed with Mayor Fletcher. He said that he has been opposed to a referendum because he thought it was redundant. However, if they do a referendum the two things that they should be looking for are clarity and finality. If a referendum will give them those two things then it has a useful purpose, which would change his position. He also agrees doing a ballot by mail to let Council know what the ratepayers want. He would suggest the possibility of putting forward the referendum similar to the sand pumping issue. This would mean that it would be put into the Charter. The whole decision is should the City be in the electric business. If the City was to draft this referendum at the same time as doing the survey it would institute clarity and finality. If someone doesn't want the Electric Plant then they could go out and get people to vote. By combining these two things Council would get what everyone wants.

Mrs. Carroll asked Mr. Coment to explain the difference of the City Council approving a Charter referendum as opposed to a regular referendum.

Mr. Coment explained that holding a referendum for a Charter amendment and if it passes then it is binding and could only be changed by another referendum. If they just hold a referendum and ask a question then the first thing that he would look at is if there is something that requires that and what is the effect and results of that question. Here they had already determined that the question they needed to ask was about the leasing of the land because it is in the Charter. He referred to the question being proposed by Mayor Fletcher and asked if it would be binding on the Council, whichever way it was answered. He said that the one thing that courts look at is if the question is clear. If it is to be an opinion or straw poll then it should be phrased more like do you support selling the City of Vero Beach Electric Utilities? It has to be clear to the voters that they are just asking for their guidance and not creating a new law. He said if they put something in the Charter then it does become binding. However, they could make the question that Mayor Fletcher is asking binding by the way that the Ordinance is written. He read the last referendum that was on the ballot (leasing the land where the Power Plant sits).

Mayor Fletcher stated that he meant this to be as a poll and nonbinding.

Mr. Coment reiterated that the courts say that the referendum has to be clear to the public and the exact intent of what asking the question is for. He said that how the rest of the Ordinance is written will determine how binding it is.

Mr. Wilson commented that by doing it this way then there is nothing to prevent having multiple referendums. He said by using the Charter change method then it makes it final.

Mr. O'Connor commented that one of the ways of settling this is to put a contingency in the contract that states "based on a referendum passing on a yes or no vote...."

Mayor Fletcher wanted to see a straw poll done to keep it simple.

Mr. Mark Mucher agreed with the finality aspect as mentioned by Mr. Charlie Wilson. He also liked Mayor Fletcher's idea of keeping it simple. However, if they do it the way that Mayor Fletcher is suggesting it would be a nonbinding referendum.

Mayor Fletcher reported that in order to have this on the March 12th ballot, that they would need to have an Ordinance brought to them at their December 11th Council meeting for first reading and then to hear the final public hearing at their January 8th meeting.

Mr. Mucher wanted to see that this was the last referendum held even if the only way to do that is to put it in the Charter, which they would need the wording to do that.

Mayor Fletcher said that wording would make this very convoluted, which is what he is trying to avoid.

Mr. Mucher recalled that Dr. Stephen Faherty had come up with some wording that might work.

Mr. Coment referred to the referendum that was held in the 1970's to sell the electric utilities. He said that was a Charter amendment that said that the City electric and water and sewer system could not be sold. Then the referendum passed that said that the City is authorized to sell the electric utility. He said this might be another option.

Mayor Fletcher said that he could buy into that.

Mr. J. Rock Tonkel, Grand Harbor, stated that the people that he represents in Grand Harbor would probably agree with the action that is being taken that there will be a policy action taken by this Council to proceed. He felt that the referendum must be binding. The question is, and has always been, should the City of Vero Beach be in the electric business today, three years from now, five years from now, or ten years from now. He said that the threats are so ominous for being in the business. When the people vote and it is affirmative it must be binding so that the City can proceed to move forward with this solution.

Mrs. Turner stated that she does not believe that a referendum is legally required. However, looking at the costs of delaying this decision to go forward with selling the utilities to FPL it will be over one-million dollars going out of their community that they are paying in premiums because they do not have FPL rates. She thinks that they should go ahead and do the referendum and make it a binding referendum.

Mr. Kramer commented that no one is going to mention the tax implications of doing this. He doesn't see any problem with getting all the details out and voting on them and moving on. The biggest issue that he finds interesting is that they are kicking and screaming in a gold fish bowl. He said there are a lot of issues that are outside of Indian River County that will need to be resolved. He is of the opinion that the all requirements project is a huge issue and it will not be resolved for four years. He is confident that this is not going to be completed for the next two years that he is on Council. He encouraged the Council to call FMPA and talk to them about this. He does not see other FMPA members agreeing to change the contract.

Mrs. Turner stated that their obligations under the all requirements contract are independent of this sale. She thought that Mr. Kramer was confusing the issue. She said once they did their CROD the commitment is totally separate then selling the electric utility.

Mr. Kramer told Mrs. Turner that her opinion and his opinion are irrelevant. He said that FMPA's opinion is relevant and this deal will not be done without their opinion.

Mr. Winger commented that they are likely to have a second referendum at the same time. If enough signatures are signed on the petition then there could be another referendum and with that referendum they want to see a super majority. He was for a referendum in general of some sort, but he feels March 12th would be too soon because they would not have all the information needed. The items that they are waiting for is the PPA between FPL and OUC. Once that is done then the question to FMPA will be addressed then FMPA will have to rule on it. He didn't know if they could do the deal at all in regards to the bonds and someone covering the obligations.

Mrs. Carroll explained to Mr. Winger that the wording is not asking the public if they want to sell the electric utilities by 2013. The question is do you want to sell the utilities.

Mr. Winger was concerned about asking the public to vote on March 12th when the facts have not been brought forward.

Mrs. Turner reminded Mr. Winger that when he brought up having a referendum he was using the date of March 12th.

Mr. Winger told Mrs. Turner that she was correct, but at that time they did not have the letter of November 10th from FMPA and he had not done the research. He would like the

public to have more information than they are proposing. He was utterly opposed to any kind of mailing and that it must go to the electorate for a referendum.

Mayor Fletcher made a motion to instruct the City Attorney, along with anyone that he thinks is appropriate, to put together a binding referendum that will give them a yes or no vote on selling the City of Vero Beach electric utilities. Mrs. Turner seconded the motion.

Mr. Coment asked Mayor Fletcher if he wants to see this as a Charter amendment or to just make it binding.

Mayor Fletcher said just make it binding and not a Charter amendment.

The motion passed 3-2 with Mr. Winger voting no, and Mr. Kramer voting no.

Mr. Wilson felt that what they will find out is that the citizens are going to vote yes.

Mr. Winger stated that he is for the sale of the utilities, but he has some concerns if they will be able to get this done in the window of time that they have.

2) Straw Poll/Survey being sent out to Ratepayers – Request by Mayor and Councilmembers (continued from the November 13, 2012 City Council meeting)

Mrs. Carroll mentioned that she has had discussions with a number of individuals in the community, both at community meetings as well as in the Council Chambers concerning the electric bills. She has talked to people who own rental property in the City, talked to business owners and talked to individuals who live in the County and these people do not have a say. The people are concerned that they are disenfranchised. The business owners who have businesses in the City, but do not live in the City, have no say with what happens with their electric rates. Also, people that own rental properties within the City and pay for City electric for their tenants do not have a say. She commented that in many families in the City there may be four or five voters within one single family home. She questioned why that home gets five votes and the business owner down the street gets no vote on a referendum item. She suggested that they utilize a vote by mail or referendum by mail, which would be a ballot in the electric bill for each meter and there would be one vote allowed. She said there would be a cost to the City to do this, but they would actually have the details. She went over some of the questions that they could ask and this would be a nonbinding ballot survey. It is expected that the majority of the business owners will be in favor of lowering their electric rates, but it will be nice to have this accurate data in front of them. This would be good information for them to have because they, as Councilmembers, represent all of these people. She said that is why she feels that they should include a straw poll in the electric bills, one vote per meter.

Mayor Fletcher had no problem with doing this and thought that it would be great backup for the referendum item.

Mrs. Turner added that it would also provide their business owners with a clear voice in the matter.

Mrs. Carroll made a motion to approve the straw poll going into the City electric bills. Mrs. Turner seconded the motion.

Mr. Kramer cautioned them on the questions that will be included in the survey. He said that if the question has something to do with lowering utility bills then the citizen will of course agree to it. He doesn't know anyone that doesn't want their utility bills lowered.

Mrs. Carroll will meet with the utility department to find out what it will take to get the survey in the utility bills, what the time frame will be and she will bring this information back to the Council at their workshop next week.

Mayor Fletcher wanted to see how the question will be phrased.

The motion passed 3-2 with Mr. Winger and Mr. Kramer voting no.

Mr. Kramer had some concerns on how the question was going to be written.

Mrs. Carroll asked Mr. Kramer to help her in writing the question. If he would write how he would like to see the question written, then she will do the same and then the Council can talk about it at their next meeting.

Mr. Kramer stated that he voted no to the motion.

3) Notice of Intent to Reimburse – Requested by Councilmember Jay Kramer

Mr. Kramer explained that this is the idea of going back and financing the cost for the Power Plant. He said that traditionally what they do for these expenses is finance with tax refinancing. What he is requesting is for staff to bring forward an option of going back and using tax financing as an option to finance the capital improvement. He said if they sell the system then they can pay it off at that time or let FPL pay for their portion of the capital improvement.

Mr. O'Connor commented that this would be a policy decision if Council wanted to finance or if they want to pay out of capital. He said what they have been doing for the Power Plant (Units 2 and 5) is paying for improvements out of working capital. The debt service issue is one of those that they obviously are going to have to defease all of their debt at the sale of the utilities. He said that it would cost them either way at the end of the sale.

Mrs. Turner felt that it was appropriate to take the money out of working capital. She said that this is not adding income or revenue to their system and doesn't give them any

additional asset. She clearly objected to going further into debt because it is not sound management.

Mr. Kramer felt that this was an asset. He said that they are refurbishing a Unit, replacing broken parts and getting the Units back into operational status. He said by doing this the sale value of the Units will increase. He doesn't like the idea of raising their rates to pay for this.

Mrs. Turner did not think that anyone was asking them to raise their rates in order to do this project.

Mr. Kramer said that Mr. O'Connor has talked about increasing the utility rates.

Mr. Winger supported Mr. Kramer's proposal because it will help keep rates down. He recalled that the last rate increase that they had was last March.

Mrs. Carroll referred to the backup material provided by Mr. Kramer where he states "Council has an option to use tax exempt financing to spread the cost of these improvements over the life of the improvements, about 15 years." She questioned, based on the decision of this Council to move forward with the sale of this utility, does Mr. Kramer expect the life of those improvements to be fifteen years.

Mr. Kramer said that he does.

Mrs. Carroll commented that the time scale they are looking at for decommissioning the Plant is fifteen years.

Mr. Kramer felt that according to the GAI study that the Units are marketable.

Mrs. Carroll asked Mr. Kramer if he believed the Units would have the value of over three million dollars once they are removed from the City Power Plant, placed on some type of barge and shipped somewhere in the world. Her question was, did Mr. Kramer really believe that someone would pay the City three million dollars for the Units.

Mr. Kramer said yes that he does.

Mayor Fletcher felt that you could probably get eighteen cents a pound for them. He said you might be able to get some money for the Unit 5 turbine, but he would be very surprised if they would get anywhere near a million dollars for it.

Mrs. Carroll wanted to make it clear that the reason they were paying this three million dollars was because they are required by their contracts to keep those machines running and able to flip them on at any moment.

Mr. O'Connor told Mrs. Carroll that she was correct. He explained that they have a contract with OUC that they have to be able to use their Unit if OUC needs to and the

other is negotiating in good faith with moving forward that they have to have all of their equipment operational according to business standards.

Mr. J. Rock Tonkel stated that it was highly unusual to incur debt retirement cost for planned maintenance. If they move away from that then they should at least ask the question if this would affect their credit rating in any way and how would it interfere with the negotiations with FPL. He said that this Council has at least two (2) members who do not want to see a rate increase in January. He said that rate increases have been deferred for at least the last couple of years simply for political reasons.

Mr. O'Connor clarified that there was a rate increase in January 2012.

Mr. Tonkel continued by saying that there is no defending incurring debt for the planned maintenance expenditure.

Mr. Mark Mucher wanted to hear from Mr. O'Connor as to why the rate increase is necessary.

Mayor Fletcher asked Mr. Kramer if he wanted to make a motion concerning this item.

Mr. Kramer explained that this was an item for staff to bring back as an option. He said that if the Council wants an option to keep the rates low then this is one way of doing it. He felt that by raising the rates it would enflame the public quite a bit.

Mr. Winger felt that this was an idea and a motion was not needed.

Mr. Kramer made a motion to send this item to the Finance Commission. He then rescinded his motion to keep this as an option.

B. New Business

1) Electric Rate Sufficiency Study – Requested by Councilmember Pilar Turner

Mrs. Turner mentioned that the last rate study done was in 2009. She is asking that a formal rate study be presented by staff.

Mr. O'Connor stated that staff has been working on this and will make a presentation at their December 11th Special Call meeting.

Mayor Fletcher instructed Mrs. Vock to put this on the December 11th agenda.

Mr. Winger handed out a report prepared by Mr. John Lee (former Customer Service's Director). The report shows what history has been for fuel and fixed costs (report filed in the City Clerk's office).

Mayor Turner requested that they also be given information on what OUC anticipates their rates to be for 2013.

Mr. O'Connor explained that OUC will not give them a flat line range. He said that the rates depend a lot on the weather (being very cold or being very hot) in that they could change drastically.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Craig Fletcher's Matters
1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mayor Fletcher reported that he attended the Downtown Friday event where the Christmas Tree was lit. He attended a technical review session for the Enterprise Zone, which was very interesting. He invited the public to attend the Middle school band performance tonight at 7:00 p.m. Mayor Fletcher reminded the public to attend the annual City Tree lighting ceremony, which will be held this Friday at 5:30 p.m. at Royal Palm Pointe.

B. Vice Mayor Tracy Carroll's Matters
1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mrs. Carroll attended the National Philanthropy event. She will be attending the monthly Treasure Coast Council of Local Government's meeting in the morning. She reported on the feasibility study that the MPO is looking at, she also attended the Downtown Friday event and rang the bell on Saturday morning for Salvation Army.

C. Councilmember Pilar Turner's Matters
1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mrs. Turner attended in Orlando the Florida League of Cities Finance & Tax Board meeting and as a member of the FLOC Board she attended their regular meeting. She will be attending an FMPA Board meeting next week. She thanked everyone that participated in the parade last Saturday night and encouraged the public to support the Salvation Army this time of the year.

D. Councilmember Jay Kramer's Matters
1. **Correspondence**
2. **Committee Reports**
3. **Comments**

Mr. Kramer reported that he attended the grand opening of the Youth Sailing building, Soirée's kitchen on Oceanside Drive, the Downtown Friday event and the Christmas parade on Saturday night. He mentioned that he was looking forward to getting the fiber optic project started again.

E. Councilmember Dick Winger's Matters

1. Correspondence

2. Committee Reports

3. Comments

Mr. Winger attended the Florida League of Cities meeting in Orlando, he rang the bell for Salvation Army on Saturday, and he attended the grand opening for the new Youth Sailing building. He also mentioned that he had fun at Saturday night's Christmas parade.

Mrs. Carroll announced that the "Christmas Puzzle" (performers taught by the Recreation Department) will take place on December 16th at the Vero Beach High School Performance Arts center.

11. ADJOURNMENT

Today's meeting adjourned at 4:01 p.m.

/tv

To: City Council Members:
December 4, 2012

Good Morning. My name is Annie Rogers and I live at 3626 Indian River Drive East.

On September 7, 2012, I sent information to you outlining issues and concerns about the proposed traffic plan for Beachland ES.

For over two years the neighborhood has worked with the city council and the city staff to address traffic issues in Central Beach. The major concerns were related to *short cut-cut through* traffic and speeders, which continue to present a safety issue for residents and their guests.

As a result the following changes were made:

- Speed Limits lowered to 25 mph
- No thru truck signs and
- No thru traffic signs posted on Indian River Drive E. and Live Oak
- No passing lines were painted on Indian River Drive E. and Live Oak
- Sidewalks were installed on both the north and south end of Indian River Drive/Live Oak

We are greatly appreciative of these efforts by the city to keep our walking, biking, jogging, and very active neighborhood safe.

NOW, the Indian River County School Board plans to *disrupt the safety of our neighborhood*, especially the students who walk or bike to Beachland Elementary School and especially the residents of Date Palm Road, *which is barely a two lane road without sidewalks.*

On Tuesday, August 28 *with very little notice to the community and during off season when many residents were out of town,* the School Board unanimously approved a plan *(you may want to refer to the maps on page 3 and 4)* which has the majority of the drop off and pick up traffic coming over Barber Bridge, turning north on Indian River Drive, turning east on Date Palm, turning south on Mockingbird, turning west into the school, looping around, and then exiting at Indian River Drive.

The parents delivering their children will become impatient if they have to wait to turn onto Date Palm and will find their own routes, winding around the neighborhood and impacting Eugenia, Fiddlewood, and roads further north and then heading east to Mockingbird.

In addition, the school buses will come north on Indian River, turn east on Date Palm, south on Mockingbird, west into the school, *a little north of where the parents will enter*, and then exit south on Mockingbird. And herein lies a problem: the stoplight on Mockingbird and Beachland has a *no right turn on red* which will block up traffic not only at the intersection, but for parents wanting to turn into the school property.

John Binkley, the architect for the School Board, shared that parents driving from north or south county, beachside, will use A1A and then come down the side street of their choice *(from Iris all the way to Live Oak)* to reach Mockingbird.

The area already deals with traffic issues on a daily & weekly basis including but not limited to:

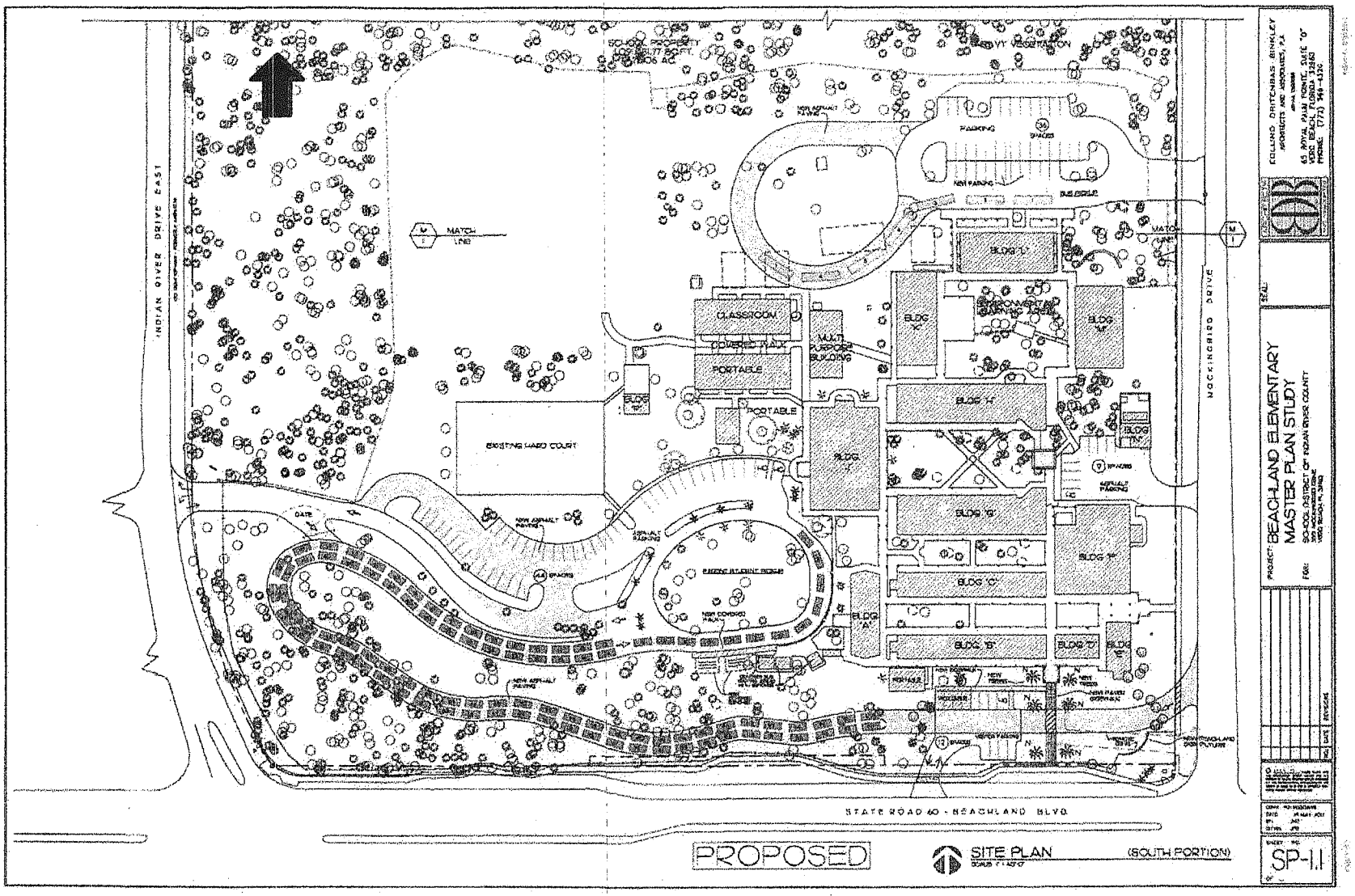
- ✓ trash trucks
- ✓ recycle trucks
- ✓ pool trucks
- ✓ landscaping trucks
- ✓ lawn maintenance trucks
- ✓ delivery trucks
- ✓ construction trucks
- ✓ mail trucks
- ✓ and the ongoing *short cut-cut thru traffic* from A1A to Barber Bridge, that despite everyone's efforts still continues***, especially during season***.

With all the community input provided, it is hard to believe this plan was the one unanimously approved by the School Board. With limited modifications, there is plenty of room on the south end of the school property to keep all the traffic moving smoothly without impacting the ***safety of the neighborhood.***

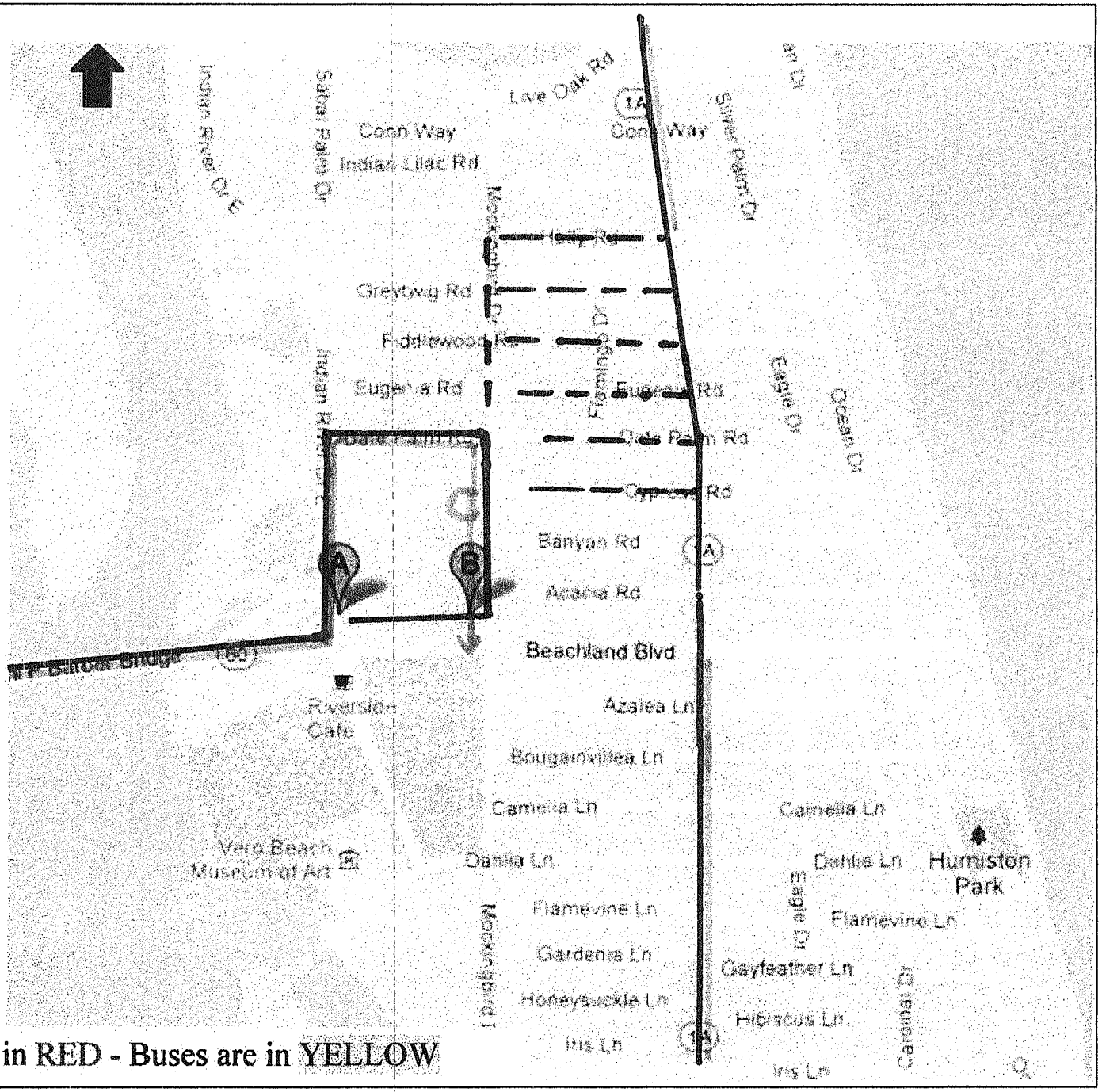
Vero Beach Newsweekly has a motto of ***Doing Good by Doing Right.*** There is a win/win solution available if only the School Board would be ***the good neighbor*** it says it is!

Thank you for your help in the past. We would greatly appreciate your help in solving this problem in an amicable manner without disrupting the ***safety of our neighborhood.***

Richard & Annie Rogers
3626 Indian River Drive E.
Vero Beach, FL 32963
772-321-3299 or 443-624-2216



Parents are in RED - Buses are in YELLOW



Parents are in RED - Buses are in YELLOW