

**CITY OF VERO BEACH, FLORIDA
OCTOBER 19, 2021 9:00 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Pledge of Allegiance

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

B. Roll Call

Mayor Robbie Brackett; Vice Mayor Rey Neville; Councilmember Honey Minuse, Councilmember Bob McCabe and Councilmember Dick Winger **Also Present:** Jenny Flanigan, Assistant City Attorney; Monte Falls, City Manager and Tammy Bursick, City Clerk

2. PRELIMINARY MATTERS

A. Approval of Minutes

1. Regular City Council Minutes – October 5, 2021

Vice Mayor Neville made a motion to adopt the minutes. Mr. McCabe seconded the motion and it passed unanimously.

A. Agenda Additions, Deletions, and Adoption.

Mayor Brackett requested that item 9-B) “Mobile Food Vendors (Food Truck) Regulations Discussion” be pulled off of the agenda. He said that this item will come back and be heard before the Planning and Zoning Board for a public hearing and then will come to the City Council for two (2) additional public hearings.

Mr. McCabe made a motion to adopt the amended agenda. Vice Mayor Neville seconded the motion and it passed unanimously.

B. Proclamations and recognitions by Council.

1) Florida City Government Week – October 18-24, 2021

Mrs. Minuse read the Proclamation.

2) Lieutenant Phil Huddy to discuss the Tactical 10k and 2-mile race taking place at South Beach Park on November 13, 2021

Lieutenant Huddy announced that the Police Department would be holding their annual 10K & 2 mile run at South Beach on November 13, 2021. He invited everyone to attend. He said that they did not hold the event last year because of COVID. They are still looking for as many sponsors and registrants as possible.

3. **CONSENT AGENDA** (include amount of expense)

4. **PUBLIC HEARINGS**

A) **ORDINANCES**

- 1) **An Ordinance of the City of Vero Beach, Florida, Amending Article III, “Sanitary Sewer System” of Chapter 78, “Utilities,” of the Code of the City of Vero Beach; Amending the frequency of Mandatory Pump Outs and Inspections of Private Wastewater Disposal Systems; Providing for Conflict and Severability; Providing for Correction of Scrivener’s Errors; and Providing for an Effective Date. – Requested by the City Council**

The City Clerk read the Ordinance by title only.

Mr. Monte Falls, City Manager, reported that this Ordinance has been before the Council before. The last time it was heard it was tabled and City Council asked that it be brought back to the Council for consideration. The Ordinance would change the requirement that each owner of a private wastewater disposal system undergo a pump out and inspection of such system every five (5) years to every three (3) years.

Vice Mayor Neville commented that this is very expensive to do and it is hard on the residents who cannot afford it. He was not sure how to solve the problem. He mentioned that they might want to look at continuing the five (5) year period for sewer systems that were built after 1984. He said that drain fields fail more than the tank itself. He suggested separating those two (2) things out. He agreed with having the three (3) year pump out cycle for those that are more at risk.

Mr. Winger commented that if they look at the year 1984, then those drain fields are getting old and will be about 27 years old. He said for systems installed over the last five (5) or 10 years it would meet the criteria that Vice Mayor Neville brings up. He would rather see for a system that is 10 years old the inspection be five (5) years and anything older then that then the inspection be every three (3) years.

Vice Mayor Neville felt that they should require that the drain field be tested as well. He urged them to reconsider that this be the drain fields and septic tanks. He said that the drain fields are the real issue when they speak of the Lagoon.

Mr. McCabe wanted them to move as fast as they could when looking for ways to improve the Lagoon. He agrees with his fellow Councilmembers that they probably should go back

and study this some more and get some more options. He recommended having a public hearing to have more discussions on this and get more public input on it. He said maybe they could hold a workshop on it.

Mayor Brackett suggested adding this item be placed on to the agenda for their workshop scheduled for November 29th.

Mr. Winger made a motion to table discussion of this Ordinance until November 29th at 9:30 a.m.

Mr. Falls said that he would ask the Department of Health to attend the workshop.

Vice Mayor Neville recalled that the inspections are going to be done by the Department of Environmental Protection according to the new State law recently passed. He would like to see some input on that rule making.

Mr. McCabe seconded the motion and it passed unanimously.

- 2) **An Ordinance of the City of Vero Beach, Florida, Amending the Official Zoning Map by Changing the Zoning District Designation from RM-8, Medium Density Multiple-Family Residential to RM-10, Medium-High Density Multiple-Family Residential District, for the property located at the Southeast Corner of Indian River Boulevard and 41st Street, Containing 23.65 acres more or less; Providing for an Effective Date. – Requested by the Planning and Development Director**

The City Clerk read the Ordinance by title only.

Mayor Brackett announced that this is a quasi-judicial hearing and he would be conducting it in that fashion. He asked Council if they had any ex parte communications, which none of the Council did. He asked the City Clerk to swear in anyone testifying at today's meeting en masse. All exhibits referred to during the testimony must be marked for identification and kept by the City Clerk.

Mr. Jason Jeffries, Planning and Development Director, gave a Power Point presentation outlining the rezoning of this property. He said that PAC Land Development on behalf of Schwerin Asset Advisors LLC is proposing to rezone approximately 23.65 acres of land from RM-8, Medium Density Multiple-Family Residential to RM-10, Medium-High Multiple-Family Residential. The property is located at the southeast corner of Indian River Boulevard and 41st Street. The property was annexed into the City in 2020 and rezoned from Indian River County, RM-8, Multiple-Family Residential and RS-1, Single Family Residential to the City of Vero Beach RM-8, Medium Density Multiple Family Residential. The property is vacant and undeveloped. The Future Land Use Map in the City's Comprehensive Plan designates the site as RM, Residential Medium. The RM-10 zoning district is listed as a zoning district consistent with the RM, Residential Medium future land use designation. The RM, Residential Medium designation allows development

in areas suitable for multi-family residential uses, with moderate densities up to a maximum density of 10 dwelling units per acre. The RM future land use is located in areas with access to adequate public utilities, access to collector and local streets, and areas that are a transition between areas with single family residential uses and more intensive uses. The Planning and Zoning Board voted 5-0 to approve the Ordinance.

Vice Mayor Neville asked if the site plan was included in the backup material. He did not see it. Mr. Jeffries said that it was not part of the backup material.

Mrs. Minuse asked what their intent to develop in the wetlands is. Mr. Jeffries explained that they would not be doing any developing in the wetlands.

Mr. Winger had some concerns about the Floor Area Ratio (FAR) going from 3 to not completely 4.

Mr. Jeffries explained that the project is at 0.34.

Mr. Winger referred to a letter from Kimley Horn dated August 10, 2021, where it states that the FAR being proposed is greater than the 0.3 allowed by the RM-8 proposed development of 0.34. He said that he doesn't want to see any increased density.

Mr. Jeffries explained that this is a rezoning application and the applicant can answer those specific questions.

Mr. Falls suggested allowing the development to speak and maybe some of these questions can get answered.

Mr. Bruce Barkett, Attorney representing the applicant handed out a "Declaration of Restrictive Covenants" (on file in the City Clerk's office). He said that if the FAR of 0.34 is crucial then he would be happy to include it in the Declaration of Restrictive Covenants. He said that staff did a good job in presenting this case and that the spot chosen is the place that you would want to have this sort of development. He said that this is how they avoid spiral development. They put residences where services are already being offered.

Vice Mayor Neville asked what is the process of handling the stormwater.

Mr. Barkett explained that stormwater and drainage has to be managed according to City and State regulations.

Vice Mayor Neville continued by saying that this property is actually sitting adjacent to the Lagoon through the marsh landing. He said when they have 8-inches of rain it overflows the existing standard stormwater and they don't want it go into Lagoon and move through the stormwater.

Mr. Barkett commented that they have the best engineer in town hired to do this project and he can explain that.

Mr. Kevin Robertson, Engineer for Kimley Horn, explained that there is an entire retention plan that will be included in the site plan. He explained how the flood plain and water treatment works. This will be very clean water and much more than standard water.

Vice Mayor Neville asked if this has been done previously.

Mr. Robertson stated that a lot of residential projects are doing this.

Vice Mayor Neville noticed the enclosed hallways. He asked about outside hallways and enclosed parking.

Mr. Tom Cavanagh, Applicant, explained that there have been factors driven by COVID that needed to be considered when doing this project. He said that people are requiring bigger spaces. The corridors will be air conditioned. He reiterated that there were things being driven by demand and social distancing issues. They have put the entire trash facilities indoor rather than outdoors. He said they have included upgrades for the tenants where they will live in an environment with more space. They are going above and beyond to produce a high end development.

Mr. Winger asked how many units will there be. He was told that there would be 189 units.

Mayor Brackett said that the Floor Area Ratio (FAR) increase from 0.3 to 0.34 is only a 5% increase in the FAR and they have to include the elevators when counting the FAR. A short discussion of the FAR took place. He suggested amending the Declaration of Restrictive Covenants, which the applicant did not have a problem with. It would say that the Floor/Area/Ratio for any project developed on the property shall not exceed 0.34.

There was a lady who spoke (name not clear) and was sworn in who had some questions about how many units there were and about the bedrooms and bathrooms.

Mayor Brackett explained to her that those are things that the Council does not get into. This property is currently zoned eight (8) units per acre and there has been no change in the number of units.

Mayor Brackett closed the public hearing at 9:43 a.m.

There was no rebuttal from staff or the applicant.

Mrs. Minuse brought up the increase in traffic.

Mr. Jeffries explained that a traffic study was conducted and this development will not lower the level of service.

Mr. Winger made a motion to grant the application based on the competent substantial evidence presented and the applicable code provisions with the following

modification that the floor/area ratio for any project developed on the property shall not exceed 0.34. Mr. McCabe seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. McCabe yes, Mrs. Minuse yes, Vice Mayor Neville yes, and Mayor Brackett yes.

Mayor Brackett thanked the applicant for moving this project forward and being willing to work with the City in seeing that it gets done.

B) RESOLUTIONS

5. PUBLIC COMMENT (3-minute time limit)

Mr. Ken Daige referred back to item 4 A-1) on today's agenda having to do with septic tanks and pump outs. He asked that they keep moving forward on this and liked the suggestion of talking about it at their workshop. He knows that they are on a tight budget and there are finance options available to get some of this done.

Mr. Brian Heady expressed the importance of giving the public the opportunity to speak. He thanked Mr. Falls for speaking on behalf of the City even though he is a County resident. Mr. Heady said that the City and Indian River Shores entered into an agreement for water services and a ton of money was spent on infrastructure in order to do this. He has heard the County say more than once that they don't want any part of this. It is a City utility and belongs to the City.

Mr. Eric Toomsoo invited everyone to a party, which is the Beachside Bonfire Fest to be held on November 13th on the barrier island. He said that opening ceremonies will begin at 5:00 p.m. He briefly went over the theme for this year.

Mr. Doug Vitunac, President of the Kiwanis Club, commented that the Club recently did about six (6) or seven (7) service projects. They cleaned out Greg Holton's old house so that it can be ready to put on the market to be sold. The Kiwanis Club is looking for new members and he gave his phone number to anyone interested in serving.

6. CITY COUNCIL MATTERS

A) NEW BUSINESS

B) OLD BUSINESS

1) Discuss Residential Boat Docks in the Vero Isles Subdivision

Mr. Falls commented that Vero Isles is a community that has 200 lots and most of those lots have boat docks. The community was developed in 1950 on land owned by the City. The City owned all that land and the City owns the bottom land where the land sits. On the plat those canals were dedicated and used by the public and for the use of the property owners to be able to build docks there. The City has allowed those docks free and clear

until a few years ago when they started requiring license agreements in attempting to limit the City's liability in case an incident happened on one (1) of those docks. What they learned as they went through that process was that the property owner could not get liability insurance because they didn't have a real estate interest in the property. He has talked to insurance people from Vero Beach to Tallahassee and there was no way that as a residential property owner they could indemnify the City for the building coverage. So they looked at ways to remedy that and find a way to continue to allow Vero Isles residents to enjoy the docks that they have for all these years, but also looking after the City and public's interest if there was an unfortunate event of an accident that resulted in a lawsuit. The City was told for the property owners to be able to get that insurance coverage that they have to have a real estate interest in the property. He said there are two (2) ways to accomplish this. He said that the City could enter into long term lease agreements with each of the residents or for the City to abandon its ownership in the canals and then the canals would convert back to the parent tracks that they were taken out of when the plat was described. The law the way it is prescribed when those canals were abandoned revert back to 50/50 to the parent track. That would be fine if Vero Isles had been developed all in one (1) plat. He said that there are actually three (3) plats. There is Vero Isles, McKee Point and the Tarpon Drive Plat on the very end. Mr. Falls felt in order to accomplish the City's goals and in order to indemnify the City it would be the best solution that they could come up with to offer would be to do the long term leases to the property owners. He said leaving things in status quo with the license agreements does not offer any opportunity for the property owners to get insurance coverage and if there was an unfortunate accident the adjacent property owners could be sued.

Mrs. Minuse asked what was the disadvantage of abandoning them now.

Mr. Falls said if they abandoned them now they would need to work out another agreement with all the property owners adjacent to the canals along Tarpon Island and McKee Point and they would all have to consent to it once it is abandoned quit claiming their interest back to the other property owners on the other side.

Vice Mayor Neville commented that the majority of Vero Isles could be abandoned and revert to the property owner. He said there are some exceptions where that would not be successful. He suggested having a two (2) part project and split this up.

Mr. Falls felt that was a good suggestion and could be done. They could do that on the ones that completely came out of the Vero Isles plat by a simple abandonment and they would revert back to both sides. He knows there has been some concern on how that would affect property values. He talked to the Property Appraiser on Friday and they said any abandonment of submerged lands would be treated as an evaluation of the submerged lands at a value of \$200 per acre. So the typical 100-foot lot in Vero Isles on the typical 150-foot wide canal would result in increased property value of about \$35.00. He said the tax implication would be insignificant. The value associated with the waterfront access is already inherent in the parcel.

Mayor Brackett wanted staff to continue to look at this. He agreed that abandonment was the ultimate way to go. It will solve the problem forever. He would hate to think that property values would start to decline as the lease comes close to an expiration date and he thinks abandoning this property would solve the problem completely.

Mr. Falls said they would take a look at this to accomplish their goal.

Mr. Winger asked what happens to the liability if the property is abandoned and someone doesn't buy insurance.

Mr. Falls said that the City would be out of the picture and not be liable.

Mayor Brackett stated that the ultimate goal here is to do what is best for the neighborhood and will focus on doing it the right way.

Mr. Doug Vitunac, Attorney representing Mr. Steve Fishman, and Mr. and Mrs. Don Peterson, they said that Mr. Fishman purchased his home in 2013 and in 2018 hired a dock contractor and discovered the new licensing agreement that the City was requiring. He thought the City was saying that it was a privilege to have a dock. He started working with City staff to help solve what they all agree is a problem and want to get it solved. His clients are in support of abandonment and would agree with Vice Mayor Neville's suggestion of abandoning most of the land now and then work on the other ones later. He knows that this has been going on for a long time and Mr. Fishman has been waiting to do the work that he wants to do on his dock. He said that he has met several times with the volunteer Home Owner's Association as well as City Council and staff to get this matter cleared up. He feels this would be a win/win situation because the City doesn't want anything to do with the bottom muck of the canal. He hoped that Council would support the abandonment today.

Mr. Roger Murray commented that he does have a home on the canal and he is concerned about what this means if the City no longer has ownership. He said what happens to complying with architectural designs, safe docks or does it become a homeowner's decision.

Mr. Falls explained the City/County Building Department is not relinquishing any rights. There are still those protections that everyone will have to go through. All the laws and Ordinances in place currently still apply. He said all the safeguards that exist today would continue to exist.

Mr. Roger Murray stated that he was not in favor of abandonment, but would be okay with a 99-year lease.

Mr. John Stepanek asked if they couldn't obtain liability insurance now, but could once this is in place how much is it going to cost.

Mr. Falls said that would be a question for their insurance carrier, but he did not think that he would see too much of a change in cost. He heard that there were some insurance policies that paid to have docks rebuilt after the hurricanes in 2004. He said that they are just trying to protect the City as a whole.

Mrs. Minuse commented that she lived in Vero Isles after the hurricanes had occurred and some insurance companies covered dock replacements and some did not. She said as they moved forward some of the Codes were changed.

Mr. Falls reiterated that they are trying to protect the public owned lands.

Mr. Robert Grice who is a retired insurance agent said that he did not think that insurance required any changes, but he encouraged the property owners to check with their agent and ask that they name the City of Vero Beach as additional insured.

Mr. Falls said what the City found out is that anyone trying to get insurance could not get it.

Mr. Gary Ferguson commented that one (1) of the options would be the City could release the ownership and he would own the canal all the way over to his neighbors on the other side.

Mr. Falls said that would be mid-point or all the way across.

Mr. Ferguson said the rational thing to do would be to survey down the middle of the canal in the rest of the fingers.

Vice Mayor Neville added to replat the area so it is split down the middle.

Mr. Jenny Flanigan, Assistant City Attorney, commented that if they look at the abandonment of the plat that one-half of the ownership of the dock would be for the public to use and not be private.

Ms. Joanne Parcel commented if they do give up their leases would they have the public coming into their canals and hooking up to their docks. She worries about opening up their canals and letting everyone in. She encouraged Council to give them the right to stay there and own the property under their docks, but worried that now the City would be taking something away from them.

Mayor Brackett explained to Ms. Parcel that the canals right now are open to the public already.

Mr. Falls added that the use will be the exact same as it is today. The same guidelines and rules and regulations that apply today will not change.

Ms. Parcel asked if they have any records of accidents that have happened in the fingers.

Mayor Brackett encouraged her to stick to the topic of the waterways and not the roadways.

Mr. Don Peterson thanked the Council and everyone that is here today for meeting with them on this matter. It sounds like they have come to a solution that will serve the City and the property owners. He has prepared information sheets for anyone that would like to have one (1).

Vice Mayor Neville asked Mr. Falls if he was comfortable that the consensus of Council was to proceed with splitting the waterways to make this happen.

Mr. Falls said that staff is ready to proceed on this.

Mayor Brackett agreed that it was the consensus of Council to move forward. He encouraged staff to look at those areas and use abandonment as much as possible. He wants to see this solved once and for all.

Mr. McCabe wanted to have another discussion on this once staff has worked out all of the issues.

Mayor Brackett explained that this will have to come back to Council for approval.

Mr. Will Schlitt asked Council to approve the abandonment wherever they could.

Ms. Stefanie Sullivan commented that she did not have all the facts in order to support or not support the abandonment. She asked if they would be transferring the responsibility for dredging the canals to the owners.

Mr. Falls reiterated that everything will remain exactly as it is today. He recalls the last time any dredging took place it was done by the City and the Department of Transportation 30-years ago.

Ms. Sullivan lives near McKee Point and said that they inherit the ownership to the other side of the canal, which is commercial property. She didn't think that they could get an insurance policy to cover commercial property. She was told that the commercial properties do have indemnity agreements with the City.

Mr. Rich Capuluti, 18 Park Avenue, did not think it was a good time to make these decisions now because the snowbirds are not here. He asked if the soil has been tested on the submerged lands and has there been any muck contamination there. He then asked if the majority of homeowners would have to approve this in order to do it.

Ms. Flanigan explained in this case the City Council can act as what is in the best interest to the City, but they would hope to have the property owner's approval.

Mr. Roger Murray explained that the question about dredging came up because sometimes it becomes non navigable because of what is growing in the canal.

Mayor Brackett explained that the City would still be responsible concerning where the outfalls are and maintaining them and making sure they were taken care of.

Mr. Falls added that the City continues to work with the Florida Department of Transportation regarding any material that comes through the pipes. He said they put out baffle boxes some years ago to help collect the sediment.

Mr. Murray said that it seems now in private ownership that individual owners will have a say on what goes on in that canal. If someone wants to have it dredged how will they be able to accomplish it.

Ms. Flannigan explained how the leasing process would work.

Mr. Falls said that there would still be an easement for public use and the City would still be involved.

Mr. Ted Kulczycki encouraged homeowners to get the dredging done and still have the resources through the City to get it done. He is for abandonment.

Mr. Dave asked where the easement was located.

Mr. Falls explained it would be an easement for public access just as it is today over the entire waterway. It would not give the public rights to tie up to their docks or do anything they are not allowed to do today. The only charge would be the recording fee for the instrument, which is under \$50.00. Property owners are still responsible for maintaining their seawalls.

Ms. Robin Debrosia said that she does have liability insurance and did not understand the question about the environmental study. She asked if the City was going to do an environmental study. They need to know if the land is contaminated.

Mr. Falls said that he would bring that information back when this comes up again before the City Council.

Vice Mayor Neville understood that the main reason that this came up was because of the liability insurance.

Mr. Falls said that is correct. He said if something should happen on one (1) of these docks the City would be liable for the costs because the property owner cannot name them on their policy.

Mr. Dave said they are concerned about other facts and not just liability. He asked if there was going to be a decision made about when this is going to happen.

Mayor Brackett said that there would be a public hearing held to approve this at a later date.

Mr. Dave said that if there is a lease agreement it would need to be pretty stringent. He was curious about the timing.

Mrs. Megan Peterson asked everyone to keep in mind that getting insurance because of the license agreement is different than regular liability insurance, which is why she would not sign the license agreement. They would have to indemnify the City. She thanked everyone for being so cooperative.

Mrs. Minuse asked if the property is sold does the lease expire or is it renewed. She was told that it runs with the land.

At this time, Council took a break and the meeting reconvened at 11:00 a.m.

2) Charter Review Commission Recommendations

The City Clerk read each recommendation that was made by the Charter Review Commission. The first issue proposed was Compensation for City Councilmembers. *The motion was that the Mayor's salary be increased to \$1,300 and that the City Councilmember's salary be increased to \$1,075 and they should get the CPI index increase for the last year or what the employees received last year, which was 3%. Then whatever is given to the City employees going forward should also be given to the City Council.*

Mr. Winger suggested enacting this after all the terms of office for the people on this Council have passed, which would be October 1, 2023. It was nice that the Charter Review Commission recognized the fact that some compensation for this job is appropriate.

Mayor Brackett agreed that it was nice of them to do that, but the amount of time that a Councilmember puts into this job will not change. He is fine with what they are receiving now. He wants to make sure that someone doesn't lose money by taking this job. He was not in favor of raising their own salary.

Vice Mayor Neville was in favor of giving whatever the CPI is for every year. He was told that might be more than what the employees get which could cause some problems.

Council agreed that whatever raise the City employees receive every year should be given to the City Council effective October 2023.

The next issue to be addressed was the term of office. *The motion passed 4-1 with Mr. Mucher voting yes, Mr. Daige no, Mr. Stassi yes, Mrs. Hillman yes, and Chairman Cook yes to change the term of office for City Councilmember from 2 years to 4 years.*

It was the consensus of Council to leave the term of office for City Council at 2 years.

Mr. Ken Daige agreed with Council in not extending the term of office.

The next issue addressed was how often the Charter should be reviewed. *A motion was made that the Charter of the City of Vero Beach should be reviewed every five (5) years. The motion passed unanimously.*

Mrs. Minuse agreed that they needed to have a time certain and that 15 years was too long to wait to have the Charter reviewed.

Mayor Brackett suggested having the Charter reviewed at least every eight (8) years with eight (8) years being the maximum to wait until a Charter review takes place.

Vice Mayor Neville suggested instead of having a mandatory review that every eight (8) years the sitting Council would decide if a review was warranted. He said that putting together a Committee is a lot of work and doing the review takes a lot of staff's time. He said that the Charter seems to work well and there have not been any substantial changes to the Charter.

It was the consensus of Council to have a Charter Review at least every eight (8) years or sooner.

The next item discussed by the Charter Review Commission was in regards to the makeup of the Canvassing Board. There were changes made to this section of the Code that were just housekeeping measures. *The motion made was that the Charter Review Committee unanimously agreed to housekeeping measures for Section 4.06 of the Charter to now read: The City Canvassing Board shall be composed of the City Clerk, City Manager, and the City Attorney. An alternate member, if needed for any reason, shall be chosen by the Canvassing Board. The City Attorney shall act as Chairman. The responsibilities of the Canvassing Board shall be to cooperate with the Supervisor of Elections in canvassing the returns of the Election, general supervision of the Election procedures, and any other procedural responsibilities related to the Election appropriate under applicable law. The Canvassing Board shall meet after the Election at the Supervisor of Election's office at a specified time and date and shall proceed to canvass the returns of the Election and shall deliver to City Council at its Organizational meeting a certificate provided by the Supervisor of Elections containing the total number of votes cast for each candidate. The certificate shall be placed on file with the City Clerk.*

It was the consensus of Council to include this language in Section 4.06 of the City Charter.

The next issue addressed was an undeveloped Park in Edgewood Subdivision. The Charter Review Commission made a motion *to include in the Charter an Undeveloped Park in Edgewood Subdivision (1795 18th Street) to be included in the Charter Protected Parks.*

Mr. Falls reported that this is a piece of property off of 18th Street that has never been developed and is owned by the City. There has been some interest in having this piece of

property protected as one of their Parks. He met with the neighbors of where this Park is located and they had some concerns about a Park being developed there. He said that the City mows the property occasionally and the property owners mow it occasionally. It is not an overgrown piece of property or health issue. He said that the interest to St. Francis Manor is just to the west of this parcel and this parcel is a small strip of land that has never really been developed. He said there is some entrance of having this piece of property protected as one of their Parks. He said that the St. Francis driveway was built to give them a connection on 18th Street and they do not use that entire piece of property. He said that there is some land that is vacant adjacent to theirs. He said if St. Francis Manor is not going to use that strip of land and the City could work out a trade they could move the property line so that it would not be jammed up against the neighbor. He said it might work out better. He said that he would be happy to explore this and bring it back to Council.

Vice Mayor Neville felt if that was to occur this could become a nice Park like setting.

Mr. Falls said that there are some passive Parks like that around the City. He will bring back additional information to Council on allowing them to make an informed decision.

Mrs. Minuse commented that Parks are so important for the quality of life in neighborhoods.

Mr. McCabe asked if the deal with the County goes through (referring to the lease that is on the referendum for 2021) they will get to two (2) parcels one (1) in South Beach and the other in Charles Park. He wondered if these parcels would need to go in the Charter. He was told that they already are in the Charter.

Mr. Ken Daige stated that he liked the idea that Mr. Falls came up with about this piece of property. He reported that the neighbors met and they are in favor of improving the landscaping (basically cleaning up the property) and are not in favor of benches being there because they don't want people spending the night there. They would like to keep the greenspace and put the Park in the Charter. His hope is that it does go on the ballot and it is protected under their Parks.

7. PUBLIC NOTICE ITEMS FOR FUTURE PUBLIC HEARING

8. CITY CLERK MATTERS

9. CITY MANAGER MATTERS

A) Discussion of October 6, 2021 Remanded Chapter 164 meeting with Indian River County

Mr. Falls brought up the Chapter 164 meeting that was held with the County on October 6, 2021. He said when they met with the County they were prepared to declare impasse and there was some discussion about that. At that point, Mr. Flescher asked them to take a look at a couple of things. The County has stated that it was not their intent to go after any of

the City's customers. They also said that the County does not want to enter into any litigation. They said that the City would continue to serve the Town of Indian River Shores under the existing Franchise Agreement and the City would continue to serve South Beach under a new reasonable Franchise Agreement. For this the County would acknowledge the validity of the 1989 Territorial Agreement. Then the County laid out four (4) points that they thought would be a reasonable Franchise Agreement. Those were that the City would charge County rates until 2027, then City rates thereafter. However, the City rates could not increase by more than 5% annually until 2032. The City would not levy any outside City limit surcharges. The City would provide the same service standards inside and outside the City limits and the City would no longer transfer 5% of revenues to the City's General Fund. He said what the City feels are not too much different then what the County is asking for and agree with two (2) of their points. The City agrees that there should not be an outside City surcharge and that all of their customers should receive the same level of service. When it comes to rates, the City has been firm in saying the City should be able to establish rates that are equitable to cover the cost of operating their utility, which is the same manner that the County sets its rates. The City also does not think it is reasonable for the County to dictate to the City how they run their business. The County has methods where they collect fees in their budgeting process just as the City does. They want to retain the transfer of 6% of revenues to the General Fund. He also pointed out that there was a Franchise Agreement to serve South Beach, which was issued in 1987 and this Franchise Agreement expired in 2017. In that Franchise Agreement it stated that the City would establish rates that they felt were reasonable, which is the same way they are asking that the rates be established now. That 1987 Franchise Agreement allowed the City to charge a surcharge of 10%. It had the same service standards, which they agree should be done. It was silent on the transfer of funds because it was clear on who ran their utility. The City does not think it is reasonable to have the County control their rates for 10 years or dictate how the City runs their utility business. It was reasonable to the County in 1987 when they signed the 30-year agreement and he doesn't understand why this has changed and the County feels it is not reasonable now. If the County is not interested in the City's customers and wants to avoid unnecessary litigation then they should acknowledge the terms outlined in the Territorial Agreement consistent with State law and accept the terms of the Franchise Agreement that the City has stated that they feel are reasonable. He said if not then they need to stop wasting time and move on to the next phase of the 164 proceedings, which is mediation.

Vice Mayor Neville recalled when Indian River Shores requested support from the County to examine the possibility of using County utilities versus using City utilities. He said that the County voted to do that which means that they did not support the Territorial Agreement. Also, one (1) of the Commissioners made the comment that they are constituents too. He said that the City residents are also their constituents and if you look at Florida law and their documents they are very clear. He agrees that this continued problem needs to be resolved for good. The only way to do that is to proceed moving to mediation as suggested by the City Manager.

Mr. Falls suggested that the City meet with the County representatives again like they did on October 6, 2021 and communicate to them or they send a letter notifying them that

based on the last meeting (October 6, 2021) what the City sees as reasonable and they are not in agreement with it then the mediation phase of the Chapter 164 process will begin.

Mr. Winger agreed with sending a letter.

Mr. Falls said that he would draft a letter for the Mayor's signature and then wait for a response from the County. Then they will know whether or not they have their dispute resolved.

Mr. Winger asked if the County has increased their rates. Mr. Falls said that the County has increased their rates already once and will increase them again on November 1st. He said that the City has not increased their rates in Indian River Shores or South Beach. He wondered why they have not implemented an increase.

Mayor Brackett explained that their outside counsel advised not raising the rates at this time because the City is in dispute with the County.

Mr. Falls said that they need an answer from the County when they send them this letter and he will report back to Council when they receive that response.

Mr. Winger brought up the rates and said if they are undercharging by 5% or 6% then that is material.

Mayor Brackett explained that nothing can be done before November 1st because that is when the County's next increase will occur.

Ms. Cindy Lawson, Finance Director, reported that their outside counsel has advised them not to increase their rates up to the new County rates. He advised them that they should not continue the practice of basing the rates for their customers on anything but a rate study of their own and not to continue the inaccurate practice of charging rates based on someone else's rate study and rates. The City is in the process of getting a rate study underway and getting their rates in place based on what the rate study says.

Mr. Winger commented that he agrees with the process, but giving Indian River Shores a break is driving him nuts.

Ms. Lawson continued by saying that City rates versus County rates is not a matter of cheaper or more expensive; it depends on where the customer lives.

Vice Mayor Neville asked how long it will take before they get this rate study completed.

Ms. Lawson said that what will take a little more time on this rate study would be to make sure that they properly fold in the construction of the new Water Reclamation Facility.

Mayor Brackett stated that he would be remiss if he didn't say that the second topic on hand that came out of the meeting on October 6, 2021 was that back in March when Mr.

Falls sent a letter to Mr. Brown saying that the City is not saying that they cannot talk to the County, but if they want to, they need to talk to the City first. He said that the County has done that now. At the October 6, 2021 meeting, the County wanted to know what it would take to be able to do that and he told the County that he would have to bring that back to the City Council. He told them that it was something that could not be answered immediately because in his opinion if they were allowed to talk about it, then it would require someone doing an appraisal of what the utilities in Indian River Shore is worth. He said that an appraisal was done on the whole system 10 years ago and it came back at being worth approximately \$1.2 million. He said that Indian River Shores is roughly 16% of their business and the first thing they would have to do is see if these numbers have changed. He assumed if the County wanted to know what the worth was then the City would have to enter into an agreement with them to be able to get an appraisal done at their expense.

Mr. Winger commented that the City has put in significant improvements for the Indian River Shores utilities within the last 10 years and it is more profitable now. It was also after the actions were taken after the GAI optimization study and appraisal came in. As a result of the study the City did a significant amount of improvements. He did not think that it was feasible for the County to take over Indian River Shores water customers. He said that they would be talking a big dollar amount in order to do this and personally he thinks it is a waste of time.

Vice Mayor Neville commented that the City is not going to expend any effort in this. If the County is interested in doing this then they would be the ones who would do the expending of efforts to get it done.

Mr. Falls stated that it would be his recommendation to the City Council not to expend any efforts or expense in getting this accomplished. He said if the Council wanted to see what their system was valued at and use that as a starting point for negotiations that valuation would be done based on the validity of the Territorial Agreement. The appraisal would need to be done by the person who is familiar with their system that was hired by both the City and Indian River Shores years ago and that person is Gerry Hartman at Hartman Consultants LLC. If the Council chooses to do this the cost would not be borne by the City. It would be between the County and Indian River Shores on how they would want to pay for it.

Mayor Brackett said the consensus of the Council was not to give permission to the County to talk to Indian River Shores and not to pursue that road.

Mr. Falls said that they would send the County a letter and we will not discuss giving them permission to serve Indian River Shores.

Vice Mayor Neville asked for an update on the meeting that was held between attorneys and staff at the Charter High School to discuss the 164 proceedings between the City and Indian River Shores.

Mr. Falls gave a brief update of the meeting. He said they had a Chapter 164 meeting last week with the Town of Indian River Shores at the Charter High School. The tenor of the meeting was professional, but it didn't resolve anything. Now they are in the process of scheduling a joint meeting with the different Councils'. He kept asking them what they were looking for and they never gave a definite answer. He said that they disagree on the restraint of trade issue. The City feels that it is common practice for utilities in Florida and across the Country who are set up under Territorial Agreements. Indian River Shore's attorneys brought up that the City can't serve them at the end of the franchise agreement because the infrastructure reverts to the Town and the City does not dispute that. They agreed in the franchise that the distribution facilities revert to the Town under the franchise. This does not include the lines under the river, the lines up State Road A1A, and not the tankage that they have. Those things would remain City assets. The ownership of the infrastructure does not affect the Territorial Agreement. He said that the Town can serve themselves. They have the distribution infrastructure when the franchise is terminated in either 2027 or 2042. He said that the City relayed to the Town's attorneys that they are looking for an answer so they can move on and build their Water Reclamation Facility and know what the treatment capacity needs to be. They want to build what it needs to be, but they don't want to build what it doesn't need to be.

B) Mobile Food Vendors (Food Truck) Regulations Discussion

This item was pulled from today's agenda.

10. CITY ATTORNEY MATTERS

1) Approval of Tower Site Lease Agreement with Indian River County

Ms. Flanigan commented that this matter has come before Council a number of times. What they are seeking today is approval of the Tower Site Lease Agreement between the City and Indian River County on the site lease agreement. At the City Council's October 5th City Council meeting there were some concerns about a provision in the lease about what happens to the tower if it stops being used for communication purposes. There is a provision in the lease that says in the event the leased premises are no longer used for the purposes stated, the tower site and leased premises shall revert to the City unless such other nonconforming uses are approved in writing by the City and the nonconforming uses are allowed by City Charter. The leased premises and tower will revert to the City in the event the Lessee, Sublessee, or Assign abandons or ceases to use the leased premises for the uses noted above for a period of five (5) or more years, and the improvements may be removed as provided in Section 10 of the lease. The owner shall provide the lessees one year's notice of its intent to terminate the agreement due to such abandonment or cessation of use. The City feels that this protects the City and are asking for Council's approval. This same lease agreement has been taken to the County Commission for approval at their meeting this morning. The referendum item will be taken to the voters for the November 2, 2021 Election.

Vice Mayor Neville commented that he has not been in favor of this at all. He felt this was absurd that there were two (2) communication towers built for commercial purposes and the County then decided to sell both of the towers since their lease expired with AT&T. The County did not perform an appraisal and they have no idea what the appraised value of this property is. After doing a public records request the City was able to find out additional information. He said that the City owns the land where AT&T built the tower and then the County first offered the City \$200,000, then they came back and offered the City \$500,000 when they received an offering price for this company of \$1.7 million. So the City gets 30% of the value. He said the real value is the land and not the tower. He thinks they have been mistreated in the way this has been handled. He thinks this whole thing is a mistake and could have been done differently.

Mayor Brackett commented that they have agreed in principle to do this. He said there was negotiation involved by staff, but reminded Council that there are two (2) valuable pieces of property on the ocean and some land at Charles Park, which will be given to the City as part of the negotiations.

Vice Mayor Neville felt that in good faith the County should have deeded that land to us years ago. He said they are part of the same team in this community and did not understand why they would use that as a wedge in order to get a lower value on the tower.

Mayor Brackett explained that the County did help pay for that property, which is why they have ownership in it.

Mr. Winger felt that it was time to approve the lease and any future revenue should be shared 50/50.

Mr. McCabe hoped going forward that they would have more transparency between the City and the County.

Mr. Ken Daige agreed with the comments made by Vice Mayor Neville. He doesn't like the County always dictating to the City about doing things. He thanked Vice Mayor Neville for putting it on the level. In this lease it talks about how many towers can be put on the land and the limit of towers on the land.

Ms. Flannigan made it clear that the lease allows one (1) tower, however antennas can be added to the tower.

Mr. Daige pointed out that there are five (5) years left on this lease.

Mr. Winger expressed it was because the County wanted to take the offer that they received from Tower Point.

Mr. Daige felt that if there was additional revenue to be generated then the City and the County should share that revenue.

Mr. Falls agreed that if the County derives any additional revenue it will be split 50/50. However, there will be no additional revenue from Tower Point. If Tower Point goes away and the County gets a new provider it would be shared 50/50.

Mr. Daige commented the County is leasing to a private entity for 99 years so they derive the revenue and not the City. He said that is not a good deal for the City.

Mrs. Minuse brought up the property for the tower and said if the lessees ceases using the tower and it stays empty for five (5) years who is responsible for the maintenance.

Mayor Brackett explained that the County would be responsible for the maintenance of the property.

Mr. Winger made a motion to approve the site lease agreement between the City of Vero Beach and Indian River County, Florida. The motion passed 4-1 with Mr. Winger voting yes, Mr. McCabe yes, Mrs. Minuse yes, Vice Mayor Neville no, and Mayor Brackett yes.

11. COUNCILMEMBER MATTERS

A. Mayor Brackett's Matters

Mayor Brackett reported that he attended the Breast Cancer Awareness Walk, which was very successful.

B. Vice Mayor Neville's Matters

Vice Mayor Neville sent prayers out to Mrs. DeSantis who was recently diagnosed with breast cancer. He reported that he had a nice trip to the mountains and has come back very refreshed.

C. Councilmember Winger's Matters

D. Councilmember Minuse's Matters

Mrs. Minuse stated that she wanted to make some comments on the meeting that occurred on October 14, 2021, regarding the Chapter 164 proceedings between the City of Vero Beach and the Town of Indian River Shores, which they participated in. She said that this meeting took place as required by Florida law and that is when there is legal action concerning two (2) local governments. She said that the Town filed a complaint against the City for their provision of water and sewer services. She said what was very disturbing is prior to the meeting the City received an email from the Town's attorney saying that they looked forward to working with the City in good faith to reach a tentative resolution. She said good faith is when you put trust and confidence in a tentative solution. She said when City staff specifically asked the Town what do you want, they did not receive an answer. There was no response to that question. Her wish here is to make it a public record to say

how can you come to any tentative resolution as expressed in your email when no one knows what they want. She asked how can you discuss, negotiate or mediate when we don't know what the Town wants. The meeting was a very courteous meeting, but she did not see good faith exhibited or positive work towards the tentative resolution. This kind of behavior will go on and it will cost their taxpayers. She wants to restore the word faith and go on accordingly. They don't need this nonsense between their local communities. They need to work together in good faith.

Mrs. Minuse asked for Council's approval to create a Resolution in support of home rule and opposing any preemption. She said that these powers are given to them by their Charter and she would like to address that to the Legislative Delegation. The kind of things that are important are policy and appropriations, the importance of their Lagoon, their function as a government controlling their own budget, etc. She could work with staff to bring this kind of Resolution forward. Council was in consensus of allowing Mrs. Minuse to do that.

E. Councilmember McCabe's Matters

Mr. McCabe reminded Council that Downtown Friday is this Friday night and the Bacon festival is this weekend under the Oaks at Riverside Park.

13. ADJOURNMENT

Today's meeting adjourned at 12:07 p.m.

/tb