

**CITY OF VERO BEACH, FLORIDA
JANUARY 19, 2021 8:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Pledge of Allegiance

Mr. Neville led the City Council and the audience in the Pledge of Allegiance to the flag.

B. Roll Call

Mayor Robbie Brackett, present; Vice Mayor Rey Neville, present; Councilmember Joe Graves, present; Councilwoman Honey Minuse, present and Councilmember Bob McCabe, present **Also Present:** Monte Falls, City Manager; John Turner, City Attorney and Tammy Bursick, City Clerk

2. PRELIMINARY MATTERS

A. Approval of Minutes

1. Regular City Council Minutes – December 15, 2020

Mr. Neville made a motion to approve the minutes. Mr. McCabe seconded the motion and it passed unanimously.

A. Agenda Additions, Deletions, and Adoption.

Mrs. Tammy Bursick, City Clerk, pulled item 9-A) “Youth Sailing Memorandum of Understanding (MOU)” off of the agenda. This matter will come back at a future meeting.

Mrs. Minuse requested that Mr. Mike Johannsen who is on the agenda under her matters be allowed to speak after item 9-D) on the agenda since it involves the stormwater utility, which is what he intended to speak on.

B. Proclamations and recognitions by Council.

1) Mr. Monte Falls, City Manager, to be presented with a plaque for his 30-years of service to the City of Vero Beach

Mayor Brackett presented Mr. Monte Falls, City Manager, with a plaque thanking him for his 30-years of service with the City of Vero Beach.

2) Mr. Michael Kahn, Esquire to speak on preparing a Panhandling Ordinance – Requested by City Attorney

*Please note at the time this item was to be heard, Mr. Kahn was not at the meeting. The Council moved on to item 4-A) and then went back to this item once Mr. Kahn had arrived for the meeting.

Mr. John Turner, City Attorney, said they have had several meetings and discussions on revising their panhandling Ordinance and he did some research on the legal issues involved, which are numerous. He said dealing with panhandling ordinances is a specialized area and takes someone with a lot of knowledge and experience to have an enforceable panhandling Ordinance. He contacted Mr. Michael Kahn's office because he has had success in drafting panhandling Ordinances in other cities in the State and asked him to make a presentation to the City Council. He said that Mr. Kahn is doing this at his own expense and will explain to the City Council his means and methods of implementing the panhandling Ordinances with a possible end for the City Council to consider his proposal and a recommendation that they proceed in that direction if that is the desire of the City Council.

Mr. Michael Kahn, Attorney, apologized to the City Council for being late. He reported that for the past 35-years he has represented Florida cities and towns from Pensacola to South Florida on different Ordinances. He said that panhandling Ordinances used to be straightforward. It used to be intermediate review, which means that in order to get a panhandling Ordinance sustained you would have to prove significant important government interest. He said in the Case of Reed vs the Town of Gilbert, in one (1) paragraph it turned the whole thing upside down and it seems to indicate what they have to show has to pass a higher bar. They have to show it a compelling State interest. Since then, especially in the North East and in Tampa, Florida, no one knew how to handle that. They couldn't find compelling State interest, which means that they couldn't pass strict scrutiny. Therefore, there are a number of different panhandling Ordinances that were struck down, most notably Tampa's Ordinance. He said that he just spoke with the attorney who represented their case and asked if the reason they lost the case was because they couldn't find a compelling State interest and passed as strict scrutiny and her reply was yes. He asked is that also why they didn't appeal the case and she answered yes. He said St. Augustine had a terrible time with panhandlers and because they have rights, as part of the Ordinance he protected those rights, but he also protected the rights of others, such as business owners and tourists. He reported that they hired him in St. Augustine to prepare a panhandling Ordinance about four (4) years ago and the Ordinance has never been challenged. He said what he did in St. Augustine was that he took strict scrutiny head on. He explained that there are certain unhygienic habits that panhandlers do that are inimical to the health, safety, and welfare of citizens and tourists. He said that he has two (2) Ordinances pending in Port Orange and Delray Beach that are going to be passed this month. He did one (1) in Melbourne, he did one in St. Augustine and he did one (1) in Daytona Beach. He then passed out to the City Council articles from the Daytona Beach News-Journal (attached to the original minutes). He said Tampa made a lot of mistakes with one (1) of them being that they banned panhandling in certain areas and panhandlers have rights. In St. Augustine he had predicated testimony of citizens and tourists who visually saw some of the unhygienic habits that panhandlers were doing. Then he had a

physician testify as to the nature of the health, safety, and welfare to the citizens and tourists. In his Ordinance he stated that it satisfied strict scrutiny and has a compelling State interest. The physician testified and went into detail of the unhygienic habits that could cause people to get a disease. The last two (2) Ordinances have COVID clauses, which helps by regulating those habits in panhandlers. What he did was create distance parameters. He said that what he is going to present to the City Council is what he is currently doing for Port Orange and Delray Beach. To have three (3) special meetings with testimony from police officials, fire officials, the Public Works Department, and business owners, employees, etc. The first and second hearing will be evidence where these people will testify under oath with a court reporter transcribing minutes. Each Ordinance averages 2,000 pages of record, which includes 1,000 pages of medical records and data that clearly indicates that these unhygienic habits are amicable to the health, safety, and welfare of the citizens and tourists of Vero Beach. He said that he is trying to protect the constitutional rights of panhandlers and at the same time to ensure the rights of the citizens and tourists. He said that he has created distance perimeters, where he banned panhandling, such as prohibiting panhandling 20-feet in any direction of entry/exit to any commercially zoned properties, 20-feet in any direction of any bus/trolley stop, 100-feet from any school, etc. He reported what panhandlers would do is go up and wait for a red light and then go to people's cars while they were waiting for the light to change. Some of the panhandlers would get hurt so he also included a clause banning around certain intersections within 150-feet. He said after the second meeting, there would be the first reading of the Ordinance and the third hearing would be the second reading of the Ordinance. He said that his Ordinances have not been challenged for many reasons and one (1) of the reasons is tremendous good fortune. He said they would do some mapping of Vero Beach, which could be handled through the City's GIS Department. He said that when he creates an Ordinance, he is creating a grid of maps that show the impact of the distance patterns. At the end of the day well over 90% of Vero Beach will be available to panhandlers, which shows that he is protecting their rights. But, on the other side it is not occurring where the businesses are or where the intersections are. It is not in the sensitive areas. The impact of that is that it regulates panhandling. He said that he will not discuss homeless people in his Ordinances or in his discussions. They are two (2) different things. He said not all panhandlers are homeless and not all homeless are panhandlers. He said there are a lot of reasons why his Ordinances have not been challenged. He said the First Amendment Law, they have the privilege of imputing the record from previous First Amendment cases into their own so the very first thing that he would do is put all the testimony into the record. He said if he is retained, Vero Beach will have a record of 10,000 pages and that is disincentive to challenge. He said that Tampa was struck down because they couldn't think of compelling State interest. He said that he doesn't blink an eye. His Ordinances state that the compelling State interest is protecting the health, safety, and welfare of citizens and COVID supports his Ordinances. He asked would the City's GIS Department be able to handle the mapping. He said that would save the City money.

Mr. Falls answered yes.

Mr. Kahn said the first thing he would do if he is hired is he would start to interview, which he could do by Zoom, police personnel, fire personnel, the Public Works Department,

customers, business owners, etc. Next he would like to have a local physician that he could work with to provide the City with 1,000 pages of medical data on the health, safety, and welfare of the citizens and tourists of Vero Beach. He then would set the three (3) public meetings. He said that he would pre-interview each person that would testify.

Mr. Neville asked how long would it take for the law to penetrate the panhandlers so they know how to behave and know where to go.

Mr. Kahn said you would give them fair warning before enforcing the Ordinance. He said if they want to see how hard he works, they can call Mr. Matt Jones, of Port Orange, and Ms. Lynn Jelon (spelling may not be correct), of Delray Beach and they will tell them how hard he works. He is a hard working guy and will spend a lot of time on the Ordinance. He said the impact will be immediate. He has seen that when putting up signs they don't have affects in stopping the panhandling.

Mayor Brackett said this has been an important topic before this City Council before. His recommendation would be to have Mr. Turner finish some type of proposal with Mr. Kahn and bring it back before the City Council.

Mr. Turner said that he would like to proceed as soon as possible. He asked for a consensus of the City Council to move forward with this.

Mayor Brackett said it has been on their agenda for a while to get further information about this and the sooner the better.

Mr. Turner said that he had indicated the general area of Mr. Kahn's fee.

Mr. Kahn said it is roughly the same as Port Orange and Delray Beach. The fee would be in increments. There will be a payment due on the execution of the retainer, there will be a payment due on the presentation of the Ordinance, a payment due at the first reading and the last payment would be at their second reading. He said by having the City's GIS Department do the mapping, the City will save about \$23,000. His fee is \$45,000 divided in those increments. He said that he is not the type of lawyer that sits around and waits for the money. He wants to get the job done. He said that he waived the consultation fee of \$500 to come and speak to the Council today and he waived it because Vero Beach is his neighbor.

Mayor Brackett asked Mr. Turner if he could get this item on a future Council meeting.

Mr. Turner said that he would get a copy of Mr. Kahn's retainer and put this on the next City Council agenda.

Mr. Neville said it seems like a logical process and everyone wins in this particular case.

3. CONSENT AGENDA (include amount of expense)

- A) Awarding of Bid 420-20/JO – Community Center Bathroom Remodel to A Thomas Construction for a Total Price of (\$112,000.00)
- B) Advoco, Inc. – Work Order 1 – Enterprise Asset Maintenance (EAM) Implementation Services – Water Treatment Plant (WTP) and Raw Water Wellfield System – Estimated Expenditure (\$115,600)
- C) Interagency MOU
- D) Engineering for Veterans Memorial Island Bridge Replacement (PW Project #2020-36) – WO No. 16 to EC-9-2017 – Cost (\$149,895)
- E) Award of Bid No. 450-2-/CSS – Compressed Liquid Chlorine Annual Supply Contract – Estimated Expenditure not to exceed (\$150,000.00)

Mr. Falls noted that there was a typo in the memo for item 3-E). The word “lime” should be “chlorine.”

Mayor Brackett pulled item 3-D) off of the consent agenda for the City Manager to explain the reason for the bridge replacement on Veterans Memorial island.

Mr. McCabe made a motion to approve consent agenda items 3-A), 3-B), 3-C) and 3-E). Mrs. Minuse seconded the motion and it passed unanimously.

Mr. Falls explained that the Veterans Memorial Island Bridge has reached the end of its design life and is experiencing substantial deterioration. The bridge is in need of a full replacement within the next 4 years.

Mr. Neville commented that when the Veterans Memorial Island Bridge was built years ago there were cenotaphs laid there and they were not all City residents. He felt the cost to replace this bridge should be a community effort.

Mr. Falls said that he would reach out to the County Administrator and other City Managers of the County when they have their monthly lunch and report back to the Council.

Mr. Neville felt that everyone should want to participate.

Mr. Matt Mitts, Public Works Director, stated that the Florida Department of Transportation (FDOT) inspects all bridges every two (2) years. This bridge was built in 1988 and is 30-years old. He said they are where they are today because an inspection was done.

Mrs. Minuse made a motion to approve and execute Work Order number 16 to contract EC-9-2017 in the amount of \$149,895 for engineering services associated with the design and permitting of a new bridge at Veterans Memorial Island. Mr. Neville seconded the motion and it passed unanimously.

4. PUBLIC HEARINGS

Mr. Kevin Lyons, Ez2cy Window & Pressure Cleaning, LLC, to talk about unwarranted expenses for his business.

Mr. Kevin Lyons, owner of Ez2cy Window and Pressure Cleaning, LLC, said that on November 25, 2020, he rearranged existing dirt on a sidewalk. He said it was rearranged on a public path, which was a unique pattern specific to a business and no different than the tread mark of a Nike symbol or a Bridgestone tire. He was called by a Vero Beach Police Officer who asked him to remove the rearrangement of the note on the sidewalk, which basically was to clean the sidewalk. He said that he didn't bring any material, he didn't leave any material, or paint anything on the sidewalk. He did not damage the sidewalk, all he did was rearrange the mold. He said that he spoke with Police Officer John Pederson and was told that he was clever and asked him to remove it. He reported that he told Officer Pederson that he didn't think that he broke any laws and asked for the Section of the Ordinance that was being cited. He was told by Officer Pederson that he is to remove it or the City would charge him. The next day he called Officer Pederson who was not at work that day. He reported that Officer Pederson called him back stating that he had asked him (Mr. Lyons) to remove it and he again asked for an Ordinance because he did not think he broke the law. He said that he then was billed for \$758 for the City to remove it and he was also given the correct verbiage on the Code Enforcement citation. He said under the Ordinance on the citation he did not break the law. He said that he has complied and removed everything that he was asked to. He said during that time he called Mr. Matt Mitts, Public Works and Engineering Director, and offered his time for free to clean South Beach Park, the City's boat docks, etc. He said that Mr. Mitts said they have employees who take care of the Parks, but that he would take this before the City Manager and the City Manager turned him down. He said that he asked if he could rearrange his business logo. He said he was not leaving out signs in people's yards, on the corner, etc. He said that he wanted to make sure they have an understanding that this was not regulated. He would like to move forward and if there is something that he can do to clean areas and help he would like to do that. He was asking if he could leave his business logo. He said that he was turned down for offering free service. He would like to see where exactly they stand in a unified way. He said that he has not broken the law and he would like the bill of \$758 removed and he offered his services. He would like to handle this peacefully and see if they could work on a contract or something where he would work for the City for free. He would offer his own grass and check in with Mr. Mitts to be sure he is doing what the City is looking for. He then showed a picture of Orchid Island advertisement and his logo. He said that his logo it is not a sign.

Officer John Pederson stated that Mr. Lyons went before the Code Enforcement Board on this and is now appealing it to the City Council. He said that he became aware of this complaint through Ms. Melody Sanderson, Code Enforcement Officer, on December 3, 2020. He reported that the Code Enforcement Officer received an email complaint regarding the business that appeared to have used some type of stencil equipment or a pressure washer to pressure wash a business design on public sidewalks in the area of Riverside Park. He reported that the number on the advertisement was Ez2cy Window Cleaning Roof and Pressure Washing that included a telephone number. At 12:03 p.m. on December 3, 2020, he called that number and made contact with a person stating that he

was Kevin Lyons. He told Mr. Lyons who he was and the purpose of the call. He asked Mr. Lyons if he was the owner of the business and was told that he was. He asked Mr. Lyons if he was aware of these signs that were apparently pressure washed on the public sidewalks in the area of Riverside Park and was told that yes he was aware of this and that he did them. Officer Pederson said that he told Mr. Lyons that what he did was he created a sign in a public Park, which was prohibited. He said that he asked Mr. Lyons on four (4) occasions to please remove them and he refused. He told Mr. Lyons that if he doesn't remove them the City is going to remove them and he will end up bearing the cost and Mr. Lyons hung up on him. He then had Officer Sanderson contact the Public Works Department to abate these signs. He then read into the record, Code Section 38.18 – Removal of prohibited signs from public property or public rights-of-way, *“Any prohibited sign on public property or public rights-of-way may be immediately removed by a Code Enforcement Officer or other authorized City official. Any sign so removed may be disposed of without notice or compensation. In addition to other remedies, the City shall have the right to recover from the owner or person placing such sign the cost of removal and/or disposal.”* He reported that staff followed City Code. They contacted the Public Works Department and sent Mr. Lyons a bill. He said that Mr. Lyons called him on December 5, 2020, and he explained to Mr. Lyons what the City had done and all of this could have been negated if he would have volunteered to go out and clean it up as requested. Mr. Lyons then said maybe they could work out a deal and he was told that he should contact the Public Works Department. He told Mr. Lyons if there are any other signs in the City they need to be cleaned up and he was told that there are some in other parts of the City and he suggested that Mr. Lyons get them cleaned up so they don't receive any more complaints.

Mr. Neville questioned so they actually had a complaint from a citizen.

Officer Pederson answered yes.

Mayor Brackett asked was there more than one (1) at Riverside Park.

Officer Pederson said there were at least eight (8) different signs that were stenciled into the sidewalks at Riverside Park. He showed the City Council a few pictures of the sidewalks at Riverside Park (attached to the original minutes)

Mrs. Minuse asked have they all been removed.

Officer Pederson said they all were removed from the Riverside Park area.

Mr. Lyons said they have pictures of rearranged molds on the sidewalk, not pictures of signs. He said it is not paint. All he did was rearrange molds.

Mr. Graves asked is the apparent sign defined in the Ordinance.

Mr. Turner answered yes.

Mr. Graves asked what is the definition of signs in the City's Ordinance.

Mr. Turner said any device used to communicate.

Mr. Graves said so a sign doesn't have to be a physical sign. It can be anything to convey a message.

Mr. Turner said that is correct.

Mr. Lyons asked is it lawful for a Police Officer to call and ask for something to be done without any Ordinance or piece of paper or anything being sent to him and telling him that he has to do something and then when he was not able to comply within two (2) days and it was already taken care of without him being able to check to see if it was a prank call or a real Police Officer calling him. He said for the Police Officer to say that he hung up on him was not correct because he did not. He said the fact is that they did have telephone calls two (2) separate times. He said that he did wait for Code Enforcement to come through and he did pay the Code Enforcement citations. He said that he made sure that he removed anything that the City was upset about. He said they are in the middle of a loophole on something that is not regulated. He reported that he had two (2) citations, paid them, and made sure he took care of what was asked because of the fact that he lives here and has his business here and he wanted to make sure that he moved forward by doing things correctly. But, to have a \$758 charge for eight (8) little squares is a little too much without receiving any Ordinance, any proof, any ticket, nothing at all except for a telephone call. He said there is not an email except for after the fact, which was on December 22, 2020, and he had until December 26, 2020, to remove it, which he made sure that he did. He said that he does not want to rub the Police or the City Council the wrong way. He said that he thought that he was being clever and still thinks that he was being clever. He asked the City Council to erase the bill, let it be done, and he will stop rearranging molds on the sidewalk. He said this is not illegal and asked that they move on and possibly have a new Ordinance that covers this, which would be a natural product. He said that he rearranged dirt, mold, and algae and there is no law against that.

Mayor Brackett said for the record he knows Mr. Lyons from about 30-years ago. However, he thought the point is, according to the City Attorney, is that it is a sign by definition because it sends a message.

Mr. Lyons said it is a natural thing and you cannot argue it. He said they are telling him that everyone has to be ticketed for this. If they are ticketing him then they have to ticket everyone for the same thing because if a shoe has a business logo on it they are rearranging the same thing.

Mayor Brackett said that he thinks there is a difference because it has a telephone number and the name of a business.

Mr. Lyons said that he called Officer Pederson on the day that he was off and has proof because he called Mr. Mitts and stated that they had already been removed. He asked if he

could clean the Parks and leave just the logos. He said there is no grounds for this. There is a loophole. He said if they put the fine against him then it is not according to the Ordinance. He is asking the City Council to make this go away and he will apply for a proper permit. He said that he would like to clean the City for free.

Mr. Neville said if they allow this they are inviting everyone else with a power washer to write stuff on the sidewalks. He felt that this needed to be properly regulated. He said when their citizens are walking on the sidewalks they are not expecting to see advertising. He understands the fact that Mr. Lyons is not using paint, but he created an image of an advertising logo.

Mr. Lyons said they stated there were eight (8) of them and his fine was \$50 for the other citations. He asked can he just have a fine for \$200 instead of \$758, which would make more sense. He felt this charge was a little exorbitant compared to others using yard signs. He said this was gross with negligence of charging that much money to remove eight (8) squares that took him 30-minutes to do.

Mr. Falls said in looking at the invoice, there were eight (8) hours associated in removing this. He suggested a compromise subject to adequate insurance being provided that they work out an agreement with Mr. Lyons to give the City eight (8) hours of pressure cleaning time.

Mayor Brackett said that he did not have a problem with doing that.

Mrs. Minuse said her concern is what kind of precedent they would be setting.

Mr. Falls felt they were showing that the City does not allow any type of advertising placed on City property.

Mr. Graves said if Mr. Lyons wants to work it off that would be great as long as they are sidewalks that need to be cleaned. He said if they have mold on the sidewalks they need to have them cleaned because it increases liability to the City. He said they should have some type of program to clean the sidewalks.

Mr. Lyons said that he would like to work with Mr. Mitts and have Mr. Mitts control this.

Mr. Graves made a motion to allow Mr. Lyons to work off what he owes to the City. Mr. Neville seconded the motion.

Mr. Falls asked that they add to the motion that this is subject to the appropriate insurance being provided.

Mr. Graves agreed.

Mr. Lyons apologized to Officer John Pederson and Code Enforcement Officer Melody Sanderson. He said that he would like to start fresh. He will now recognize their telephone call moving forward.

Mr. Graves said when law enforcement contacts him and tells him there is an Ordinance, he should believe him. He said Code Enforcement is not a fun job and they deserve everyone's respect.

The motion passed unanimously.

A) ORDINANCES

B) RESOLUTIONS

- 1) A Resolution of the City Council of the City of Vero Beach, Florida, Establishing for Property Abatement a Special Assessment Lien in the amount of \$6,143.98 against the real property identified as Knightlawn Subdivision Block 2, Lots 7 & 8 PBI 1-69 and with the address of 1941 33rd Avenue, in the City of Vero Beach, Indian River County, Florida.**

The City Clerk read the Resolution by title only.

Mr. Falls reported that this Resolution establishes a special assessment lien for costs and expenses incurred by the City in abatement of an unsafe structure at 1941 33rd Avenue. In addition, other code violations were rectified to bring the property into compliance. He recommended that Council approve the Resolution so that the City can secure recovery of the public funds expended and costs incurred. Interest will accrue on the amount assessed as provided by law.

Mayor Brackett opened and closed the public hearing at 9:50 a.m., with no one wishing to be heard.

Mrs. Minuse made a motion to adopt the Resolution. Mr. McCabe seconded the motion and it passed 5-0 with Mr. McCabe voting yes, Mrs. Minuse yes, Mr. Graves yes, Vice Mayor Neville yes, and Mayor Brackett yes.

5. PUBLIC COMMENT (3-minute time limit)

The City Clerk read into the record two (2) letters provided by Mr. Brian Heady (on file with the original minutes).

6. CITY COUNCIL MATTERS

A) NEW BUSINESS

B) OLD BUSINESS

7. PUBLIC NOTICE ITEMS FOR FUTURE PUBLIC HEARING

8. CITY CLERK MATTERS

A) Appointment to the Utilities Commission

The Council discussed the need to have more members serving on their different Commission and Boards. The Code constitutes that the majority of the members serving on their Commissions/Boards must be City residents. The City Clerk informed Council that some of their Commissions now have more County residents serving on them than City residents.

Mayor Brackett volunteered to meet with the City Clerk and City Attorney to come up with some recommendations and bring them back to the City Council.

Mr. McCabe made a motion to appoint Mr. Douglas DeMuth to the Utilities Commission.

The motion died for lack of a second.

The Council agreed to hold off at this time in appointing anyone to the Utility Commission until they have discussed this matter.

**9. CITY MANAGER MATTERS (include amount of expense)
(Staff/Consultant special reports and information items)**

A) Youth Sailing Memorandum of Understanding (MOU)

This item was pulled off of the agenda.

B) Revised Second Amendment – Indian River County CARES Act Funding Agreement (\$652,736)

Mr. Falls reported that the County has requested that the City replace the Second Amendment previously approved by Council with a revised Second Amendment that has the current version of the spending plan and also approves a time extension to the agreement.

Mayor Brackett requested a list of the businesses that have been awarded grants from the CARES Act funding.

Ms. Cindy Lawson, Finance Director, said they could provide that list. She then went over some other things that the County is offering to the citizens of the community and the different resources that are available.

Mr. Neville asked if these different things are offered to people living in the unincorporated areas of the County, as well as to all of the municipalities. Mr. Falls told him that they were.

Mr. Falls explained that the CARES Act funding had initially expired then it was extended.

Mr. Neville made a motion to approve the Revised Second Amendment to the Indian River County CARES Act Funding Agreement and the City of Vero Beach Spending Plan and the time extension to the Agreement and authorize the City Manager to execute the documents. Mr. McCabe seconded the motion and it passed unanimously.

C) Indian River County Legislative Delegation – Seeking Support to amend Florida Statutes which regulate Florida Department of Transportation (FDOT) funding of Airports based on Florida Aviation Administration (FAA) Airport Classification

Mr. Falls reported that the Indian River County Legislative Delegation was originally scheduled to meet on January 20th. They have now rescheduled the meeting for January 21st at 11:00 a.m. and it will be a virtual meeting. He said that staff will be speaking on the Airport funding issue. They have been working with Senator Mayfield and Representative Grall to amend the Florida Statutes to continue authorized funding by FDOT for up to 80% of master planning and eligible aviation development projects for commercial service airports that have not been classified as small, medium or large hub airports by the Florida Aviation Administration (FAA).

D) Discussion Regarding Proposed Budget for Stormwater Utility

Mr. Falls reported that staff needs the Council's help on the stormwater utility. He said that they have talked about this many times and it has always been their understanding that it is Council's position that they only include capital expenditures into the stormwater utility budget. They want to see if that is still Council's direction and if that is the case then they want to know if they still want to tie the additional funding into the capital program that they have.

Mr. Neville stated that his thinking on this is that all funds related to the notwithstanding the 1% tax, but beyond that, all activity related to stormwater should be accrued into a single account and paid for out of the revenue from the stormwater utility. He said as a consequence then the ad valorem tax that applies to primarily the maintenance would be abated to the amount that was tossed into the stormwater program. He said that the reason he thinks the stormwater utility is so important is because it is fair and unfair in many ways when they are paying for stormwater projects out of ad valorem taxes. He said those most involved in creating stormwater don't necessarily pay that much in tax and those that have large ground areas it could be expensive to them and they are not causing most of the problem.

Mayor Brackett asked if they would be creating more employee costs and are they talking about shifting some of those costs. He doesn't think that there is that much and he was not trying to imply that there is, he just doesn't know the answer to the question. Also, what is the process for someone appealing what their Equivalent Residential Unit (ERU) is on their home. He would like to see this money go towards purchasing a street sweeper if that is needed. He knows they have talked about not purchasing vehicles, but maybe they can make this an exception.

Ms. Lawson explained that as far as the vehicles go she included to this backup all of the things that are stormwater related in the current Fund 304 budget and that does include the purchase of a street sweeper. She said as far as the operating costs go there was a spreadsheet put together in response to the generic question what is all the expenditures on stormwater and operating of maintenance in the General Fund and also in Fund 304 and it was about \$1.6 million per year as opposed to the \$600,000 that is in the capital project site. She said it is a pretty substantial amount of money in the General Fund. She pointed out back when they first did this study in Fiscal Year 15/16 the amount of revenue to be generated annually was about \$1 million.

Mayor Brackett understood that Council was looking for if they did a stormwater utility what is it supposed to generate.

Ms. Lawson said yes and no. She said right now they have about \$600,000 a year worth of stormwater expenses in their Fund 304 paid by the one-cent sales tax. Then they have another \$300,000 a year worth of unfunded projects that are also shown in Fund 304. She said if they want to take the stormwater utility money and use that source of revenue to pay for those things, meaning that they would have the one-cent sales tax to pay for different things that stormwater is competing with and it is done that way then the current adopted stormwater capital expenditures and unfunded capital expenditures will be about \$1 million per year, which is what they had originally targeted as their number for a stormwater utility.

Mr. Neville asked how soon are they looking for a response to this question.

Mr. Falls explained that they need the answer to this question so the consultant can get the study done. The consultant has promised to have the report done by the middle of April.

Mr. Neville suggested having a workshop to discuss this item.

Ms. Lawson expressed how time sensitive this was. She said they already delayed their position on the stormwater utility where there really is no additional time to make this decision.

Mr. Neville asked Ms. Lawson what she thought the deadline would be in this regard.

Ms. Lawson explained that in order to meet the timeline laid out in the work authorization this information was requested by the consultant about a week ago. She said maybe they could push it back another week or so, but after that it is going to start to impact the project.

She said how much money and how many ERU's are the two (2) fundamental pieces of this equation.

Mrs. Minuse commented that staff was basically looking for direction in order to continue moving forward with the study.

Ms. Lawson yes they need to keep moving going. She said that they already have about a million dollars a year of stormwater expenditures that are budgeted and funded together.

Mr. Falls added that the timeline that they put together was predicated on having the information available to Council so if they chose to implement a stormwater utility they could do it this year. If they delay that timeline it doesn't mean that stormwater utility goes away it just means the possibility of having it implanted this year goes away. The basic question is do they want to have the stormwater utility that encompasses globally and has all the costs included or is it the same discussion they had with Council for capital only.

Mr. McCabe suggested doing the analysis on both scenarios.

Ms. Lawson said in doing that there would be an additional cost because two (2) complete different studies would have to be done. She said a million dollars is what they programed in Fiscal year 15/16 and it generated an answer of about \$5.00 per ERU and the costs for stormwater including operating is more like \$6 million.

Mr. Graves said personally he doesn't feel like they should be doing this on the fly. He understands some of the other Councilmember's position in getting the study done, but he did not think doing it this year is something that their business community would be in favor of. He said what he is hearing is that their business community is extremely concerned in looking at this political environment that they are entering where taxes may be raised. They don't know what the effect the pandemic is going to be this year as far as expenses and revenue goes. He thinks that this should be a thoughtful process and he likes stormwater, but he doesn't think that it should be rushed through or done on the fly and pressured by a timeline to get it done. If it does move forward it is something that should be well thought out. The only way that they have ever discussed this in the past is "capital" only. He said doing something that would increase the ERU's is not something that they have ever considered before. That is not something that he could be in favor of at this point. He said for today he would say for capital only.

Mrs. Minuse commented that they are looking at two (2) situations. She said are they moving in the direction that it should only pertain to capital projects and the second option is to look at the five year capital improvement.

Mr. Mitts explained that the direction that staff has been given up to this point is to put their capital projects in the utility and they can move forward with that or take another direction. He said in regards to the timeline that is a decision for Council that the work can still be done to meet the timeline and these goals for funding. He just wants to make sure that they are doing what the community wants.

Mr. Neville asked if the issue was the amount of the ERU.

Mayor Brackett felt that point was relevant and they have talked about it in the sense of all encompassing.

Ms. Lawson noted that the other thing to think about is that it is not possible to draw a straight line between ad valorem taxes and stormwater costs in the General Fund.

Mr. Neville said if they reduce the amount of money that they are spending from the General Fund the way they would deal with that would be to abate the ad valorem tax value. He said the rest of the stuff that they get they don't necessarily control. His goal here is to make this as fair as possible. He said that ad valorem is not appropriate for the stormwater because it is not proportional. It is important to him to move forward on this and he is trying to be flexible.

Mrs. Minuse said for clarification when they talk about maintenance they are not talking about staff. They are talking about the specific maintenance that is being done. She said in many ways it is a capital improvement. They are not necessarily looking at salaries, which is always associated with maintenance.

Mr. Falls explained that currently stormwater has an operational side and a capital side. The operational side is generally funded through the accounts that include the ad valorem taxes and the capital side is funded through those funds that have sales tax, gas tax, etc., those type of discretionary funds that have to be used for capital. There are some maintenance capital projects, then there is about \$600,000 allocated for the ad valorem types of revenues. He thought that Vice Mayor's Neville's point was if they cover those costs in the utility could they then abate them and reduce the amount of ad valorem that they collected on an equal basis. He told Council if they want staff to proceed with the timeline they have given them they are up against that hard deadline. However, if they want to have more time to talk about this then they could take this opportunity off the table for this year.

Mr. Neville said so they are being told that this is the only opportunity that they have to address this issue.

Mr. Falls said yes, if they want to implement the timeline and initiate the stormwater this year.

Mr. Graves commented that this has never been discussed. He recalled at the public hearing when this was heard there was a concern from the public that it was creating another level of government. He said they discussed capital improvements only and not all this. He was not sure that they had a valid vote to move forward on stormwater and there has not been a public hearing held on it.

Mrs. Minuse explained that is not what they are here for. They are here to give staff direction to assemble the knowledge that they need to eventually make a decision.

Mr. Graves deferred his question to the City Attorney. He said that they moved forward on a study based on something for capital improvements.

Vice Mayor Neville stated that he did not want to stop the process. He just offered the way that he would like to see it.

Ms. Lawson clarified that they moved forward on a study that requires that they provide the consultant with a budget to go with their analysis on how many ERU's there are. She said that staff wanted to make sure before moving on that they affirm the direction that they have had since 2016, that there be nothing but capital partly because when they gave Council the information last year it came out to be around \$1.6 million. She has actually read in the local press that this was the budget that they were proposing. She said it is absolutely not what is in the agenda package. This agenda item was meant as a clarification for people who may have read this misinformation. She said the Council that gave staff the direction to do capital only was the Council of 2015 and she wanted to make sure that was this Council's direction. It was their assumption that they would take all the capital projects that they already have lined up including those that couldn't be funded because there was not enough one-cent sales tax and move all of those into the stormwater utility. This is about a million dollars a year, which is about the same amount of money they were looking at back in 2015. She said if Council wants to take the time to talk about these other ideas they can and it doesn't mean they can't do this next year with allowing the consultant to complete the study. She said the data from the study should be pretty good for the following year, with maybe some small adjustments.

Mr. Neville acknowledged that he threw a "monkey wrench" into the discussion and he is willing to pull that "monkey wrench" out for another time.

Mr. McCabe stated that for purposes of today and to keep them on track and on schedule and keep their options open he would make a motion that on point A (referring to their backup material) that they keep it to capital funding at this point. Mr. Neville seconded the motion.

Mr. Falls said that they were looking for confirmation that Council wants to use the one million dollars and that is the number that the consultant will use to divide the ERU use for each property.

Mayor Brackett said that his understanding on this is that the one million dollars was the number that they were using.

Ms. Lawson said there were two (2) questions here. The first was capital only and the second question was the budget attached to her backup material and that is, is the budget from Fund 304 and the project amount to about one-million dollars a year. She asked

Council if they wanted staff to move the unfunded projects from Fund 304 into the stormwater utility and leave that money available in Fund 304 going forward.

Mr. McCabe said that he was going to break that into two (2) motions.

Mayor Brackett asked if they could leave it as the fact that they are going to try to raise a million dollars and then at budget time discuss the answers to Ms. Lawson's questions.

Ms. Lawson explained that because it was a non-ad valorem assessment in addition to just the dollar amount the consultant needs to know what the projects are to determine the elements of cost and also make sure if they are going to levy assessment it has a Citywide benefit by virtue of the range of projects that are budgeted. She said it needs to be more specific than just the dollar amount.

Mr. McCabe asked Ms. Lawson in her view can the motions be separated.

Ms. Lawson explained if they don't move the current program from Fund 304 into the stormwater utility then the question is what would they like to see in the stormwater utility instead, which they would need to ask the Public Works Director if he has other projects other than the ones he has already put forward that he thinks would be appropriate for the stormwater utility.

Mr. McCabe amended his motion to include both requests. He said for purposes of going forward at this point in time and for the study and for the public hearing to include the capital funding or limit the utility to capital funding and to combine those two (2) capital spending in the study. He emphasized that this was just a study and no commitment to create a utility. He wants to keep the concept of cleaning up the Lagoon and a stormwater management system on the front burner so that they are all looking at it and they are going to make some decisions going forward based on more data from their City officials and also from the consultant. Mr. Neville seconded the amendment. On a roll call vote the motion passed 4-1 with Mr. McCabe voting yes, Mrs. Minuse yes, Mr. Graves yes, Vice Mayor Neville yes, and Mayor Brackett no.

Mrs. Minuse introduced Mr. Mike Johannsen, who was at today's meeting to speak on stormwater utility on behalf of the Indian River Neighborhood Association (INRA) and the Clean Water Coalition (CWC). She said currently the CWC is doing science back monitoring on the pollution in the Lagoon and are collaborating with the Health Department because the Health Department did not have funds to do this. She thanked Mr. Johannsen for being at the meeting and mentioned how dedicated he is to the City.

Mr. Mike Johannsen passed out a memo (attached to the original minutes) entitled "Fact vs Fiction." He said that there is a great deal of misleading information circulating regarding the City's proposed stormwater utility. He said that Mr. Keith Drewett is from the CWC and he was happy that he was helping him on this. He said the City is doing a great job in

meeting its BMAP targets and focusing on moving the Water Treatment Plant off of the Lagoon.

At this time Council realized that there was a motion taken and voted on without public input. The motion was restated and public comments were opened and the motion was then voted on and passed 4-1 on a roll call vote with Mayor Brackett voting no.

Mayor Brackett thanked Mr. Johansen and Mr. Drewett for being at today's meeting and he respected them for all they do for this community.

10. CITY ATTORNEY MATTERS

A) Settlement to Mr. Paul Lagassey

Mr. Turner reported that this proposed settlement will be to Mr. Paul Lagassey in the amount of \$5,000 concerning his claim for damages to his property at 611 Date Palm Road. His claim was that his driveway was destroyed when improvements were being made by the City in the right-of-way. The City tried to work with Mr. Lagassey in replacing the driveway, but because the driveway was installed in 1980 the City was unable to match the material that Mr. Lagassey wanted to use. They (the City) was unable to find any contractor in the State to do the work. The cost to fix the driveway would have cost the same amount that the property owner has agreed to which is \$5,000.

Mr. McCabe made a motion to approve the settlement as negotiated by the City. Mrs. Minuse seconded the motion and it passed unanimously.

At this time Mr. Turner introduced Ms. Jenny Flannigan who is the new Assistant City Attorney.

11. COUNCILMEMBER MATTERS

A. Mayor Brackett's Matters

Sponsored presentation items by the public (10-minute time limit)

Mayor Brackett hoped everyone had a wonderful holiday. He encouraged the public to continue wearing their masks, social distancing, washing their hands and to be good to their neighbors.

B. Vice Mayor Neville's Matters

Sponsored presentation items by the public (10-minute time limit)

Mr. Neville reported that as they meet today, the County is also meeting on whether or not to continue their Ordinance for mask wearing for County employees and wearing masks in a County building. He asked Council to give some thought into at least doing what the

County does. They have people who will not venture out in public because they are not sure if store employees are wearing masks. Their infection rate is higher than it has ever been and their positivity rate keeps going up. He expressed that they have a very large fragile population in this area. He said they need to do as much as they can to prevent people from catching this virus. He said that it is miserable if they catch it. He asked Council how they felt about this.

Mrs. Minuse agreed that personal responsibility was important and wearing your mask is a part of that responsibility. She is shocked when she sees children entering stores and people are not wearing masks. She said that she would never subject her children to that.

Mayor Brackett commented that this item was not on the agenda for discussion today and he was fine with putting it on their next Council agenda.

Mr. Turner explained that under Florida law it is not improper to consider a matter that is not on the agenda, but it is this Council's policy not to.

Mayor Brackett said that they try to be as transparent as possible.

Mr. Neville explained that it was not his intention to entertain that a vote be taken.

Mrs. Minuse commented that they have received enough emails from the public to know what the controversy is in the County.

C. Councilmember Graves's Matters

Sponsored presentation items by the public (10-minute time limit)

Mr. Graves wanted to clarify that misinformation that no one cares on Council about people wearing masks. He pointed out that was not true. He said that when it comes to public health there is a function of government in dealing with that. He wished they had the ability for people to get rapid testing. He said that they are going to be living with this pandemic for at least six (6) more months or so. He asked that staff look into seeing what the City of Ft. Pierce did regarding rapid testing. He felt that they are almost to the "finish line" with this pandemic and they can't stop now. With regards to their citizens that people do try to comply with safety. He brought up the national politics that they see taking place and didn't want to see that run into Vero Beach. He asked that all of their citizens make it a goal to make the City of Vero Beach better and not divided based on the political party. What is better for them is that they are all united together. He said they need to all work together even when they disagree.

D. Councilmember Minuse's Matters

Sponsored presentation items by the public (10-minute time limit)

Mrs. Minuse agreed that they live in a small City and they all love living here.

1) Mr. Mike Johannsen to speak on Stormwater Utility on behalf of the IRNA and CWC

This item was heard earlier in the meeting.

E. Councilmember McCabe's Matters

Sponsored presentation items by the public (10-minute time limit)

Mr. McCabe reported that the Sunshine Rotary Club decided to cancel their draft brew fest for this year. He said it is bitter sweet. They couldn't figure out how to do the event safely so they felt that if they couldn't do it right then they should not do it at all this year.

Mr. McCabe reminded everyone that when they run for City Council they run a non-partisan election and do not declare what party they are affiliated with. He encouraged the public to please mask up not just for yourself, but for your neighbor also. He said that businesses are allowed to require masks in their establishment.

13. ADJOURNMENT

Today's meeting adjourned at 11:02 a.m.

/tb