

**SPECIAL CALL CITY COUNCIL MINUTES
MONDAY, AUGUST 30, 2021 1:30 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

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

1. CALL TO ORDER

A) Pledge of Allegiance

Mayor Brackett led the Council and the audience in the Pledge of Allegiance to the Flag.

B) Roll Call

The City Clerk performed the roll call.

2. PUBLIC HEARING

A) An Ordinance of the City of Vero Beach, Florida, Calling for a Referendum to be held on Tuesday, November 2, 2021 to Replace an Existing Lease with Indian River County with a New Lease for .64 acres of the Old City Nursery Site; Providing for Effect of Referendum Results; Providing for Conflict and Severability; Providing for Correction of Scrivener's Errors; and Providing for an Effective Date.

The City Clerk read the Ordinance by title only.

Mr. Monte Falls, City Manager, stated that they are approaching the deadline to get something on the ballot for this year's Election. He said that the deadline is September 3rd. At the last meeting held when this item was discussed Council had some concerns about three (3) different things, which he feels have been addressed. The first was the size of the property. That has been scaled back to .64 acres. The next was that only one (1) tower be located on the property and the last was if this lease does not work for Tower-Point and the County enters into another lease with someone different that the cost be shared 50/50 between the City and the County. He said that he has been in close contact with the County in reaching an agreement on this lease and feels that these issues of concern have been resolved.

Mr. John Turner, City Attorney, expressed that they are in the final negotiations with the County concerning the site lease. He said that the parties involved have discussed it several times and exchanged drafts back and forth. He said that he received another draft at noon today and did not have time to review it before today's meeting. He said that there were a couple of minor adjustments that needed to be made before the lease is final. He asked that the Council adopt the Ordinance making it contingent to them receiving the completed lease and executed document no later than Wednesday at 5:00 p.m. He said that if they don't receive it then the Ordinance will not go on the ballot. He said that once it is sent to the Supervisor of Elections the wording for the referendum cannot be withdrawn from the ballot.

Vice Mayor Neville asked if they needed to vote on this.

Mr. Turner said the motion that would be voted on is that passage of this Ordinance is contingent upon the lease being completed by 5:00 p.m. on Wednesday.

Mayor Brackett asked if the County also agrees with this.

Mr. Turner said that it was not negotiable.

Mr. Dylan Reingold, County Attorney, commented that this is the first that he has heard of this. His thought is if this Board sends the referendum wording to the Supervisor of Elections and between now and November they cannot make a final deal approved by the City Council then in affect it will not happen regardless of what the voters say. He does not know if a hard stop on Wednesday at 5:00 p.m. is really necessary considering that at the end of the day the Board still has the right to agree to or not agree to whatever the final terms are.

Mr. Falls commented that they are discussing this matter today because the County came to the City asking that it be done. They have been working on this matter for the last two (2) months to get where they are today. He said on the staff level they are okay with this. He said if the County wants to move forward and put it on the ballot and they have agreed in principal to pay for the cost of the referendum then they would just have something on the ballot and if they didn't come to terms then the vote on the referendum would not have any pertinence.

Mayor Brackett wanted to make sure that he understood this. It is his understanding that the County and the City staff have come to an agreement on the lease and they are just waiting for Tower-Point to review the lease to make sure they are in agreement with it and they have come back with some changes that they would like to see made. The City Attorney feels good about those items, but he just received them an hour ago and has not had enough time to review them.

Mr. Reingold agreed that the City and County staff have worked very hard in putting this deal together. He said they are in agreement with the major points and hoped that they could have a little more time to go over the lease that they received from Tower-Point. He hopes that all of this can be completed by Wednesday, at 5:00 p.m., but a hard deadline might kill the whole deal.

Mr. Joe Baird, County Administrator, stated that if this item is placed on the ballot and the voters approve it and the City and the County are still in disagreement it does not mean that it will happen.

Mayor Brackett asked if for some reason they don't approve the lease and it doesn't make it on the ballot will the tower group go away.

Mr. Brown hoped that it would not end the deal, but those carriers might start exploring other options.

Vice Mayor Neville commented that he spoke up a little bit the last time that they had this discussion and he still has concerns about this. They have a lot of responsibilities as Councilmembers and some of the most important are public safety, sanitation and their responsibility to look after the public trust. He said in the end when this deal is done they will have sold some property and he thinks the value of that property is equivalent to the value of this 25-year old tower. He feels that it should have

been a 50/50 arrangement. He felt that the City and the County should have been working as cooperative partners in the process of making an effective sale. He said that the lease that the County has with AT&T is now up and it is possible that they will release it to AT&T. The current price being offered for this tower is \$1.675 million and the share being offered to the City is \$500,000, which is roughly a 30% split. He doesn't feel that this is the right deal for the City. He knows that the City would like to have the \$500,000, but the deal needs to be fair.

Mayor Brackett commented that he understands Vice Mayor Neville's views and he has done a little more research on this himself. He said that their interest in the land on South Beach is a lot different than he thought it was. He said it is two (2) pieces of land to the North and they are completely vacant. They are talking about 150 feet of oceanfront property and if they ever wanted to expand South Beach Park and use it they would have the ability to do so without having to go back and purchase the land. He also brought up the land that the County is giving to them at Charles Park and the fact that the County is paying for the Election this year. The pieces of property were put up on the screen for the public to see. The County did not hesitate to add these pieces of property to the deal.

Mayor Brackett stated that he was completely happy with the deal. He agreed it started out rough and could have been handled differently.

Mr. Winger asked how they would be sure that there will not be additional towers built on this land.

Mr. Falls said it would be clear in the lease that they are presently working on.

Mr. Turner added that the last draft he reviewed stated that there would only be one (1) tower on the site.

Mr. Winger asked if there was additional revenue from the \$1.67 million, would the City share in that equally.

Vice Mayor Neville said that there would not be any more revenue coming after this lease agreement is finished.

Mr. Reingold mentioned that staff brought to his attention that after the last Council meeting when this was discussed that they needed to compromise on three (3) items. The first being shrinking the area, which they have done. The second being to make sure there was only one (1) tower. He said so what they did was make this part of the lease agreement and the third item was that the County and the City would split 50/50 any benefit from any future lease or anytime if the County did receive some benefit from a future lessee (50/50 on the revenue and transactional agreement). He said on South Beach they wanted to make sure that the County receives an easement to be able to do beach renourishment projects.

Mr. Falls told Mr. Reingold that they have found an area for that easement on the beach at the South end of the Park that would not be in conflict with anything else.

Mrs. Minuse brought up about the length of the lease being for 99 years. She wondered if because of technology and there was a new way of communication other than having a tower could that be worded in the lease.

Mr. Turner said the only thing that they could add is that the lease agreement would be permitted. He did not want to negotiate this from the dais, but he will talk to Mr. Reingold about tightening up addressing the language.

Mrs. Minuse asked if they should address the neighboring property that the City owns, which will be removed from the Charter for the lease regarding any kind of encumbering use that Homeland Security would put on it.

Mr. Turner explained that would not be a subject matter concerning this lease. It would have to come to them for consideration. He said if there was going to be another use on the property they would have to approve it.

Mr. Falls mentioned that this tower has been at this location since 1996. This lease expiring with the County will be in five (5) more years. If they were not talking about adding commercial uses to the lease then the lease with the County would have been entered into again. The tower is a great benefit to the City residents and the County.

Mr. Winger commented that the Council allows the City Manager to make these deals and if this is the deal that he has made then he will support him. It is not their job to run the City or negotiate the deal.

Mr. Ken Daige said he has been watching this situation with this tower. In the Ordinance it talks about the new lease. He called the City Clerk to look at the new lease and was told that it was not on file at this time. He said that when he does business he has all the paperwork in front of him. He said there is no emergency right now that this deal has to be made. There are still five (5) years left. He does not recall the City having any lease agreements for 99 years. He said that this is an incomplete packet. He realizes that most of the Council is in agreement with this and that is their business. He reiterated that it was sad that the public was not able to see the lease. The 99 year lease is in the ballot question. Only one City Councilmember has expressed some concerns on that. He did not feel that this should be approved today. He suggested looking at the lease first. He recalled that they went through this with the Tourist Tax Ordinance and thought at the time that it was a good idea, but it did not turn out that way. County staff is doing their job to promote what the County Commission wants. The City Council's job is not complete because the lease is not in front of them. He complimented staff on doing a good job, but still wanted to see the lease. He told Council to do what they will because that is their business.

Mr. Falls told Council that they would have the lease in front of them before the November election. If City Council does not approve of the lease at that time then there will be a mute issue on the ballot.

Mayor Brackett made a motion to approve the Ordinance contingent on the lease coming back and approved by this Council. Mr. Winger seconded the motion and it passed 4-1 with Mr. Winger voting yes, Mr. McCabe yes, Mrs. Minuse yes, Vice Mayor Neville no and Mayor Brackett yes.

3. OLD BUSINESS

A) Update on the Budget – Finance Director

Ms. Cindy Lawson, Finance Director, commented that Council should have their budget packages for next week's meeting. She did receive some additional updates from the State on two (2) estimates and the good news is they netted another \$130,000 in the General Fund, which gave them enough money to add the street sweeper position, and the police body cameras. They were the number one (1) and number two (2) priorities that Council established at their last meeting. The State also updated their one-cent sales tax estimate, which is the money that they put into their one-cent sales capital funds and as it stands now between the workshop and this last update there will be \$475,000 for the Five-Year Capital Plan. What she was able to do was put in the debt service coverage for the purchase of the street sweeping machine matching as well as increase the paving budget by \$375,000 a year, which brings the five year unfunded paving balance down. She told Council to let her know if they have any questions between now and their formal public hearing on September 7, 2021 at 5:10 p.m. and then their final budget public hearing will be held on September 21, 2021 at 5:10 p.m.

Vice Mayor Neville asked Ms. Lawson if she could find \$1,500 for the Demand Star bidding process software.

Ms. Lawson explained at the time she published the budget books and she was not going to leave the budget unbalanced by \$1,500. She did get an update on Friday afternoon on their OPEB costs for next year that generated about another \$15,000 so if at the first public hearing Vice Mayor Neville wants to make a motion to add the \$1,500 to the budget then they could. She said that she is not going to start the process of dipping into the fund balance even if it is for small amounts.

B) Reduction of Code Enforcement Board Fees for Mr. Scott McCracken – City Attorney

Mr. Turner reported that there is a request by Mr. McCracken and his counsel for a reduction in the liens that are pending on a piece of property resulting in Code Enforcement Board actions. He passed out a summary listing the cases and the amounts (attached to the original minutes). He also advised Council that the City has initiated foreclosure of the liens in Circuit Court and that case is proceeding. If Council accepts the offer of reduction of these liens then that case would be dismissed and a release would be presented for all of these liens against the properties. What has been offered is to pay these liens off from the sale of a piece of property that Mr. McCracken owns. The sale price and the closing price will be \$160,000. The total of the liens owed is \$153,894.29. The offer is for a payment to the City for \$145,000. He said that this amount would cover all of the liens and the cost of the foreclosure action. It is his understanding that the buyer for the property in this case is planning on building a new home at this location.

Mrs. Jennifer Peshke, Counsel for Mr. McCracken, requested to address the City Council. She said that they do have a closing for the property located at 2312 Vero Beach Avenue and that her client does own it outright. The contract has been supplied to the City Attorney's office with a purchase price of \$160,000. She is handling the closing of this transaction and she is in possession of all of the funds with a \$10,000 earnest deposit from the buyer, as well as the balance of the buyer's funds to close. She is prepared to complete the closing tomorrow morning. All of the documents are prepared and Mr. McCracken is in agreement with this settlement and they are here asking Council to resolve all of the liens against Mr. McCracken at the present time in exchange for a payment of \$145,000. She said that all of the existing code enforcement matters are now in compliance. Doing this they will be able to dismiss the action that the City filed in Circuit Court, as well as the other action that has been filed. She said that Mr. McCracken is working on remodeling a piece of property that is the subject of most of the code enforcement liens that caused many of these problems. The property is located on

Laurel Avenue. She said that Mr. McCracken realizes that he is taking all of the proceeds he would have received from 2312 Vero Beach Avenue and he does not have the funds to put back into Laurel Avenue, which was his original plan. He does understand and is aware of the City's Codes and Ordinances for code enforcement and will keep the property in compliance as he continues his remodeling project on the home located at Laurel Avenue.

Mr. Scott McCracken commented that this property renovation at Laurel Drive has taken longer than he anticipated. When he purchased this property he did his due diligence in fixing the property up, but it was worse than he thought it was. He said that this piece of property has been designated historical. He talked about the installation of new windows and how long that process has taken. He would have loved to use this current money from the sale of his house to renovate this property, but instead he is paying off the City.

Mr. Winger asked when will the City receive the funds.

Mrs. Peshke said that the wire transfer to the City will be in the morning.

Mrs. Minuse recalled that when the Code Enforcement Board addressed this matter there were two (2) cases. She asked if those cases were in compliance now and is that part of the agreement.

Mr. Turner answered yes.

Mrs. Peshke asked that her name be added on to any future notices from the City. She said that Mr. McCracken did not understand the magnitude of these daily fines and how they accumulate. If he were to get another notice that he is not in compliance on a matter she will help him get into compliance.

Mr. Turner asked Mrs. Peshke if Mr. McCracken sat on the Code Enforcement Board at one time.

Mr. McCracken named the City Boards that he served on in the past. They were the Board of Adjustment, Finance Commission, and Planning and Zoning Board.

Mr. Tuner asked Mrs. Peshke if she will accept the notice if one is sent to her.

Mrs. Peshke said that she would and she will also accept email service.

Mrs. Linda Hillman spoke as a member of the Code Enforcement Board and resident of the City of Vero Beach. She did not know where to start with this. She started with one (1) word "blatantly." It is an open and unashamed manner and complete unsubtle way. She said that this has not been going on for just a couple of weeks. She said this has been going on for a couple of years. She said that Mr. McCracken never attended one (1) of their meetings. He has ignored the fines, every single notice that the Code Enforcement Officer gave him. He had plenty of time to come forward and pay the previous fines and did not, but now he wants something from the City. She said that the neighbors have dealt with a dumpster being on this piece of property for seven (7) or eight (8) years. Their Code Enforcement Officer sent Mr. McCracken a letter and noticed the property for each citation that came up. In her opinion Mr. McCracken is snubbing his nose at the City of Vero Beach. He wants something, which is why he is here. If he served on the Planning and Zoning Board he knows what the Codes are.

He is a contractor so he has to know what the Codes are. She is totally against the reduction of the fine. She hopes that Council understands the implication of this case.

Mayor Brackett made it clear that the property in question that the fines are on is not the piece of property that Mr. McCracken is selling. If this was an attempt to throw his nose up at the City it is costing him a lot of money. Most Councils' try to hold to the liens when a lien request reduction comes to them, but still do what is best for the City. He said receiving \$145,000 tomorrow is better than going through foreclosure proceedings.

Mr. Turner agreed. He said when going through foreclosure proceedings you never know when you are going to get your money and how much money will be received. He said they are pursuing these cases now and going after violators who accumulate large amounts of liens against properties. They are not going to let these liens just sit around anymore.

Mayor Brackett added that the foreclosure of the property probably prompted more of this than the sale of that particular piece of property.

Mr. Winger said if this is the settlement that the City Attorney and staff has come up with then he stands behind it and agrees with what is said. It is not up to the City Council to micro manage these things.

Vice Mayor Neville mentioned that the time put into these cases is probably equivalent to the amount being offered to the City. He agrees with the \$145,000.

Mrs. Minuse added that this item went before the Code Enforcement Board at a Special Call meeting and it was approved.

Mr. Ken Daige commented that he sits as a member on the Code Enforcement Board, but was not here to discuss the reduction of the lien. What he understood from Mr. McCracken was that one (1) of the properties that he owns that needs repairs he is going to continue to making those repairs. He knows that it is an older home that needs a lot of care. He felt that in the future neighbors may come in with concerns about that property and he would like to have an answer for them that Mr. McCracken has stated that he is the process of taking care of the property and repairing it.

Mayor Brackett explained that currently the property is in compliance, but Mr. McCracken does have more work to do on it.

Mr. Daige was familiar with the piece of property and the things that the Code Enforcement Board spoke of were some tree matters and that is where the fines kept accumulating and that is taken care of. The house on the property needs a lot of repairs made to it and as he understands it Mr. McCracken is going to be taking care of it. He said going into the future complaints may come in on that home.

Mayor Brackett explained that the property is in compliance and Mr. McCracken has agreed to go through the proper process to remodel the house and keep it in compliance.

Mr. Falls added that the property is currently in compliance and Mr. McCracken's attorney has asked to be on the notification list for any future actions that come up. He thinks that this will ensure the City that everyone has been properly communicated with.

Mrs. Minuse made a motion to go ahead with the settlement officer. Vice Mayor Neville 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.

Mr. Turner reported that the City, City Council, and City Manager, have been named in an lawsuit by the Town of Indian River Shores dated August 26, 2021. They have been named in their official capacity and not individually. As a result of the filing staff has been in contact with their outside counsel who is assisting them in another matter involving the Town of Indian River Shores, as well as the County. As a result of this action he is requesting that the Council set a special meeting with their attorneys at an Attorney/Council Client meeting to discuss litigation and settlement strategy as authorized by Florida law outside of a public meeting. This case is from the Town of Indian River Shores versus the City of Vero Beach, a Florida Municipality naming Robert Brackett, Mayor of the City, in his official capacity; Rey Neville, Vice Mayor of the City, in his official capacity; Honey Minuse, Councilmember of the City in her official capacity; Bob McCabe, Councilmember of the City in his official capacity; Dick Winger, Councilmember of the City in his official capacity; and Monte Falls, City Manager, in his official capacity. At the Attorney Executive Session meeting those that will be present are the individuals he just named, John Turner, City Attorney; Tom Cloud, outside counsel, and Gary Carmen, outside counsel. Also, present will be a court reporter from Indian River County Court Reporting Services. The meeting will be held on September 21, 2021, at 3:30 p.m. They will open the meeting up in the Council Chambers and adjourn to the City Manager's Conference Room to discuss strategies and come back to the Council Chambers to adjourn the meeting. He asked Council not to discuss this pending lawsuit. If Council has any questions, to please speak with him or the City Manager.

4. PUBLIC COMMENT

5. ADJOURNMENT

Today's meeting adjourned at 2:31 p.m.

/tb