

MINUTES OF A REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, HELD IN THE CITY HALL COMMISSION CHAMBERS, 100 NORTH U.S. #1, FORT PIERCE, FLORIDA, AT 6:30 P.M. ON MONDAY, NOVEMBER 2, 2009.

Mayor Benton called the meeting to order.

Rabbi Arthur Rutberg, Temple Beth El Israel, gave the invocation.

The Pledge of Allegiance was recited.

Upon Roll Call, those present were: Mayor Robert J. Benton; Commissioners Rufus Alexander, Edward Becht, Christine Coke, and Reginald Sessions; City Manager David Recor; City Attorney Robert Schwerer; and City Clerk Cassandra Steele. Those absent: None.

The next item on the Agenda was Approval of the Minutes of the Special Meeting on October 13, 2009, and the Minutes of the Regular Meeting on October 19, 2009.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, to approve the Minutes of the Special Meeting on October 13, 2009, and the Minutes of the Regular Meeting on October 19, 2009.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

Mayor Benton proclaimed November 2009 as NATIONAL AMERICAN INDIAN HERITAGE MONTH. Betty Nevers, National Society Daughters of the American Revolution, was present to receive the Proclamation.

The following letter will be kept on file in the City Clerk's office:

Letter from Paul Desborough commending Fort Pierce Police Officer Cheryl Glenn-Reed for her professionalism.

The next item on the Agenda was Comments from the Public.

Mr. Jim Van Hekken said he is here to talk about the **Seven Gables House**. He watched their October 19th meeting and spent time here this morning reading background information from the Agenda. He spoke with Ms. Cox and a couple of the board members for the Chamber of Commerce. Apparently from the background on the Agenda, the economic development portion of this thing is going to be spun off and handled differently. It appears from the memorandum from the City Manager that the Manatee Center is going to be running Seven Gables. That is effectively going to take the physical presence of the Chamber out of the City of Fort Pierce. He thinks they should really give this some serious consideration before they make that decision. The Chamber's goal is strictly to support the local businesses in the community. A prosperous business is probably the best economic development tool they can get. The Chamber also did a fantastic job in running the Visitor Center and promoting the

City of Fort Pierce. He does not know what the reason behind staff was to recommend the Manatee Center do this, he is sure they had one. He thinks if the Commissioners were routinely active in Chamber functions or on some of the committees, they would know exactly how much time, energy, and money the Chamber spends promoting the County and particularly the City of Fort Pierce. If they did, they would really strengthen the membership of the Chamber of Commerce, there would be a lot more people attending if they did. He just thinks it is a mistake to take the Chamber's presence away from the City. There is one other thing, if it involves public funding - no matter who they give it to - they need a budget, they need to look and see what they are spending this money on, how much of it is going to operating costs, administration, and other stuff. The public deserves to know what is being done with the money they are throwing at that.

Mr. Carroll Collins, 8375 Orange Avenue, said he is the owner of several pieces of residential and commercial properties located in the City of Fort Pierce. He wanted to address the Commission on a matter regarding the **Fort Pierce Redevelopment Agency**. He has five major points he would like to bring to their attention. Number one, the definition of a grant. This Agency, through the Commission's approval, is charged with awarding grants in the City. For clarification, a grant is his money, his tax dollars, given away with no expectation that the grant will ever be paid back. In most of these cases, his tax money was given to private individuals and private corporations that are in business to make a profit. He does not like his tax dollars going to private for-profit enterprises. He doesn't much like it going for non-profits. Don't get him wrong, privately he donates to many organizations; but he and his family choose to who and what they want to donate to. Number two, the recipients could obtain the cash they needed from local banks. Over the past five years, this Commission has given away over \$2 million of tax dollars, his money, to these organizations and individuals, again with no expectation of getting this money back. He did a little research before he came here tonight. He would reason that the recipients of these grants could easily have went to their local banks and gotten loans for the money they did receive. For example, three months ago he was speaking to the owner of a commercial building at the corner of 25th Street and Orange Avenue, who told him that he turned down an offer of \$1.2 million for this property three years ago. He had told him that he was waiting for Rick Reed to help him acquire a grant from the FPRA to remodel the building. A very successful restaurant on Avenue D was given over \$200,000 of his tax money for improvements. He knows it is successful because he eats there quite often. Another individual was given \$40,000, who owns several properties and businesses. He couldn't get a loan? One corporation paid \$2.4 million for a shopping center and the next year received \$75,000 of their tax dollars from this Commission. Let him get this straight - a corporation from Boca Raton puts up \$2.4 million to pay for a prime piece of property on U.S. #1, but they need his \$75,000 to paint the place? What about the Love Center? Granted, he is sure there is all sorts of great things going on over there. But why would he want \$791,000 of his money to be given to the Love Center? Non-profits should be self-supporting, not looking for tax dollars to keep them afloat. His third point, why do they have these

grants? Ever hear of low interest loans and placing liens on the properties until the loans are paid back? That is common sense, that is fair to the taxpayer and the recipient. That he would not have a problem with. His fourth point, he is sure that these grants have been acquired for certain blighted areas of Fort Pierce, he is sure there are state and federal mandates the Agency has to follow; but does that make it necessarily right? Is it legal? Over the past 30-plus years he has been here, he has watched this Commission pump millions of dollars into a very limited geographical area, namely downtown and the area north of Orange Avenue. In the meantime, the taxpayers like him throughout the entire City watch their neighborhoods go down. His fifth and final point, which ones of the Commissioners running for re-election have voted for giving his tax money away? Ms. Coke and Mr. Alexander.

Ms. Lisa Fasnacht, 1708 St. Lucie Court, said she is a resident on South Hutchinson Island. She is here tonight regarding a Consent Agenda item (Renewal of Revocable License for **Lisa's Kayaks Inc.**). She really appreciates all they have done to help with this issue that seems to be never-ending. She knows each one of them have took the time to really consider the factors. She has in hand a temporary contract for South Causeway Park, one of the three locations that she has been asking for. This is a good start, but it is not a perfect solution. This time last year she was granted a temporary three-month trial contract for the South Causeway Park. It proved to be a major expense with zero revenues. At that time there was constructions and there was stipulations that only allowed her to work on Fridays and Saturdays only. South Causeway Park is mostly a summertime location due to the wind direction. In the wintertime, the wind tends to blow from the east and west direction. So with no shelter in this large body of water and the in/out going tides gives this location many limitations for the winter months. In the summertime, the wind normally will come out of the north or south, which makes Causeway Park a perfect location. She is asking for Indian River Memorial Park and also Jaycee Park to be added. Where she will rent kayaks from will be determined by the wind direction for that day. When there is a west wind, Indian River Memorial Park is a great place to enjoy a kayaking trip, the water will normally be like a lake under this scenario. Jaycee Park would not make a good place to kayak with the west wind. An east wind would produce the exact opposite, Jaycee Park would make a great location, whereas Indian River Memorial Park would not. She knows all this can be confusing, but she is about safety first and foremost. She is asking for all three locations - South Causeway Park, Jaycee Park, and Indian River Memorial Park. She would ask that all three of these be on this contract. South Causeway Park is the weakest of the three this time of year. But she can take a weak location if there is some stronger locations to offset it. Last year under the three month trial, there were no problems at all. They granted her a temporary to see how it would go. Why can't they do the same thing with all three locations to see how it will go, to see if any problems arise? She doesn't believe there will be any problems with water activities or parking issues in any way. One thing is for sure, they will not know until they try. On October 19th Agenda, she asked for this.

When they mentioned granting a six month temporary contract, she assumed they meant for all locations that she has constantly and consistently been asking for. She did not realize they were starting with a replay of only one location as they had before. They can put a clause in it, if either party sees a problem, a certain location could be deleted. She has a contract with St. Lucie County that she is 1-1/2 years into, so she is not one to change her mind. She thinks things through before she asks. If nothing else, she is persistent. She called each and every one of them today to ask them to pull this item for further discussion. She learned later that it may or may not be to her benefit. So in summary, she asks them to grant her a six month temporary contract for the South Causeway Park, Indian River Memorial Park, and also Jaycee Park. She would ask they do this now without any further prolonging. She would ask they get a corrected contract with a certain time frame. She would ask that however it needs to be done, they do it now. She believes this community needs the service and it needs to be at the water and available to those enjoying their parks. They all have the best interest of this community at heart. She believes they will make the best decision possible based on these facts. She asks that they approve all three locations tonight and that corrections be made with all three locations listed that will allow her to start out with exactly what she feels she needs. She has complied with all the requirements, she has in hand the additional insured - a \$1 million general liability policy and a \$1 million auto insurance policy. She is ready to move forward.

Ms. Camille Yates, 719 Georgia Avenue, said she is here to comment on two items on the Agenda. Later in the evening they will be presented with a list of applicants to fill an empty seat on the **Fort Pierce Utilities Authority Board**. She has applied for that seat. She hopes they have had a chance to read over the letter she sent as well as her resume. She has requested meetings with each of the Commissioners and she looks forward to those meetings. She believes that once they meet face to face, they will have the opportunity to see that she is very enthusiastic about serving the citizens of Fort Pierce. She is confident they will find that she is not only the most qualified person, but that she does have a passion for Fort Pierce that runs very deep, and she will be an advocate for all citizens of Fort Pierce with an unbiased and independent voice. The second item she would like to comment on is the **Seven Gables House**. She wants to commend Mr. Recor for his diplomacy coming to an agreement with the three parties who replied to the RFP (Request for Proposals). Mr. Recor has done a really good job in bringing the three applicants together. She just wanted to correct Mr. Van Hekken, who commented earlier. The Treasure Coast Manatee Foundation has agreed to allow the Chamber of Commerce to have a presence there, if they are granted the lease-operator agreement, with having office space for Ms. Cox, the Director, and any other Chamber staff, by allowing members to hold meetings there at the Seven Gables House, by having brochures of the Chamber members there, and by having a prominent sign out on the roadside that indicates that this is a place where the Chamber of Commerce has a facility. She just wanted to commend Mr. Recor for his good ideas and his tactful manner.

The next item on the Agenda was Public Hearing on Application for Conditional Use submitted by Contech Construction Products, Inc. (Amortec) in order manufacture concrete products at 1031 DiGiorgio Road; said property zoned I-3, Heavy Industrial Zone.

Ms. Erica Ehly, Comprehensive Planner, said the applicant is requesting approval of a Conditional Use to manufacture concrete blocks for earth stabilization products in the Heavy Industrial zoning district. Contech is currently operating at a leased site on Midway Road and would like to relocate operations to this 2-1/2 acre property located at 1031 DiGiorgio Road which they own. The property is surrounded by Industrial land use designations and zoning classifications. At their meeting on July 14th, the Planning Board unanimously submitted a recommendation for approval. Out of the 23 property owners with 500 feet, 4 responses were received - 1 for disapproval, citing a concern for future costs of services. Staff recommends approval with the following conditions: That parking and landscaping will meeting City code requirements, the fence will be site-obscuring, and all uses will be contained within the property boundaries.

Commissioner Coke asked has the applicant agreed to all of Staff's conditions?

Ms. Ehly said yes.

Commissioner Sessions asked what are these structural blocks?

Mayor Benton said those look like what lines some of the canals. For the record, he met with the applicant.

Ms. Ehly said it is for shoreline stabilization.

Commissioner Sessions said he noticed there was a prerequisite from the County for sidewalks; however, the City doesn't have an ordinance that requires it. Is there anything they can do in light of it being annexed into the City to exclude them from this additional cost? Because it appears to him that this is some form of industry that is going to produce jobs for the area. They always want to be friendly to these types of people, so he is just trying to make it as easy as possible for them. Is there anything they can do to exclude them from having to pay these fees in lieu of sidewalks, since the City doesn't require them?

Ms. Ehly said they have done what they can, they are not making it a condition of approval. However, the applicant will be required to go through the permitting process to have driveway access to Enterprise Road through the County. So that will be a negotiation between the County and the Applicant.

Mayor Benton declared a Public Hearing in session and asked if anyone in the audience wished to be heard.

Mr. Brad Currie, Land Design South, said he is representing the Applicant. It is concrete block that is matted together and is

typically laid on canals. One of the biggest projects they did was the cooling canals around the power plant. During the last hurricane there was some washout there, so they went in there. They lay it on the banks of canals and it provides a little more structural integrity to those canal banks so those don't erode away in a bad storm. Regarding the sidewalks, their TRC (Technical Review Committee) process allows for multiple agencies to sit on that committee when they go through the staff review. The County is one of the agencies that sits on that committee and did propose sidewalks. Sidewalks on the site is about a \$20,000 cost if they were to install those themselves. If they go through the County, it would be between a \$13,000 and \$15,000 cost, a fee, cash in lieu of. The City's code does require sidewalks, but not for industrial projects. In this case, City Staff has made a recommendation that those not be a condition. But they do have to go to the County to get a driveway access, so they expect a little bit of a battle with the County, the County might still get that fee out of them. But City Staff has said if the County does get that fee, that it not go to pay for sidewalks in the unincorporated portion of the County, but to pay for sidewalks along County roads within the municipal boundaries of the City of Fort Pierce. Technically, the County does not have the ability to ask for sidewalks at the time for a driveway permit, but he expects they probably will. They will have to fight that battle when they get there.

Commissioner Sessions asked would an active deep water port be conducive to their business?

Mr. Currie said they are fortunate tonight that the Director of Manufacturing for Amortec is here, as well as his Plant Manager.

Mr. Dan Moody, Director of Manufacturing for Contech Construction Products, Inc., said yes, it could be used for that purpose and has been used for that purpose in other ports. For instance, Baltimore. Commissioner Sessions said however, as they sit today they can't facilitate what they need for export/import. But if they had a more active port, it would be more conducive?

Mr. Moody said for shipping, yes.

Commissioner Sessions asked so they could make more money and get more jobs?

Mr. Moody said great idea.

Seeing no one further and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Commissioner Becht said Staff had three conditions. But he would like to add a condition that if the County extorts a sidewalk contribution from this property owner, that the contribution be restricted to the City Limits of Fort Pierce. It can be spent on County roads or sidewalks, but it needs to be spent within the City limits of Fort Pierce.

Commissioner Sessions said that may cause a problem. If the

County doesn't see fit to do that, then are they back to square one where it is not approved because a prerequisite hasn't been met? He shares his sentiments. But he is wondering, do they have control over that? If the County does not agree, is that going to be a caveat to approving the Conditional Use?

Commissioner Becht said he will promise that if they expose the County not agreeing to that, that with great fanfare they will expose it again on TV, and he will acquiesce that the Applicant can move forward without the restriction. But they are going to make the County take the position that they are going to take City of Fort Pierce development dollars and spend them in the unincorporated County. Then they will be the good guys and say they won't insist on that restriction. But he would rather place the restriction and make the County say they are going to take these dollars outside City Limits.

Mayor Benton said in this economy, he hopes the County does not put any roadblocks up to a business looking to expand here and create more jobs.

Motion was made by Commissioner Sessions, seconded by Commissioner Becht, to approve the Conditional Use submitted by Contech Construction Products, Inc. (Amortec) in order to manufacture concrete products at 1031 DiGiorgio Road with the following conditions: (1) The landscaping and parking must meet City Code requirements; (2) The fence must be site-obscuring; (3) All uses must be contained within the property boundaries; and (4) If St. Lucie County extorts a contribution from the property owner for sidewalks, that the funds be spent for sidewalks along County roads within Fort Pierce City Limits.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

The next item on the Agenda was Public Hearing on Applications for Conditional Use & Site Plan submitted by Pastor Vernon Shazier for construction of Mount Bethel Baptist Church on property located on the east side of South 37th Street between Deberry Road and White Way Dairy Road; said property zoned E-3, Single Family Residential Zone.

Mr. Duane Yazzie, Development Review Planner, said tonight they are here to review a Site Plan and Conditional Use for a 20,635 square foot church on South 37th Street between Deberry Road and Whiteway Dairy Road. The zoning for the parcel is E-3. To the north is R-1, and the rest of the surrounding property is St. Lucie County. There were 34 notices sent out within 500 feet and 4 responded - 1 approved, 3 opposed. One that opposed commented that it was a bad road. The Planning Board met on September 10, 2009, and unanimously approved the Site Plan and Conditional Use. All the rest of the Departments have approved it. Staff recommends approval with the conditions that the applicant must finalize a service agreement with the FPUA to extend an 8-inch water main to their property and the applicant must enter into a road improvement agreement with St. Lucie County in the amount of \$41,621 within 90 days of final

development approval.

Commissioner Sessions said as far as the conditions are concerned, the Fort Pierce Utilities Authority is requesting an 8-inch water main to the property. Is that something that is commonly done? Is the property owner normally responsible for something like that? If so, why is that the case? Why are they making this kind of proposal in this situation?

Mr. Yazzie said right now the applicant does not have potable water or sewer running in front of the property, it is actually quite a distance away. So therefore the Utilities Authority is asking them to run an 8-inch potable water main to service the property.

Commissioner Sessions asked how come the Utilities Authority doesn't do it?

Mayor Benton said because they would have to raise rates to pay for it. This is business as usual. Westside Baptist Church paid a fortune to have lines run. It is so the ratepayers don't pay for that. It is like an impact fee.

Mr. David Carlin, Assistant Planning Director, said that is exactly right. This is not unusual, there are some locations where they do have to extend the lines.

Commissioner Alexander asked doesn't the FPUA have the Energy Services Center right down the street from there (1701 South 37th Street)? They don't have water running to that?

Mayor Benton said they probably have it to the Center; but extending it from where it is now to the church...

Commissioner Alexander said it is not that far.

Mayor Benton said whatever the cost to extend it from where it is now to the church is at the church's expense.

Commissioner Alexander asked the roadway, is that a fair share they are paying on that?

Mr. Yazzie said correct, the applicant will be working with the County to pay a fair share for the improvements to that roadway.

Commissioner Coke asked have they spoken with the applicant regarding both the U.A.'s and the County's requirements for approval? Does the applicant have any problem paying for the water main or their fair share for the road improvements?

Mr. Yazzie said the applicant did go through the Technical Review Committee and conversed with the different utilities, other Departments, and the County, and were amenable to these conditions.

Commissioner Sessions said the Staff Report mentions the cost of the road improvement, but fails to mention what the expense of the 8-inch water main is going to be. How much is it?

Mr. Yazzie said that is out of the scope of his expertise. When they pull a building permit for site work on the property, they will assess the cost of that at that time.

Mayor Benton declared a Public Hearing in session and asked if anyone in the audience wished to be heard.

Mr. Daniel Retherford, Engineering Design & Construction, Inc., said he is here to answer any questions pertaining to this application.

Commissioner Becht asked what is the width of 37th Street in front of this property?

Mr. Retherford said the right-of-way is 80 feet in front of their property and the roadway is about 26 feet... It varies through there.

Commissioner Becht asked so they have enough right-of-way?

Mr. Retherford said in front of their property, they have sufficient right-of-way. Just south of this property, the right-of-way is insufficient for a County approved roadway section.

Commissioner Sessions asked does he know how much the 8-inch water main is going to be?

Mr. Retherford said they have not done a complete cost estimate on that. But it is probably 1,000 to 1,200 foot of water main. An average ballpark figure is \$50 a foot. They are probably looking at \$60,000.

Commissioner Sessions said if they are not complaining, he is not. They can handle it?

Mr. Retherford said that is standard business with FPUA. There is a fire requirement on this building, because they are going to have a lot of people in there. They want to have potable water there to handle their fire requirements. It is a safety issue.

Mayor Benton said that is a standard requirement for any utility. If someone wants to build something and the lines don't run out front, they have to help pay the cost to get the lines there.

Mr. Retherford said yes, it is. It is so the existing customers don't have to bear the cost of new construction. It is standard.

Mayor Benton said he just wanted to make it clear that it is not the FPUA burdening anyone else. This is the business of utilities throughout the State of Florida.

Mr. Mike Perri, 1137 Club Drive, said just as a side note, years ago when he lived on Seneca Avenue in 1964 or 1965, Cody Baily

put a water main to his apartments, which were across the street from him. He had it extended to his house, two or three houses away. He paid for the whole extension. But as other people plugged into that line upstream of him, he got some of his money back. That may be an issue the church can pursue.

Seeing no one further and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Motion was made by Commissioner Alexander, seconded by Commissioner Coke, to approve the Applications for Conditional Use & Site Plan submitted by Pastor Vernon Shazier for construction of Mount Bethel Baptist Church on property located on the east side of South 37th Street between Deberry Road and White Way Dairy Road, with the following conditions: (1) The applicant must finalize a service agreement with the Fort Pierce Utilities Authority to extend an 8-inch water main to their property; and (2) The applicant must enter into a road improvement agreement with St. Lucie County in the amount of \$41,621 within 90 days of final development approval.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

The next item on the Agenda was (a) Public Hearing on Development Agreement between the City and Cornerstone Fort Pierce Development LLC for Newberry Fields project; and (b) Request submitted by Cornerstone Fort Pierce Development LLC for 3-year extension to the approved Site Plan for Newberry Fields at 2721 - 2785 South Jenkins Road.

Mr. David Carlin, Assistant Planning Director, said approximately a year ago this Site Plan was previously approved by the Commission to construct a large retail shopping center. One of the anchor tenants which is Target, and some of the larger retail shops that would go with it, would be located on the southwest corner of Okeechobee Road and Jenkins Road. They approved a Development Agreement that outlined several of the conditions that were associated with the project, including off-site improvements, which consisted of signalization, widening of Jenkins Road south of Okeechobee Road to the project entrance, and some other elements associated with landscaping mitigation. At that time, the Commission had determined that based on the numerous off-site contributions and financial contributions that the developer would be obligated to do as a result of the size of this development, that the proportionate fair share requirement requested by St. Lucie County for traffic impacts to Orange Avenue and Kings Highway was waived. Subsequent to that waiver, the County had raised a legal issue or challenge, and began the legal procedures to secure the funding for the traffic impacts to Kings Highway & Orange Avenue intersection. Since that time, there has been a tremendous amount of discussions with staff and legal counsel to try to resolve this issue. The applicant has agreed to pay the proportionate fair share requirement for Kings Highway & Orange Avenue to resolve the legal challenge that occurred. So what they have before them is an agreement that now includes the provision that was removed at

the original hearing over a year ago. That provision is now in the Development Agreement. One other change was made to the Development Agreement as part of this review, subsequently discussed with both legal and planning staff, the term of the agreement. The term has been modified down from ten years to three years. They feel this is much more consistent with insuring that the related improvements outlined in the Development Agreement and construction schedule are more consistent with the Land Development Regulations and concurrency provisions. Therefore, Staff is recommending that the Commission approve the Development Agreement. In addition, the applicant is requesting a three year extension to the Site Plan in conjunction with the three year concurrency and Development Agreement approval, which all go together as if it were a marriage, which he thinks is the way the code intended it to be when they have a Development Agreement pursuant to Florida Statute 163.3220.

Commissioner Becht asked why have they agreed to different time limits to different performances by this developer? Section 19 of the proposed Developer's Agreement has multiple tasks the Developer is supposed to complete at different times. Paragraph 19(I) says the Developer shall widen Jenkins Road on or before the first Certificate of Occupancy. Paragraph 19(ii) says the Developer shall construct northbound left turn and right turn lanes at Okeechobee Road and Jenkins Road on or before the first Certificate of Occupancy. Paragraph 19(iii) says the Developer shall construct a 24-inch force main and appurtenances along the east side of Jenkins Road on or before the first Certificate of Occupancy. On that one, does the public own the property that the 24-inch force main is going to go under today?

Mr. Carlin said he discussed this issue with the FPUA. The applicant is in the process of securing the necessary right-of-way along the east side of Jenkins Road. The FPUA is looking to secure an easement that would run along the east side of Jenkins Road. They have easements for most of the sections needed just south of where this property is. He believes the representatives can answer his question as to what they have secured in order to facilitate that.

Commissioner Becht said he would not want to hold anybody up that might be wanted to develop south of this, because they wouldn't have the right-of-way to connect a force main up to Okeechobee Road.

Mr. Carlin said the FPUA would grant some credits back, depending on which developments come in. Really the first person in is the one that is going to be required to do that. He thinks that is the way the FPUA looks at this.

Commissioner Becht said he wouldn't want them to have to acquire the land. Putting the pipe in the ground is one expense; but having to pay Newberry for the land, which Newberry would have to give anyway if they were to develop first, seems to him a bit unfair. So he is trying to make sure that Newberry is either giving the land or the easements; so they don't need to wait until the Certificate of Occupancy for that to occur, because it

could accelerate the development of properties south of there, if they had the easements in favor of FPUA in the next 60 days.

Mayor Benton said he believes it could be along from McNeil Road, which is just to the south. But he knows Westside Baptist Church, when they expanded, had to pay to have it run down there. He thinks it went from McNeil Road. He thinks the only area lacking is from Okeechobee Road to McNeil Road.

Mr. Carlin said this was an FPUA requirement, what FPUA asked for. He can't tell them where the applicant is in regards to what properties, where they are at this point in time.

Commissioner Becht said Paragraph 19(iv) says the Developer shall provide a fair share contribution to the City for a turn lane and U.S. #1 and Virginia Avenue upon issuance of the final development order for the project by the City. What is that event - the issuance of the final development order by the City?

Mr. Carlin said their Code doesn't define what a final development order is. But one could articulate that it is at the time the Site Plan is approved or the Developer's Agreement is, one or the other. He can tell them that the applicant has paid those fair share requirements, so those things are satisfied.

Commissioner Becht said his compliments and thanks to the Developer. In the future he would prefer to not have language in a Development Agreement that Mr. Carlin can't tell him what the event is. So instead of the issuance of a final development order for the project by the City, it seems to him it could say it is the earlier of (a) or (b).

Mr. Carlin said when they get the concurrency section of their LDR Rewrite, they already know that is going to have to be further explained so there is no...

Commissioner Becht said this Development Agreement is not dependent upon the LDR Rewrite, they could do it right here in the agreement, they could say the earlier of (a) or (b). But the City has the checks in hand, so it really doesn't matter. He is just asking that next time Staff brings one of these before the Commission, it would be nice to have the clarity. He just found it ambiguous - the final development order - he didn't know what that meant.

Mr. Carlin said he agrees. Staff will make sure that is further explained. In future Development Agreements, they will have that provision either (a) or (b).

Commissioner Becht said in Paragraph 19(viii), the County has asked that their \$156,687 towards construction improvements to Kings Highway and Orange Avenue be paid prior to the issuance of the first building permit. So they have staged this such that... Actually the City is getting its money tonight, so they are well ahead of the County and he compliments Staff for doing that. But prior to the issuance of the first building permit for the County and prior to the issuance of the first

certificate of occupancy for the City - why? What is the thought behind that?

Mr. Carlin said this issue of the fair share requirement, it changed numerous times when they wanted this particular payment. It went back and forth. This was what they finally agreed to.

Commissioner Becht said so the timing is a function of negotiation between the City and the Developer? Why is it the City waits until the first C.O. and the County gets it prior to the first building permit? Why isn't the City....?

City Attorney Schwerer said recall that this agreement was before the Commission and concerns were raised by Staff. This Developer's Agreement was approved by the Commission. Subsequently, after the lawsuit, they only dealt with those terms and conditions that were the subject of the lawsuit. So going back to renegotiate the other points seemed to be a little bit...

Commissioner Becht said he doesn't want to renegotiate it tonight.

City Attorney Schwerer said he wants them to understand, had this been the first time review and negotiation, he and Mr. Carlin would certainly have been looking at it with different eyeglasses. But that is the landscape today. Certainly Commissioner Becht has raised some very valid and excellent points and he has them noted. But unfortunately this is round two on this one.

Commissioner Becht said he doesn't want to renegotiate their deal tonight. He is just trying to find out what they did it this way. It was a function of negotiation. So all the points he is talking about could be resolved differently with a different applicant at a different time in the future.

Commissioner Sessions said as they go through all of the conditions of the Development Agreement, he is more prone for granting extensions if in fact they have met the vast majority of the conditions. They have gone through a couple of those. But as far as Staff is concerned, are there any outstanding, other than what has been mentioned?

Mr. Carlin said they haven't seen any development yet. Once development commences, they will make sure that it adheres to the construction schedule provided and all conditions are met. Staff feels the conditions outlined in here are representative of what the Commission had originally considered a year ago.

Mayor Benton declared a Public Hearing in session and asked if anyone in the audience wished to be heard.

Mr. Paul D'Arelli, Attorney with Berger Singerman, said he is representing the property ownership. They do concur with Staff's recommendation tonight. They do appreciate their patience working through these issues over the last many months. The property owner remains committed to the development, which

is why they are willing to write checks to secure their obligations in expectation of being able to move forward as soon as the tenant commitments are ready to move forward. The questions regarding the utilities, they have acquired some of the right-of-way. They have the three remaining pieces under contract and due to close before the end of the year, so they have those under firm commitment. He just confirmed with the ownership that in the event there is a property owner that needed to have easement rights over Newberry's property, if they needed to first run the lines before Newberry would get to that position, then they would be willing to accommodate those requests. It would be the same system they would all be tied into.

Mayor Benton said they can't wait to go shopping out there. They know the economy has been tough, but they are glad this appears to be still on track. They are glad to see things progressing. Anything the Commissioners can do, let them know.

Seeing no one further and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Motion was made by Commissioner Sessions, seconded by Commissioner Alexander, (a) To approve the Development Agreement between the City and Cornerstone Fort Pierce Development LLC for Newberry Fields project; and (b) To approve the request submitted by Cornerstone Fort Pierce Development LLC for 3-year extension to the approved Site Plan for Newberry Fields at 2721 - 2785 South Jenkins Road.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

Ordinance No. L-96 entitled, "AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AMENDING ARTICLE III OF THE CITY CHARTER ENTITLED "CITY COMMISSION"; AMENDING SECTION 18(1) "CREATION OF CITY COMMISSION", BY CHANGING THE **TERM OF OFFICE FOR THE MAYOR AND/OR CITY COMMISSIONERS TO BEGIN ON THE FIRST REGULAR MEETING IN JANUARY AFTER THE NOVEMBER ELECTION**; REPEALING ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE." was placed on second and final reading and read by title only.

Mayor Benton declared a Public Hearing on Ordinance No. L-96 in session and asked if anyone in the audience wished to be heard.

Seeing no one and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Motion was made by Commissioner Becht, seconded by Commissioner Coke, that Ordinance No. L-96 be passed on second and final reading.

Those voting in favor of the passage of Ordinance No. L-96 on second and final reading were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

Ordinance No. L-97 entitled, "AN ORDINANCE OF THE CITY

COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AMENDING THE CODE OF ORDINANCES; AMENDING SECTION 22-3 OF CHAPTER 22, ARTICLE I, DEFINITIONS - BY ADDING A DEFINITION FOR **RAILROAD PASSENGER STATION**; AMENDING SECTIONS 22-31(c), 22-32(c), AND 22-34(c) OF CHAPTER 22, ARTICLE III, CONDITIONAL USES PERMITTED, BY ADDING SECTIONS 22-31(c)(20), 22-32(c)(14), AND 22-34(c)(14) TO PERMIT A RAILROAD PASSENGER STATION AS A CONDITIONAL USE IN THE C-3, C-4, AND I-1 ZONING DISTRICTS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE." was placed on first reading and read by title only.

Mr. David Carlin, Assistant Planning Director, said this is in anticipation of securing funding for the proposed Amtrak station, provided that funding is awarded to the City. The City is working with Florida Department of Transportation (FDOT), in conjunction with the Treasure Coast Regional Planning Council. The slide shows the appropriate zoning districts that would allow this type of use as a conditional use. Preliminary discussions they had at previous meetings identified some of the potential locations for the station, based on different considerations. The purpose of this text amendment is to stay ahead of the game, not behind the eight ball, in the event they do get funding for this.

Commissioner Alexander asked on the depiction he has here, only the one that says C-4 is vacant property, right?

Mr. Carlin said no, that is both on the east and west side of the FEC Railway railroad tracks. Predominantly the area on the east side, where one of the locations would have been over near the Sunrise Theatre, also to the north of City Hall just south of the canal where the former King Power Plant property is located. That is really the general area.

Commissioner Alexander asked the property to the south of City Hall which they used for temporary parking when building the Parking Garage, that is vacant?

Mr. Carlin said yes. It is a combination of C-3 and C-4.

Commissioner Alexander said they have businesses along the other portions. Are they thinking of tearing these businesses down?

Mr. Carlin said there is no discussion at this point about tearing any businesses down. In fact, what they are going to be looking at when more detailed plans come forward, is to find out how they can fit the site within the confines of the vacant areas. Certainly they do not want to be demolishing buildings, that is not contemplated at this time, and he certainly does not think that would be appropriate either.

Commissioner Sessions asked does he have any idea when the anticipated funding will take place with regards to the decision as to whom will be funded?

Mr. Carlin said at this time the indications are between December and March the awards will be made to distribute the funds. Keep in mind, the funds are competitive, not just in the State of Florida but through the entire United States. There

are other cities, for example, a route from Las Vegas to somewhere in California, where a high speed rail is being contemplated. There are several different projects contemplated as part of this large redevelopment funding from the government, TIGER (Transportation Improvements Generating Economic Recovery) funds and things along those lines. So it is maybe a month or two before they hear back on whether or not the City will... There are a total of nine cities that were part of the original application package for the proposed Amtrak stations regional corridor service. The City of Fort Pierce is in that list. He looked through the documents and found it. He found a bulls-eye target that shows the general area in the downtown for the station. So they are on that radar screen. It is just a matter of whether or not the funding gets allocated to the State of Florida and then trickled down.

Mayor Benton declared a Public Hearing on Ordinance No. L-97 in session and asked if anyone in the audience wished to be heard.

Seeing no one and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, that Ordinance No. L-97 be passed on first reading.

Those voting in favor of the passage of Ordinance No. L-97 on first reading were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

City Clerk Steele introduced the following Resolution by title only:

RESOLUTION NO. 09-60

"A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AMENDING SECTION 2 OF RESOLUTION NO. 07-08 (WHICH ESTABLISHED THE SUNRISE THEATRE ADVISORY BOARD); **PROVIDING THAT THE CHAIR OF THE SUNRISE THEATRE FOUNDATION INC. SHALL SERVE AS AN EX OFFICIO MEMBER OF THE SUNRISE THEATRE ADVISORY BOARD.**"

Motion was made by Commissioner Coke, seconded by Commissioner Sessions, that Resolution No. 09-60 be adopted.

Those voting in favor of the adoption of Resolution No. 09-60 were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

The next item on the Agenda was Submittal of Applications for Appointment to the Fort Pierce Utilities Authority Board.

City Clerk Steele said she submitted the applications in their package and there will be a Resolution for appointment on the next Agenda. She does want to get their concurrence. There are nine applications, so she will put a tally sheet in their Agenda package. Would they prefer to rank the top three?

Mayor Benton said he thinks that is the best way.

City Clerk Steele said she will ask them to rank their top three

choices - first choice would receive 3 points, the second choice would receive 2 points, and the third choice would receive 1 point.

Commissioner Becht asked could they rank the top four?

City Clerk Steele said if they want to rank four, it is up to the Commissioners.

Commissioner Sessions asked isn't that going to complicate things a little bit?

Commissioner Becht said if anybody has heartburn with it, leave it at three.

Commissioner Coke said she doesn't think four would hurt. Each would give their number one choice 4 points. She thinks it might actually make it easier.

City Clerk Steele said it is two to two right now. What does Commissioner Alexander want?

Commissioner Alexander said they are going to pick just one. So he is thinking the three would be better.

Mayor Benton said three it is.

The next item on the Agenda was Commissioner Alexander discussion regarding the process to Amend the City Charter to eliminate the super majority vote requirement to disapprove any rate change or any change in the formulas by which the rates are determined, in addition to the super majority vote requirement for disapproval of any line item expenditure in the Fort Pierce Utilities Authority Annual Budget.

Commissioner Alexander said the reason he brought this forth is because it seems that they forget that the citizens own the Fort Pierce Utilities Authority. Is he wrong with that assumption? It seems like they get heartburn when they start discussing things with FPUA and when they say it has to be a super majority. The community had some concerns about dissolving the FPUA Board and making the City Commissioners the Board. That didn't pan out. It seems that the dilemma comes when they have to have a super majority. He thinks anything that comes before them, if three of them say yes, then that is what it should be. He does not know the reason why the super majority was put in place. It is easy to count three to two. That is just his personal opinion. He thinks it is just unnecessary, it just makes them bicker amongst each other. If it is three to two, they know what that means.

Mayor Benton said there are other things that come in front of them that require a super majority. The City Planning Board, for example, or the number of letters for a Conditional Use, he forgets the percentage, but that takes a 4/5ths majority vote also. He thinks it is done because they have an appointed board that makes recommendations, so it just needs to be a little bit harder to override that. It was done by referendum. His

suggestion would be, every ten years or twenty years the City should look at its Charter, have a Charter review. What a lot of other cities do, they put several items on the ballot, and people can vote on each one if they want to make changes. Sometimes City Charters are outdated, sometimes things were done differently 25 or 30 years ago. So his suggestion, if that is what the Commission is looking at doing, for the cost of a special referendum at \$45,000, he would think they could look at several items that could be placed on a referendum for a possible change. For example, their secretary doesn't work for them. It makes it very difficult when they have somebody that is supposed to be working for them, but answers to the City Manager. That is just another item that could be changed.

Commissioner Alexander said he agrees. But the reason he brought this up is, it has been such a great concern of the citizens of the City of Fort Pierce for them to take no actions, just to let them go away and assume in two or three days that have forgotten. But they are not letting them forget. It is not just one section of town, it is the entire City of Fort Pierce. When he hears other people outside of these five having such strong opinions that they try to deter things one way or the other, it kind of troubles him. Because if he is going to be put in place to be a City Commissioner, he voted in by the public, and not have to answer to the public, that is not fair. It is not fair for the public to sit out there and don't know which way to turn, some don't know what to say, some don't know how to say these things. They come before them and plead with them on a regular basis. Again, he just has a problem when it comes down to the Fort Pierce Utilities Authority not having an even playing field. He understands that the Power Cost Adjustment is supposed to be coming off the utility bills in the very near future.

Mayor Benton said it is coming down, not coming off.

Commissioner Alexander asked so why haven't they not communicated to the public when they get a bill every month? It could be a little slip of paper in there that says the Power Cost Adjustment in the next 30 days will be this or that. They just leave people hanging out. They don't care, that is what the attitude to him, that is how he feels about it. They don't care about the public. They need to understand that the public owns the FPUA.

Mayor Benton said the FPUA Board does talk about it at their public meetings which are televised. A lot of people do watch those. They have talked about it for the last two months. They hope to be lowering that next month.

Commissioner Coke said she likes the idea of reviewing the City Charter, because she is sure it hasn't been reviewed in many years and there are probably lots of things that need to be updated and changed. She is wondering if the cost would be as high if they put it with the next general election next November?

Mayor Benton said maybe the City Clerk can shine some light on

that.

City Clerk Steele said the Supervisor of Elections has generally not charged the City for the election itself if they place an item on the ballot.

Mayor Benton said he checked into some other cities that have done this to their south, Palm Beach County specifically. Normally what they do is have several workshops during the year. Especially start with items in that Charter that are outdated. He is sure the City Attorney and the City Manager would have recommendations.

Commissioner Coke said she knows they were all surprised when something came up about alcohol being sold... She forgets what it was. But nobody, including the Police Chief, knew there was a law on the books.

City Manager Recor asked would they like to establish a Charter Review Committee amongst staff and maybe appoint a Commissioner as a liaison? They could develop some discussion items to come back.

Mayor Benton said the first route to go might be for the City Commission to have a workshop, so they can direct staff with each one's concerns after they take a close look at it. Most cities do this, not on a regular basis because it is so expensive.

Commissioner Coke said more regular than every 100 years.

Mayor Benton said it would help them do their job and give the public a chance to make a decision if they want to change something.

Commissioner Sessions asked in what instances are they required to have a super majority versus a simple majority?

City Attorney Schwerer said there are a number of occasions in the Code. He can pull the Code up and start going through that to pull up all the provisions that apply. He can't do that sitting here tonight. It is not that many, it is rare.

Commissioner Sessions said he concurs with Commissioner Alexander, this particular issue deserves some attention. It appears that they haven't been able to address it in light of the protocol now with the super majority. They can sit here and talk about doing workshops and holding off for a year from now. He is interested in trying to do something now, a special election. In light of the situation his city is going through with these high utility rates, a special election of \$45,000, \$50,000, or \$60,000 might be well worth it. So he does not mind addressing it today. How many votes do they need in order to put this up for vote in order to determine whether or not they should change it from a super majority to a simple majority by changing the Charter?

City Attorney Schwerer said the City Charter is similar to the

Constitution, it is that type of document. Under the Home Rule Powers Act and other provisions of law, the City Commission has the ability to make changes to the City Charter by ordinance as opposed to referendum vote. It is the exception that it requires a referendum vote of the public to change provisions of their Charter. There are five or six provisions in a City Charter that are sacrosanct that they cannot change by ordinance, but anything else can be changed. For instance, lengthening or shortening the term of any commissioner or mayor's term of office, changing the boundaries of the city by a charter amendment as opposed to an ordinance or a referendum, things of that nature. There are a very limited number, he can't recite all of them, but has the list in his office. He wants the Commission to understand that when it comes to the Utilities Authority, the reason this particular provision might require a referendum vote is because that was set up by a referendum vote. So this is an exception to the rule as opposed to the norm. So while they discuss perhaps looking at the Charter and making amendments, that is really not a complicated process if they are dealing with anything other than those five or six subject matters that they can't change except by referendum. Given that landscape, they need to consider the fact that because this requires a referendum, if it is a voter initiative versus a commission action... A Commission action is by ordinance. They would only need a majority of this Commission - three of the five - to vote to have an ordinance drafted, which ordinance would then provide for a certain ballot issue to be placed on whichever election schedule they want to go before the public. So it would only take three of them to pass that ordinance simply to put it on the ballot for a vote by the public.

City Manager Recor said that is by far the easier alternative. The second alternative is a petition signed by 10% of the voters in the previous election, which would be essentially tomorrow's election.

Commissioner Sessions said so they can address Commissioner Alexander's concerns in terms of changing this from a super majority to a simple majority by a mere ordinance change, which only warrants three votes. Is he correct?

City Attorney Schwerer said no. The change to this provision of the Charter would require voter approval. However, to put it before the voters would simply require an ordinance by this Commission that was passed by at least three votes, the ordinance itself. Approving something to go to the voters requires an ordinance by simple majority of this Commission.

Commissioner Sessions said he understands now. So in order to get it before the voters, it can be accomplished by a three to two vote. And then by way of referendum, the voters would decide whether or not they would change it?

City Attorney Schwerer said that is correct.

Commissioner Sessions said he does not know what the consensus is of everybody up here, but he for one is willing to move

forward with an ordinance so they can have it placed before the public by way of a referendum and let them decide. He does not have a problem with other issues of the Charter waiting for a year to do a workshop. But he thinks this particular issue warrants some immediate measures.

Commissioner Alexander said he agrees with that. They can't put their hands on anything in particular except for outrageous utilities. He is not saying unfair. But the outcry from the public, he has more people talking to him about the FPUA. When they vote three to two, then it has to be a simple majority. When the public starts putting the crosshairs on that super majority, they want to know what their word means, their vote don't mean anything. That is the sad part about it. That is why they worry about not having turnouts, people are just sick and tired of being sick and tired. If their vote is going to mean something, let it mean something. If they elect him to this office, they know he is going to have their best interest. He cannot override the City of Fort Pierce, but he surely can speak for the ones who will not or can not speak for themselves.

Mayor Benton asked if they were to have that majority vote, does he think that is going to lower utility rates?

Commissioner Alexander said that will sure put some fire under the Utilities Authority to know that the public is closer to them than they were.

Mayor Benton asked but when they can't lower the utility rates, what is he going to tell the public then?

Commissioner Alexander asked how do they know the U.A. can't lower them?

Mayor Benton said FPUA does not make power, they buy power; and they can't sell it for less than they pay for it. If Commissioner Alexander can buy a casket and sell it for less than he pays for it, let him know.

Commissioner Alexander said yes, he can. He can give it away if he wants to.

Mayor Benton said then he won't be in business long.

Commissioner Alexander said that will be his prerogative. It is not a joking matter.

Mayor Benton said he is not joking, he is serious. Unfortunately the people up here aren't telling the public the facts. FPUA does not make power any more, they buy it. There is a price tag on that. Even if they were not to approve rates, they might save a few dollars on their electric bill, but not the hundreds of dollars like they are paying for gas and oil. Every day that commodity number changes. As it does, they are going to pay more. Everybody in this country is paying more for it. They can save a few dollars. It is time they start educating the public instead of misleading them on what the cost of energy is. Today up in Tallahassee, Cap & Trade is going to

cost more. He has been saying that, but nobody is listening. It is time people got educated about energy. They need to explain to people why. It is the same when they go to the gas pump. There is not a darn thing they can do about the price of gas other than pay whatever the going rate is. They don't make gas, they don't own the gas pump. The only thing they have a say on really is water and sewer.

Commissioner Becht said somebody asked earlier why it is a 4/5ths vote. He was not in office when that was created, but he has talked to a couple of former Mayors who were around at the time that discussion was taking place. There were abuses in the past with where the utilities were, the quality of utilities that were being put in. It was a political football. If somebody was connected, they got utilities. If they weren't connected, then they didn't get utilities. Rates were a political hot potato, because they didn't want to raise rates in an election year. So what was explained to him was that the way the 4/5ths majority was set up, it was set up on purpose to de-politicize the process of setting rates. The separation of the Utilities Authority from this Commission, it was separated so that the process became less political and more like a business. When selling a product, they have to make enough money to keep the utility service in business for the next year, they have to have lines capable of transmitting the electricity, the water, and the effluent the next year. They can't do that by giving it away. That being said, he is not in a position to, by line item, go into the FPUA budget and say they should have this item higher and that item lower. He is here tonight to say that in the last six years, with a couple of exceptions, there has not been a criticism of the FPUA budget on a line item basis where even a three to two vote would have mattered. He has consistently asked this Commission to try to de-politicize the rate increases, to try to soften the increases by doing it on an annualized basis for like 50% of the consumer price index, for example. He thinks it is the PSA. They have an inflationary index based on the cost of utilities. What he suggested is they do 50% of that on an annualized basis automatic. It is not political. If there is not an increase, then there is not an increase in utilities. That de-politicizes it and it softens it. What this Commission inherited when the past Executive Director left and turned it over to Bill Thiess, he thinks there had been a 13 year run where there had not been a rate increase. Everything he has bought over the last 13 years had gone up in cost other than electric. There had been like 13 years where there had been no adjustment in the cost of utilities. That is silly. If they had had a softening with a partial increase based on PSA's inflationary index, then they wouldn't have clobbered people with a 13% increase in one year. He is against going back to the days of old. If they forget history, they are going to repeat history. There was a time when it was within the City's domain, when the Commission set the rates. Their predecessors made a decision - a wise decision - to de-politicize it. They had the power and they gave the power away. Please talk to those who were in office at that time and find out why they did that. He thinks when they do talk to them, they are going to understand there was some wisdom in that move.

Mayor Benton said take a look at Lake Worth. They will see what happens when they leave the elected officials in charge of the utility. It is continually having big problems. They have to continually put back into it, they can't let their infrastructure fall apart.

Commissioner Coke said the last thing they need to do is make the FPUA any more political than it already is. She would have to respectfully disagree with Commissioner Becht. There have been times in the last several years when they looked at line items that may not have made a tremendous percentage-wise difference, but it would have sent a message - this is what the City is doing to tighten its belt, this is what they believe the U.A. should be doing also. Whether the FPUA agreed or whether this Commission could get 4/5ths to agree, really is not the point this evening. The point here is, she does not want it to be political. But Commissioner Alexander has a very valid point. They were elected. The U.A. is owned by the citizens. If three of them feel that there is a line item that is in excess, or conversely when the utility rates hadn't been increased in 13 years, three of them should have asked what is going on over there? She can remember telling Mr. Thiess at the time that poor planning on his part doesn't constitute an emergency on hers. But it has ended up being an emergency for their citizens. They are elected officials. They are here to represent the people. She has the same concern Commissioner Alexander does. When three of them feel that something is wrong or something should be changed, and three people who are elected by the people can't constitute that change, she has a problem with that. Her concern with moving forward with an ordinance is, she would like some clarification and she doesn't know if the City Attorney is ready to give it this evening, on what exactly it would require for the ordinance to pass. They know they would have to have 10% of the electorate who voted to get a petition, if they want to do it that way. Or they could pass an ordinance. But how many votes would it take for it to pass? She thinks that is a very important question to do some research into, because if it is something three of them are looking to have changed and put on an election, they don't want to put it on a special election and pay \$45,000 and have it fail if they are not going to get the voter turnout. She does not know if there is a requirement of a percentage of the electorate voting for it or if it is just a simple majority voting for it. But she would need to know that prior to committing to when they would have an election on this and putting it on a ballot.

Commissioner Sessions said he thinks that the decision of their predecessors to hand this down to the board in his opinion was due to a lack of accountability on their part. They say it is political. But face it, each and every one of them are politicians and they are elected by the people. If the people are not satisfied with the services they provide from this dias, then they should be booted out and replaced. Nevertheless, in light of the situation now as it exists with the Fort Pierce Utilities Authority, they have no decision making process with regards to the rates themselves, because it is determined by a Board. Nevertheless, if Reginald Sessions is in a position to make that decision and the public is not satisfied with that

decision, then vote him out of office. Turn it back over to the public, it is owned by the public, it is a publicly-owned Utilities Authority. The Utilities Authority as it exists now appears to be a private corporation in the way that they operate. There are a lot of things he doesn't agree with, there are a few things that he agrees with, that is going on over there. But he personally feels comfortable with stepping in and taking his full responsibility in addressing the issue if they allow the public to decide. He is not saying this Commission should make that decision. As far as the City Attorney is saying, that is the only way, they have to allow the public to make that decision. So let the public, if they see fit by way of referendum, make the decision as to whether or not there should be a super majority versus a simple majority. Hand it over to the public. It is not his decision. It shouldn't be his decision. His decision is to give it to the public and let the public make that decision. To do otherwise is depriving them of their democratic rights as far as he is concerned.

Commissioner Alexander said his input on this, it is the citizens. He tried to express that to each and every citizen that comes in his face, that they own. The Mayor spoke about his business. If he was to give... And he has given because of circumstances. For the public to have no say and then rely on the elected officials and they don't have no say, if they cannot let the public dictate except for in an election year that they can dictate. They should be able to come to this dias twice a month and freely speak into that microphone without repercussions. Whatever they have to do, if it has to be an ordinance to go forward to put it in the public's hands, he is ready, that is why he brought it forward.

Mayor Benton said the public does have a say-so, because when they have rate increases, they have public hearings. The public has the ability to come in, which they do, to express their feelings. It is not only at the FPUA Board but also at the City Commission level. They have heard loud and clear from people. But also, it is trying to get people to understand that it is a big complicated issue to run a sustainable utility in today's market. Go back to the hurricanes, they were very lucky to have power back on within seven days. Not many cities - especially if they had Florida Power & Light - had power back. There was a cost to that. But he guarantees if it had taken a month, like Lakewood Park and some other areas, they would have got chewed up. He will see if there are three votes to take this to the next step.

Commissioner Sessions said he heard concerns from Commissioner Coke with regards to the voter turnout. He is almost certain that with this issue being as serious and devastating as it is for this City right now, they probably would have one of the biggest voter turnouts as they had in the last Presidential election. They will set precedence and records in this City if something like this were to be placed on the ballot. They all know it is a major issue, they have been out there in the public. But he does not think voter turnout will be a problem in light of the number of complaints they have had.

Mayor Benton said they can save \$45,000 by waiting. They only have one budget that could be brought in front of them before then. He could be wrong, but he does not think the U.A. is looking at a rate increase between now and next November. But \$45,000 out of this budget they have equals an employee. So he would take that into consideration.

Commissioner Becht asked where are they with the Citizens Budget Review Committee?

City Manager Recor said he has received communication from the City Attorney's office and they are moving forward with it.

Commissioner Becht asked are they contemplating looking at the U.A. budget too?

City Manager Recor said they had not contemplated a review of the U.A. budget, although that certainly could be part of the discussion.

Commissioner Becht said he does not want to always appear to be the one that is reluctant here. He is just the one that, as a student of history, it bothers him to go back to something they moved away from. But with a budget cycle, they are going to have to come through them before another election. Why wouldn't they task the Citizens Budget Review Committee to come back with...? They had a Citizens Utilities Advisory Committee, but they didn't come back with any line item entries that he remembers. But if the Citizens Budget Review Committee comes back with specific recommendations with the U.A. budget, then it would be interesting to see where that kind of specificity would be dealt with by the Commission.

Commissioner Coke said first of all, when they talk about not going back, she doesn't think anything they are looking at this evening is going back to this Commission sitting as the FPUA Board. They are looking at empowering the people that voted them in to enable the Commission to make changes. She understands his reluctance, except for the fact that she is not supportive of this Commission becoming the FPUA Board. She has gone to the U.A.'s budget workshops. She thinks they need to have a greater say. Because the way it works, they have had City Managers in the past who work on the theory of three - if he could get three of them to agree, he didn't care what the other two felt. They are now in a position where if the FPUA Board can get two people to agree, it doesn't matter if they make the other three of them happy or not. She thinks that they are all relatively responsible people, they are acting in the best interests of the citizens. They are all business people, they understand they can't operate things at a loss. However she thinks what has happened over the years is the situation has progressed to the point where they theory over there is that they need to get two Commissioners to agree; and other than that, it doesn't need to be something where they try to have a win/win/win/win situation. Number two, she would point out that there was reluctance and grave criticism of this Commission when they created a Citizens Utilities Advisory Committee. It was eventually accepted. But it was a little bit like pulling teeth

and a little bit of arguing. The Utilities Authority really did not feel the Commission had the authority to do that. She thinks it is an exceptional idea that if they are forming a Citizens Budget Review Committee to look over the City's budget, to have them review the Utilities Authority's budget. She would propose that she does not think that suggestion would be welcomed with open arms by the Utilities Authority.

Mayor Benton said he knows Commissioner Coke has been very good about going to the U.A.'s workshops. But unfortunately there hasn't been three Commissioners there. If three Commissioners were there and they had an issue with a line item and they spoke loud and clear, he guarantees they would get the U.A.'s attention. But first they have to have three Commissioners show up to these meetings. In the last two years, he does not believe that has happened.

Commissioner Sessions said he showed up at the first two and was ignored totally.

Mayor Benton said let's draw this to a close. Is there a motion?

Commissioner Coke said her concern before was not necessarily with lower voter turnout. Her concern was, they don't have facts and figures from the City Attorney on what it would take for this ordinance to pass. She will be in support of drafting the ordinance. However, depending upon the parameters of what it would require to have it passed by a referendum will determine whether or not she can support it in the future when it comes in front of them.

Commissioner Alexander said that is more than fair.

Motion was made by Commissioner Sessions, seconded by Commissioner Alexander, that they direct the City Attorney to come back with a proposed ordinance pertaining to the issue of whether or not it will take a super majority versus a simple majority for approving or disapproving line items and rate increases as proposed by the Fort Pierce Utilities Authority.

Commissioner Coke asked would the ordinance be written so that a special referendum would be held?

Commissioner Sessions said yes.

Commissioner Becht asked a special referendum would be held before the next general election in November 2010, is that what he is proposing? Or is that going to be left open?

Commissioner Sessions said left open at this point.

Those voting in favor of the motion were: Commissioners Alexander, Coke, and Sessions. Those opposed: Commissioners Becht and Benton.

The next item on the Agenda was City Manager update on Seven Gables House Visitor Information Center.

City Manager Recor said he is pleased to report they appear to have made some progress in this regard. He did have the opportunity to meet with the Chamber of Commerce, the Treasure Coast Manatee Foundation, as well as Buzz Smyth, to talk about the lease and operation of the Visitor Center. The memorandum he provided in their background material identifies the salient points of that discussion. Ms. Yates earlier this evening (under Comments from the Public) mentioned their position. He thinks the completion of a five year lease agreement with the Treasure Coast Manatee Foundation, and with a Memorandum of Understanding with the St. Lucie County Chamber of Commerce, is fairly straight forward and they can turn that around pretty quickly. It addresses the concerns of the Commission, particularly the Mayor, who expressed the desire for a seamless transition. In preliminary discussions, they are targeting a December 1st date for the Manatee Foundation to assume responsibility for the Visitor's Center. The Chamber will have a presence in Fort Pierce, exactly as described by Ms. Yates.

Commissioner Alexander said maybe it is a little confusing to him, but he thought the Commissioners decided that Buzz Smyth would have the lease there. He heard the gentleman speak about the Manatee Center being the entity that is in charge. In the last month before the lease ran out, the Chamber of Commerce was in charge. He heard him say that he made this decision. He thought the Commission had made the decision for him to go out and see if he could get some type of happy medium between the three entities. Now he comes back and tells him that he made the decision that he is going to let the Manatee Foundation...

City Manager Recor said he hasn't made any decisions.

Commissioner Alexander said that is what he just said, a five year lease with the Manatee Foundation.

Mayor Benton said Mr. Recor is looking for a recommendation.

City Manager Recor said he hasn't made any decisions. He is simply reporting back to the Commission the discussions that occurred at the meeting between the affected parties and the recommendations he is making to the Commission for their consideration. The Commissioners will ultimately decide how they want to proceed. His task was to mediate a discussion amongst the affected parties to try to come up with an amicable solution where everybody was able to make a contribution to the effort.

Commissioner Alexander asked so Mr. Recor is telling him that Mr. Smyth relinquished what vote and support he had got from the Commissioners to be the lead entity in that area? And the Manatee Center, which has their own structure, they are going to place them over the entire Seven Gables House also?

City Manager Recor said during the number of discussions that have occurred in this matter, they may recall what was appealing about Mr. Smyth and his proposal was his excitement, his new ideas, and his focus on the business development and economic

development liaison side. Clearly the Commission wanted to do something different than what has been done in the past. Mr. Smyth remained interested in focusing on business development; but when he realized that the Chamber was not actually going to be present in the building, he said he didn't need to be located in the Visitor's Center to focus on business development. So that opened the door, the possibility for a separate contract for a professional services agreement with Mr. Smyth, for him to focus solely on the business development side. That is part of the background and part of the discussion for the Commission tonight. If the Commission is really interested in having someone focus on business development activities, then he would suggest that staff develop an RFP that includes specific deliverables. He gave them a handful of examples in their background materials of what they could ask for. If they want to target specific industries, they could do that. What he did in his discussions with the affected parties was separate operation of the Visitor Center and Mr. Smyth's creativity, enthusiasm, and interest on the business development side. Therefore, that enables all three entities to make a contribution in their specific areas of expertise. He tried to base the proposal on the strengths that each one of those affected parties brought to the table. Mr. Smyth may not be happy. He has not spoken to him since their meeting. Mr. Smyth may not be happy with his recommendation that they go out for RFP. However, in an abundance of caution and in the spirit of open competitive government, Mr. Smyth could respond. He already has a leg up on the competition, he has heard the specifics of the proposal that he is recommending to the Commission. Ultimately the Commission gets to decide how they move forward.

Commissioner Coke said she has so many problems with this that she can't even begin. They sent out an RFP to operate a Visitor's Center. They got back way more than they expected as far as new and innovative ideas. She does not think there was anyone here that was happy with the thought of losing the presence of the Chamber of Commerce. She had some confusion with the Manatee Center and the Manatee Foundation. Then Mr. Smyth came in with economic development. She loves the Manatee Center. But now she is being told it is the Manatee Foundation, not the Manatee Center, and they really don't have volunteers, etc. But they were the only one that offered a lease, which the other two entities didn't. So in her mind, someplace along the line staff should have said these are the prerequisites. If they are not getting a lease from the Chamber and they are not getting a lease from Mr. Smyth, that is what they asked for, so they can't move forward. If now they are saying that Mr. Smyth's proposal doesn't meet the parameters of the RFP, now it is two months after them working on the situation after the majority of the Commissioners said they wanted to work with him. So she has a problem with that. If it didn't meet the RFP process, before anybody expended energy - the Commissioners, the Staff, and Mr. Smyth - then Staff should have said this isn't within the parameters of what they asked for or the scope, so they should have tossed it out then. She has a big problem that if they are allowing all these things that theoretically didn't meet the requirements of the RFP, if they didn't vet things

properly, if they didn't get the lease they asked for, then everybody should have been disqualified. If people don't actually have volunteers or the 501(c)(3), it should never have come to this Commission. Now they have asked lots of people to jump through hoops for two or three months. The last she heard a week or so ago, it was a win/win/win - the Chamber was staying, the Manatee Foundation was working, and Mr. Smyth was here - and she felt good about it. She was commending Mr. Recor that they had reached that level. They walk away from negotiations where they had three parties negotiating and everybody is happy and satisfied with the results; now all of a sudden staff comes back with a different recommendation, so she has a major problem. She doesn't know that the vetting process was done properly with the RFP, the recommendations she doesn't think were proper. But most of all, now that they have asked all these entities to work together for six or eight weeks to come up with a viable solution, they all thought they had one, and now all of a sudden they are closing the door on one. She doesn't feel comfortable doing that. She doesn't know what the solution is. She doesn't feel comfortable with Staff's recommendation tonight being different from what it was when they left the meeting.

City Manager Recor said Staff's recommendation is not different than what it was at the meeting. He is encouraging the Commission, based on the interpretation of continuing contract, that they may want to consider going out for RFP. Do they have to do that? No. But they all know the number of people that were circling this building when there was talk about creation of an economic development position in the organization. But due to limited financial resources, they weren't allowed to create that. He thinks Mr. Smyth would be perfectly happy with working out a separate contract or professional services agreement with him without going through the RFP process. He thinks everyone would be on board with that. But in the abundance of caution, knowing that that decision may very well be challenged, he thought that is was in their best interest if they re-do the RFP with a specific focus on business development. If the Commissioners are not happy with the discussions that have occurred to date or with the agreement between the Manatee Foundation and the Chamber, and the potential discussions with Mr. Smyth for business development, they can go right back to their original decision to let Mr. Smyth handle the whole thing, that is fine.

Mayor Benton said when they originally pulled this from the Consent Agenda (September 8, 2009), Staff's recommendation was to go with the Manatee Foundation. His concern was he didn't want to lose the Chamber of Commerce's presence in their community. He believes the Manatee Foundation was the only one that responded appropriately and correctly to the RFP that was sent out. He believes after talking with them that they have the volunteers. He is willing to go with the Manatee Foundation because they are the ones that appear to be willing to work with the Chamber of Commerce and leave that presence here. From what he heard, it appears that Mr. Smyth, the Chamber, and the Manatee Foundation weren't going to be able to work together. Mr. Smyth's main goal is economic development. They have had

several people through the FPRA come to see them about that, at least three individuals. So to him, that is another thing. They have a Visitor Center downtown that they need open during the season, which started yesterday. He would hope they can move forward tonight with the Manatee Foundation working with the Chamber of Commerce. Give it a test period - six months or a year - to see how it works. But they have to do something. They have sat here and debated this issue for months, going nowhere. So let's make a decision tonight.

Commissioner Becht said his previous concern when he made the motion for reconsideration (October 5, 2009) was that he didn't feel that Staff had a clear idea of what three of them wanted. If three of them are not happy with what Mr. Recor has done, then that proves his point. He will go on record saying he is happy with what Mr. Recor has done. He thought Mr. Recor had done a good job mediating this. Mediation involves having multiple parties - in this case three - leaving the table with something; and each being equally happy or equally unhappy. He thought Mr. Recor had accomplished that. He thought that the compromises that were made were in the City's best interests. No, it was not as clean as the first vote by the Commission. But what Mr. Smyth had come back with, what had enticed him about his proposal, it had less to do with running a volunteer center than with the other aspects of his presentation. He thinks Mr. Recor has maximized the strength that Mr. Smyth brought, maximized the Chamber's presence, and maximized the volunteers of the Treasure Coast Manatee Foundation. So he compliments Mr. Recor on a job well done and is hoping they can move forward and have what he has done approved.

Mayor Benton said he agrees with what Mr. Recor has come up with. He is just looking for a motion to get the ball rolling.

Commissioner Sessions said he appreciates the City Manager trying to work out something with all of these parties. But he knew when they sent him on that mission, in light of the personalities that were going to sit at the table, that was not going to happen. What they have here is a decision that has been made by the majority versus the minority. Initially he was flabbergasted by the fact that they must have been doing something right here within the City of Fort Pierce to have all of these individuals fighting over promoting the City from a business/entertainment/economic/visitor aspect. They must be doing something right, because all these people are putting forth a whole lot of effort in trying to take over and accomplish that mission. But he agrees with the Mayor, it is time for it to come to a halt, they need to make a decision one way or the other. They have been going over this issue for quite some time. He doesn't necessarily agree with the recommendations, but he does agree they should make a decision and set direction. The fact that they sent the gentleman out and now come back with something totally opposite of what he thought they sent him out to accomplish is not satisfying in his mind. He feels like they put their word out there and haven't stood by their word. But they need to make a decision one way or the other.

Commissioner Coke said she was very happy when she and Mr. Recor spoke and he told her the resolution he had come up with. But maybe that was prior to bringing Legal Staff into it. The truth is, she was very happy and she thinks Mr. Smyth was very happy with the Manatee Foundation and the Chamber working out of the Seven Gables House, and Mr. Smyth working here (at City Hall). She does not understand why there would be a question regarding the competitive bid process, since there was a clause in their own RFP that asked for new and innovative ideas. She was in complete agreement with the way Mr. Recor had worked it out. But what he worked out and what he has here, it is excluding that one person who has been working on this for a couple of months. So she does not know how they can go around that. She would be fully supportive if they were moving forward with things as Mr. Recor explained to her immediately following his meeting on October 22nd, which was that the Manatee Foundation, the Chamber, and Mr. Smyth all moving forward.

City Attorney Schwerer said he would be remiss if he did not advise the Commission that when he initially spoke with Mr. Recor concerning the issue... The idea, however admirable Mr. Smyth's proposal for economic development is and how it could benefit the City... Going back to the original RFP that was issued, it was really an RFP solely for the leasing of the Visitor Center, asking for a proposal by the individuals or groups that were going to submit a proposal of how they would manage that Visitor Center and what they would do while managing it. He cannot say to this Commission that awarding a contract for personal services to Mr. Smyth, or to any other group, would be legally sustainable without an RFP. He told Mr. Recor that there is likely to be challenge and he could not tell him that it is legally sustainable to award such a contract without going through an RFP.

Commissioner Sessions asked why didn't Mr. Schwerer tell them that before?

Commissioner Coke said two months ago.

City Attorney Schwerer said no, what he is talking about is Mr. Recor's proposal tonight, which is lease the Seven Gables House to two groups, but create a separate contract for Mr. Smyth. He is not talking about the RFP that went out previously. The RFP that went out for the Visitor Information Center is fine. What they have now done is change the RFP by saying they are going to lease the Seven Gables House to one group and then they are going to create a separate contract for Mr. Smyth. Now they are entering an contract for professional services for economic development. That is where he draws the line.

Commissioner Becht said this is why he wanted to clarify what they intended, instead of dumping it on Staff. It would have let Mr. Schwerer and Mr. Recor know what they intended and maybe then need to do an RFP. But he distinctly remembers bringing it up that they might need to do another RFP because they had gotten so far outside the scope of what the original RFP was. Mr. Schwerer just said if they don't go out for an RFP, that they might not have a legally sustainable position. What is the

consequence of that? Because they all know, anybody will challenge anything these days. So if somebody challenges this, with or without a basis? They are trying to do good. But somebody still wants to come in and challenge it because they have nothing else to do. What is the consequence?

City Attorney Schwerer said a legal challenge could result in the Court setting aside the contract and requiring the City to rebid under an RFP.

Commissioner Schwerer said so if they enter into a six month deal with Mr. Smyth, then somebody could challenge it and then they would have to redo it. If during the six months they go out for an RFP, they are creating the RFP as they go with Mr. Smyth... He is not sure they have refined what it is Mr. Smyth is going to deliver, because he has more ideas coming out of his head than he thinks he can deliver. He wants to take advantage of some of those ideas, he wants to have those ideas working for the City, but he does not want to delay it, if they don't have to. So he is looking to Mr. Schwerer to come up with creative ways to avoid having to go out to RFP. So if they enter into a three month or six month contract with Mr. Smyth, he assumes that reduces their exposure to whomever for whatever silly reason they might want to challenge it. Again, they are trying to do good for the City. At the end of this three month or six month period, then they have a defined RFP for what it really is they are expecting of Mr. Smyth and Mr. Smyth has a better idea of what he can deliver; and they fold all of this effect, all of their time, all of their thoughts into something productive, instead of waiting three months or six months from now for something to happen. How does he get there?

City Attorney Schwerer said he does not want the responsibility of devising a method or a procedure that bypasses the City's established RFP process, which is by Ordinance and State Law. It is better for Mr. Smyth as well, because he knows that he is going to get a legally sustainable agreement. If that is what this Commission wants to do, if they put it out for RFP, the City is in charge of what it wants to put in that RFP, what it wants to see done, putting out the specifications; and the Commission is in charge of selecting who they want to perform those services. It is simply a matter of following the procedure to get it done. He can't sit here, nor does he want the responsibility, to try to devise a method that bypasses their existing ordinance, and then be responsible for whether it is legally sustainable or not. That is an unfair charge.

Commissioner Becht said right, perhaps it is an unfair charge. But they did have an RFP and they did have a response to the RFP. Parts of Mr. Smyth's proposal did meet the color and intent and their desire. All they have done - and he thought they had the ability to do this - is remodel the RFP so that it is tailored to the best needs of the City in a way that is wonderful, if they could do this.

City Attorney Schwerer said he is not criticizing Mr. Recor's mediated attempt, it is a very reasonable solution to what the Commission now finds itself in.

Commissioner Becht asked reasonable, but not legal?

City Attorney Schwerer said they are going to award the RFP for the Seven Gables House. Now they are going to have a separate agreement with Mr. Smyth on a totally separate issue dealing with economic development. That is the problem they are faced with. If they want to award Mr. Smyth the original RFP and define the scope of what he is to do at the Seven Gables House, he does not have a problem with that legally.

MAYOR BENTON PASSED THE GAVEL TO MAYOR PRO TEM SESSIONS.

Motion was made by Commissioner Benton, that they accept the City Manager's recommendation to give the Manatee Foundation a five year lease on the Seven Gables House Visitor Center.

MOTION DIED FOR LACK OF A SECOND.

MAYOR PRO TEM SESSIONS RETURNED THE GAVEL TO MAYOR BENTON.

Commissioner Coke said let's go back to their original premise. The Commission voted to award this to Mr. Smyth and directed him to work with the Manatee Foundation and the Chamber of Commerce. Somehow now they have found a way for the Chamber and the Manatee Foundation to be allowed to work through this legally under this RFP. She does not understand why they cannot just include Mr. Smyth's operation as the third leg of awarding this RFP. She knows they hired a gentleman a few years ago who they paid a lot of money to and she does not know that they ever got the deliverables they expected. She does not recall having an RFP process to hire him. The other thing is, she has just listened to enough negative lately that she could scream. Everybody wants to talk about how bad City Hall is, not friendly, this and that. First of all she is going to go on record saying she does not believe it. The other thing is, when they do things like this, it fuels that fire, it gives people a leg to stand on to say they are not friendly. Here they have gone ahead and awarded this RFP as a Commission and now they are going to change it.

City Manager Recor said they will notice that he deliberately did not use the words "economic development" in his memo. He used language from Mr. Smyth's proposal - business development, business liaison, business development strategies - because he wanted it to be tied to Mr. Smyth's response to the original RFP. So at the meeting he facilitated, the resolution he mediated, he thought there was a direct link, and then each one of them could make a contribution under the original proposal. Yes, he and Mr. Schwerer have had follow-up discussions. When he explained to Mr. Schwerer the resolution, they did have discussion about the potential for another RFP. He thinks they can go either way.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, that they move forward with the awarding of the RFP for the Seven Gables Visitor Information Center to the Treasure Coast Manatee Foundation, the St. Lucie County Chamber of

Commerce, and Buzz Smyth, based on the Manatee Foundation providing the day to day operations of the Visitor Center, the St. Lucie County Chamber of Commerce having a presence and signage and use of that facility, and Mr. Smyth to move forward with parts of his proposal and, if Mr. Smyth needs to operate not solely in the Seven Gables House, that they will have some latitude to operate outside the Center as per the City Manager's recommendation.

Mayor Benton asked do they plan on paying Mr. Smyth?

Commissioner Coke said as per the City Manager's recommendation.

Mayor Benton asked how much?

City Manager Recor said \$25,000.

Mayor Benton asked for how long?

City Manager Recor said he recommended five years lease on the Visitor Center and Mr. Smyth \$25,000 in annual funding renewable, so they could determine the success of the effort.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

The next item on the Agenda was Director of Community Development report on Monitoring and Reporting of Community Services Housing Loans - Florida Housing Coalition (FHC) review of the SHIP and HHR Programs implemented by Community Services Division.

Mr. Matt Margotta, Director of Community Development, said on October 1st, they arranged to have an expert (Evelyn Rusciolelli) from the Florida Housing Coalition - a group that provides consulting services and expertise to housing programs across the state - come in and look at their SHIP and HHR Programs. He and Mr. Recor didn't provide too much direction, just wanted to see what FHC would be able to find out. The results came in on October 21st, after the last City Commission meeting on October 19th. There is generally seven areas that are concentrated on.

Commissioner Becht said he sincerely appreciates what Mr. Margotta has done to date. But as Mr. Margotta had said, his crystal ball got smashed by the report. He does not know if he knew what was coming in the report or not. Before they can move forward with developing local policies and procedures, he thinks they need the audit that is referenced on the Consent Agenda. If Mr. Margotta has simple straightforward recommendations for stuff they can do now, that is fine. But before they can have the comprehensive revisions that are going to foster and bring back the public trust in this operation, he thinks they are going to have to have the results of the audit and the recommendations for establishing policies, so they don't have these perception problems in the future.

Mayor Benton said he would agree.

Commissioner Coke said yes.

Mr. Margotta said he thinks that is the right way to go.

City Manager Recor said he would suggest they remove this matter from the City Commission agenda and future agendas. Allow him to manage the situation. He is on top of it. He is in communication with Mr. Margotta. They have taken some administrative steps already. The forensic accounting audit is on the Consent Agenda this evening.

Commissioner Becht asked when is he going to bring it back?

City Manager Recor said he believes the forensic audit should be completed by the end of the year.

Commissioner Becht asked the second meeting in January?

City Manager Recor said yes. In the meantime, they have put in administrative steps that designate Mr. Margotta as the decision maker.

Commissioner Becht said it is not going away, it is on the radar screen, it will be back the second meeting in January.

City Manager Recor said yes. It is not getting swept under the rug. They are on top of it.

Commissioner Alexander said he is in agreement of this. But when they are talking about management, they had an incident just happen recently that come to their attention and it doesn't do anything but smear the City of Fort Pierce. He is not going to discuss it tonight because Mr. Recor says he is taking care of it. But he hasn't received anything concerning that and he has asked for it. For them to go out and spend more money on an auditor and then they don't do it in-house. They do need to take care of the City of Fort Pierce before they need somebody else from outside telling them what to do. They all can be in error sometimes. But as this City grows and how they grow, he doesn't think it is always in error. Is that something Mr. Recor is going to get a final report out to this Commission about?

City Manager Recor said the issue in general, yes. The Chief may even be able to offer a response regarding the investigation. But how the personnel matter is specifically addressed, no. He did not plan on bringing that up at the Commission level, that is his responsibility to handle.

Commissioner Alexander said he is not asking him to bring it up and he knows it is Mr. Recor's responsibility. The Commission does not do the hiring and firing, that is Mr. Recor's job. But he does have to answer to them.

City Manager Recor said yes, and he will explain to Commissioner Alexander privately how that situation was handled.

Commissioner Alexander said he does not want him to think he is trying to micro-manage him. He is going to the head, to Mr. Recor. But when they do the finalization on all this about bringing back to the public, the public is sincere about what they say. Every night when someone says something, it might offend somebody. But they shouldn't be offended if they are speaking the truth. Speaking the truth to the powers is what makes them the citizens they are. Again, he does not want to taint anything unless... If they are just butting their heads up against the wall, Mr. Recor is going to hurt his head.

The next item considered was the Consent Agenda.

Mayor Benton asked does any Commissioner have an item they would like to pull for further discussion?

Commissioner Becht said he would like to pull Item #19e (PBA Contract) and #19g (Lisa's Kayaks) for discussion.

Motion was made by Commissioner Becht, seconded by Commissioner Alexander, that the following items on the Consent Agenda be approved:

a. Request by Joseph Richardson Jr., Future Generations of St. Lucie County, Inc., for \$1,000 in Public Funds for advertising the 2009 Christmas Concert on December 5, 2009 and advertisement musical performances throughout the year.

b. Approve proposal from Kessler International to conduct a Forensic Audit of the programs and activities in the City's Community Services Division.

c. Accept the Recovery Act - Edward Bryne Memorial Justice Assistance (JAG) Grant from the Florida Department of Law Enforcement (FDLE) in the amount of \$292,938.

d. Approve contributions from the Police Department FY 2010 Law Enforcement Trust Fund to the Police Athletic League (\$10,000) and to the Executive Roundtable of St. Lucie County, Inc. (\$4,000).

f. Approve quote from Advanced Processing & Imaging, Inc. for OptiSpool Report Archival Software (including Installation, Training, and Maintenance for) the MIS Department AS400 / SunGard HTE spoolfiles in the amount of \$28,620.

The next item considered was Item #19e, which had previously been removed from the Consent Agenda: Approve Contract between the City and the Coastal Florida Police Benevolent Association (Sergeants and Lieutenants Unit) effective October 1, 2008 to September 30, 2009.

Commissioner Becht said the reason he asked this be removed is the City Attorney had told him that there were three conditions that needed to be added to the Contract.

City Attorney Schwerer said the list grew since their conversation today. He and Mr. Recor got communications from both the Chief of Police and Human Resources Director Mazella Smith today, recommending that this Contract be pulled so that they can convene the bargaining team. They are not exactly sure at this point in time that they have a complete contract here. Without going into detail, it would be his recommendation that the Commission pull it and direct that it be brought back on the next Agenda.

Commissioner Becht said he is deeply disturbed and disappointed that it would get to the point that something which is that deficient would be on their Consent Agenda. It is not for discussion. Somebody got it to the point that it was put on the Consent Agenda. Not him, he doesn't set the Consent Agenda. He will talk to Mr. Recor about that later, because that is irritating. How long does Mr. Schwerer need?

City Attorney Schwerer said he has not signed off on this.

Commissioner Becht asked remove it indefinitely?

City Attorney Schwerer said remove it from consideration tonight because it is not capable of being signed off legally by his office nor the Chief of Police nor the HR Director.

Commissioner Becht asked bring it back when?

City Attorney Schwerer said next meeting.

Motion was made by Commissioner Becht, seconded by Commissioner Alexander, to bring back the Contract between the City and the Coastal Florida Police Benevolent Association (Sergeants and Lieutenants Unit) on the November 16th City Commission Agenda.

Commissioner Coke said she thought at the last meeting they had, the City made offers which were accepted. Now they are looking to approve a contract which runs from October 1, 2008, to September 30, 2009. So whatever is in this contract has already happened. Can somebody tell her how...? They haven't had an Out of the Sunshine meeting on contract negotiations in a long time. They had a meeting of the minds a long time ago. The contract has already expired over a month ago.

City Manager Recor said the Sergeants and Lieutenants ratified a contract. Upon their ratification, he asked the Human Resources Director to schedule this matter on the next City Commission Agenda for approval. When they received the document, there were several inconsistencies or questions that were raised. He thinks those are the three issues that perhaps Mr. Schwerer spoke to Commissioner Becht about. It was their hope that they could move forward with approval of the contract tonight, subject to certain conditions that would address those questions that had been raised. Mr. Schwerer continued to review the document this afternoon and apparently there were various other issues and inconsistencies that apparently were not discussed at the bargaining table. So somehow the draft that was ratified by the Sergeants and Lieutenants is apparently different than what the bargaining team recalls discussing at the table, realizing

that Mr. Schwerer and Mr. Recor do not participate in the negotiation sessions.

City Attorney Schwerer said one of the things Mr. Recor said, he has to correct him. It is not clear what they ratified, because this contract comes to them without being signed. This is a cyberspace issue. It was emailed in. There were drafts of documents. It looks like this is a combined draft. So while the union may have ratified a contract, it is unclear if this was the contract they ratified. There is confusion with the draft. He is simply saying that they need the bargaining team to sign off on these changes and agree that this is in fact what was negotiated, so that this City Commission can agree to the Contract. They also need the bargaining team to confirm what it was they ratified.

Commissioner Coke said she is going to support the motion to postpone this to their next regular meeting. But the point she wants to make is, this says "Contract Ratified: September 15 & 16, 2009", which is over 45 days ago. So when it got to the Human Resources Department, HR should have gone through it to insure that it met with what they had negotiated or kicked it back. It should not be 45 days later. Now they have had people that have operated for a year and 45 days without a contract.

Commissioner Becht said this is not a cyberspace issue. This is an issue that Staff put on as a Consent Agenda Item to approve a Contract, that apparently not all Staff members had reviewed, or if they reviewed it, hadn't reviewed it with enough thoroughness to know what they were asking for the Commission, of no consequence on a Consent Agenda, to approve. He is happy that it got caught before they approved it, don't misunderstand that. He is not happy that it got to the point where it was placed on the Consent Agenda. That is the problem he has, that he and Mr. Recor might be butting heads on, because it shouldn't get to this point, it should have been caught before tonight.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

The next item considered was Item #19g, which had previously been removed from the Consent Agenda: Approve renewal of Revocable License of Vendor Services for **Lisa's Kayaks Inc.** for a period of 180 days at South Causeway Park.

Commissioner Becht said he asked this be pulled because he cannot remember the discussion or rationale for why they had eliminated Indian River Memorial Park and Jaycee Park from... The temporary license they issued before, was it just Causeway Park?

City Manager Recor said the Revocable License for Vendor Services they have in their packet is identical to what was approved previously.

Commissioner Becht asked so if they changed it, they would be expanding it substantially from what they had previously done?

City Manager Recor said as he told Ms. Fasnacht, for simplicity purposes they were going to be advocating for what she had originally. If she wanted to revisit it, she could make that request of the Commission and they could add to it if they chose to do so. He does not think that complicates the matter, but obviously there was some basis for their decision not to include one park over the other. Perhaps the Parks Advisory Committee has made sufficient progress by putting those rules in place, which are attached in the background material.

Commissioner Becht said he cannot remember.

Commissioner Alexander asked isn't Indian River Memorial Park being utilized with the same type of entertainment - the kayaks? Isn't it already being utilized for that?

Commissioner Becht said the Manatee Center has said - but he has heard it disputed - that they are using it for kayak rentals.

Commissioner Alexander said he wholeheartedly is for her request, but he doesn't want her to be stepping on other's toes while she is trying to maintain her business. The Indian River Memorial Park is being utilized for the exact same thing. Do they not have enough beach access or waterway assets that they can make some concession besides that Indian River Memorial Park?

City Manager Recor said that is up to the Commission if they would like to allow the activity there.

Commissioner Alexander said no, not to allow it because it is already there with the Manatee Center. Did they not go through that as far as what activities were going to be utilized out of there?

City Manager Recor said he is familiar with it.

Commissioner Alexander said so if she requests Indian River Memorial Park, then Mr. Recor can say that is being utilized now. They don't want two separate individuals in there plus the public utilizing those ramps. Do they want that kind of confusion in there?

Mayor Benton said he thinks there would be competition there. The one in question is Jaycee Park, because there is a beach there. Also, there is several businesses within a quarter mile of the Manatee Center that rent kayaks.

City Manager Recor said Dive Odyssey and Captain Bob's rents kayaks.

Commissioner Becht said he is not in favor of Indian River Memorial Park for the reasons stated, unless someone can show him that the Manatee Center is not doing the kayaks. But Jaycee Park, why would they not want her there?

Commissioner Coke said when she spoke with Ms. Fasnacht today,

she told her she had concerns that if they change the contract tonight, they didn't advertise it. The last time they were talking about it, there was a lot of public input. She doesn't really recall what all of it was. She knows there was concerns about too much activity at Jaycee Park already, plus they have the sailing kids out there. She knows the Manatee Center was not happy with their area being used. That being said, she doesn't know if everyone would still have the same concerns or not. But at bare minimum, if they are going to consider revising this contract and adding those two areas, that they need to advertise it and at least give Mr. Whitehead and his group the opportunity, if they still have concerns, to come address the Commission, the same as the Manatee Center.

Mayor Benton said he sits on the Youth Sailing League Board. He knows they might have talked about this once, but he doesn't believe there is a problem, because most of the activity is during the summer. Kayaking and sailing should be one on one. The only problem they have run into over there is jet skis.

City Attorney Schwerer said this is a Revocable License Agreement, not a lease. He would recommend they approve it tonight for the only location that is specified. Should they want to have this amended to include other locations, that would be subject to another day and another debate. They can have it advertised that they are considering granting a license for an additional location and have public input on that.

Motion was made by Commissioner Becht, seconded by Commissioner Coke, to approve the renewal of the Revocable License for Vender Services with Lisa's Kayaks, Inc. for a period of 180 days at South Causeway Park.

Commissioner Becht said what he wants to do is ask that 30 days from now staff bring them back an expansion of that Revocable License for Jaycee Park. In 30 days they could have a hearing on it, so if the folks from the sailing organization or anybody else can come in with a legitimate reason why they shouldn't be doing this, they would have an opportunity to be heard.

City Attorney Schwerer said they can do that, because this is not an exclusive contract. So other people could ask for the same thing and they could have that public debate. That is certainly permissible.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Sessions, and Benton. Those opposed: None.

City Manager Recor said last month he tasked Mr. Margotta with developing a schedule for completion of the **Little Jim Bridge** Lease. He is pleased to report that Mr. Margotta has this on schedule for completion by the end of the year in 60 days. They do have a working draft. They are to the point where they will be negotiating the specific terms. He has had various inquiries over the last several weeks from interested parties. He will hold Mr. Margotta accountable to his schedule.

Commissioner Sessions asked there must be some issues that are outstanding in light of the prolonged period of time this has gone on? Could he share with them what are the outstanding issues that he can't resolve? Is it a money factor? What is the problem?

Mr. Matt Margotta, Director of Community Development, said it is coming up with a reasonable amount to charge for the slips. There was a lot of discussion regarding the planning issues. The King's would like to do certain things on the property. To work through whether those were issues or not, it took some staff time. And quite honestly, it slid off the back burner as he was dealing with some other issues and he hadn't addressed it in a while. It has taken him much longer than he expected to be able to work this out, but now he is on track to finish it.

City Manager Recor said he wanted to bring it to their attention that the Port St. Lucie City Council did agree to Midway Road as a boundary for annexation purposes and formally approved moving forward with the negotiation of a **Joint Planning Agreement**. They will need to revisit the actual description of Midway Road. If they recall, their discussion focused primarily on Midway Road west of 25th Street, whereas the boundary that PSL has described takes Midway Road all the way to the Indian River Lagoon. They are already south of Midway Road on U.S. #1 for at least one property. So he thinks PSL's intent is good, it demonstrates a commitment to working with Fort Pierce. That remains high at the top of their priority list.

Commissioner Becht said the Port St. Lucie decision was historic. He would like for them to move forward on that and take advantage of whatever they might be able to do with that now.

City Manager Recor said many of the Commissioners have received complaints regarding the City's automated voice response **telephone system**. He is pleased to report that system has been reprogrammed. Now when callers get the automated voice response system, they have an option of going directly to a specific department that has a designated line that will be answered by a live body at all times. If the person does know the extension or the last name of the person they are trying to reach, they may reach that person by way of that alternative as well.

City Manager Recor said something he established as a goal when he became City Manager and is appropriate certainly with some of the issues they are wrestling with today, and he spoke to the Department Heads this morning about it, he is going to be drafting an administrative policy to establish a **Code of Ethics and Values**. The values he has identified that he thinks are core values to their organization are ethical behavior, professionalism, being service oriented, fiscally responsible, organized, communicative, collaborative, and progressive. Those are big words. What does he mean by ethical behavior? So he is going to follow up those expectations with what in practice this value looks like. What does it mean to be ethical. What is means to be ethical is to be trustworthy, to demonstrate the utmost integrity, to have moral courage, to be truthful, to do

what you say you are going to do, to be dependable, make impartial decisions. It is similar to how he constructed the formal performance evaluation where he gave them examples of what that specific performance category would mean, he is going to give the Department Heads a specific example of what each one of those individual values means. Those are the expectations he expects of them and those are the expectations he expects they will have of their staff. Given the climate they are working in, it is absolutely appropriate that they move forward with something like this, at least on an administrative level. If the Commissioners are interested, they can move forward with it formally here at the Commission level as well.

Commissioner Alexander asked do what at the Commission level?

City Manager Recor said right now he is implementing it administratively. If the Commissioners are interested, they can formally adopt a Code of Ethics for the entire organization. Formalize it, as opposed to it being administrative policy.

Mayor Benton said put a copy of it on the Agenda.

Commissioner Becht said Mr. Recor brought up a Code of Ethics. He thinks the FPUA should be included in that discussion.

Commissioner Sessions said W.G. Mills, the contractor for the **Federal Courthouse**, he thought they had some assurance from them with regards to trying to put forth some effort to subcontract a lot of the work to local people. He has a list provided to him by a group of laborers and subcontractors in town that indicates that out of about 24 subcontractors, there is only one from the City of Fort Pierce. It is quite evident when he rides by there and sees all of these out of town cars coming in and out of that gate. Is there anything they can do at this point that they haven't already done to try to put some emphasis on making sure that W.G. Mills puts forth a good faith effort toward trying to hire local people? A city such as Fort Pierce has such a surplus of laborers being out of work. And to have a major project like this in their City going on, not putting their own people to work, is just devastating for the economy. That was a golden opportunity to put a lot of people to work and it is not happening based on what he sees and also the complaints from a lot of the subcontractors in their City.

Mayor Benton said he has not seen that list. They were led to believe from their Congressmen when this was approved that there was a certain amount of not only local labor but minority labor that was going to be used on this project. Maybe they could put a letter together from the City Commission to all of their Senators and Congressmen that played a role in this Federal Courthouse becoming a reality in Fort Pierce, just showing their concern. This is through the GSA, the Federal Government. Maybe they can put some pressure on to help out at home. That is the only thing he can think of. That is a place to start. It hasn't been done. He knows it has been communicated verbally through phone calls by himself. He thinks something in writing from the City Commission, they can task the City Manager with putting together a letter that they can all

sign. If Commissioner Sessions has the information about the number of subcontractors, he has not seen that. Can Mr. Recor put a letter together? They can all sign it to show their concerns. They can start there.

City Manager Recor said absolutely.

Commissioner Alexander said he thinks that is an excellent idea. The holidays are coming up and they have a community that hasn't received any jobs in quite a while. He thinks that is a task they need to get on top of as far as bringing jobs into this community. With the holidays coming up, they are going to have families that are not going to be able to give their children a Christmas. He thinks that is sad. Because everything has to go to utilities or rent. It is always a sunrise in the Sunrise City.

Commissioner Sessions said they got a stack of applications for the **Fort Pierce Utilities Authority Board**. He will be interviewing on November 5th and 12th, so call Ms. Wilkinson to set up an interview for that.

Commissioner Becht said he does not want to sound critical of the **Building Department**, he thinks they have made great strides there. But when he was at the Housing Authority, they had what he would call a report card on a housing unit that was taken out of commission, a tenant would leave. They actually installed a report card - when did the tenant vacate and when was it re-let? So what he would ask, with the computerization they have, can't they create that for the Building Department for the permits? Somebody submits for a Building Permit, when is it issued? He would like it broken down; for example, how long does it take somebody to get a historic building permit? All of them are being bombarded with criticisms of the Building Department, how long it takes for something to happen. If they had the report card, they could say that 99% of the permits are processed in this amount of time. They may have the aberrant one where it takes a little bit longer, but it is not normal. Is that going to be difficult to...?

City Manager Recor said he is not sure he understands what he is asking for.

Commissioner Becht said what he is asking for is a flow chart that tells him five permits were applied for on October 1st and it took 5 days or 20 days or whatever to have the permit actually issued.

City Manager Recor said okay.

Commissioner Coke said Peter Buchwald started that. She requested it and Mr. Buchwald did it at Mr. Beach's direction.

Commissioner Becht said what he is looking for is something he can show the public. He is not being critical. What he is trying to do is get information that he can share with the general population that the Building Department is delivering this in a reasonable amount of time. If they are not, then the

City Manager can identify why it took 120 days.

City Manager Recor said it goes back to what he said at the last meeting, there are 55,000 rounds of golf played on the Edward G. Enns Indian Hills Golf Course; but they receive maybe two complaints a year about the transition areas. There are many more success stories in their Building Department than there are those very unusual... When they hear something egregious or something unusual, there is a reason for that.

Commissioner Becht said then shame on them for not getting that accurate information out.

City Manager Recor said he thinks the report card idea would be a good way of combating that, saying here are the facts, the reality. Yes, they can do that.

Commissioner Alexander said along with that, they are having problems with the historical houses. These historical houses are not even being issued permits because they have to wait 60 or 90 days for the Historic Preservation Board meeting to occur.

City Manager Recor said they took a big step in alleviating that logjam by delegating administrative authority to the Historic Preservation Officer. The more administrative authority they can grant to the Historic Preservation Officer, the more expedited that process will become.

Commissioner Alexander said he still thinks that should be added to the Building Department report card, so Mr. Meyers is not blamed for permits not being issued.

City Manager Recor said they will make that distinction.

Mayor Benton asked were they able to find out when H.G. Mills is going to be moving that dirt (from the old **St. Anastasia** School site)?

City Manager Recor said several phone calls were made today. Mr. Andrews can give an update. If it does not happen, the Public Works Department is ready to go.

Commissioner Alexander asked has that soil ever been tested?

Mr. Jack Andrews, City Engineer, said that is the good dirt there. The contaminated dirt has been hauled away. There were two specific piles, they had separated them. That material has been tested, yes.

Commissioner Alexander asked can he give him a copy of that report?

Mr. Andrews said he does not have it, but he will get one for him. The contractor has told him that material has been tested.

Mayor Benton asked what did he hear from them today?

Mr. Andrews said they are aware they need to move the dirt and

in agreement with that. He asked them to go ahead and sod the area after they remove the dirt.

Mayor Benton asked it will be done by the end of the week?

Mr. Andrews said he didn't put it on this week, but the contractor is aware of the Thanksgiving event.

Mayor Benton said the sod has to settle a little bit. They are going to have thousands of people eating there on Thanksgiving day. They don't need people tripping over the sod. He will be there all day for a couple of days and he doesn't want to hear the complaints. Tell the contractor it needs to be done by the end of the week.

Mr. Andrews said he will give him that message.

Mayor Benton said on Wednesday, November 11th, Veterans Day, at the Community Center at 11:00 a.m., the City will be honoring the Veterans. He asks the public to come out to honor these Veterans and show support for these folks that have made this country what it is, who have given them such a great life in this country. They are really going to put on a show. They have the Fort Pierce Central High School Band. Come out and join them.

There will be a Special Meeting of the City Commission on Wednesday, November 4, 2009, beginning at 12:00 Noon in the City Hall, 3rd Floor Conference Room, 100 North U.S. #1, Fort Pierce, Florida, to Canvass the Returns of the Municipal Election held on November 3, 2009.

There being no further business, Mayor Benton declared the meeting adjourned at 9:25 p.m.

Adjournment.

ATTEST:

CITY CLERK

MAYOR COMMISSIONER