

**CITY OF PORT ST. LUCIE
CITY COUNCIL REGULAR MEETING MINUTES
MAY 29, 2012**

A Regular Meeting of the CITY COUNCIL of the City of Port St. Lucie was called to order by Mayor Faiella on May 29, 2012, at 7:00 p.m., at Port St. Lucie City Hall, 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.

1. MEETING CALLED TO ORDER

2. ROLL CALL

Council Members

Present:

Mayor JoAnn M. Faiella
Vice Mayor Linda Bartz
Councilwoman Michelle Lee Berger
Councilman Jack Kelly
Councilwoman Shannon M. Martin

Others Present:

Gregory J. Oravec, City Manager/
CRA Director
Roger G. Orr, City Attorney
Pam E. Booker, Senior Assistant City
Attorney
Sherman A. Conrad, Parks & Recreation
Director
Edward Cunningham, Communications Director
Joel Dramis, Building Official
Edwin M. Fry, Jr., Assistant Finance
Director
Azlina Goldstein Siegel, Assistant City
Attorney
Daniel Holbrook, Planning & Zoning Director
Renee Major, Risk Management Director
Jesus A. Merejo, Utilities Director
Karen A. Phillips, City Clerk
David K. Pollard, OMB Director
Brian E. Reuther, Police Chief
Patricia Roebeling, City Engineer
Tonya Taylor, Parks and Recreation
Facilities Administrator
Susan Williams, Human Resources Director
Margie L. Wilson, Deputy City Clerk

3. INVOCATION & PLEDGE OF ALLEGIANCE

The City Clerk gave the Invocation, and Mayor Faiella led the assembly in the Pledge of Allegiance.

4. PUBLIC TO BE HEARD**STEVE CARROLL - COMMERCIAL DENSITY IN SOUTHERN GROVE/CONTRACT OVERRUNS**

Mr. Carroll said, "I want to talk about something that was brought up about a month and a half ago at a meeting. Mr. Kelly brought up density in Southern Grove. Mr. Oravec was consulted about contracts and adjustments. On density, Mr. Kelly said that we held the line with apartments, which is true. But we also approved 3.5 million more square feet of mixed use, which could be apartments. That's enough to put three shopping malls from Palm Beach Gardens in. Density needs to be held out there, because Riverland/Kennedy will come on board. We've already projected 250,000 trips a day, but that was before this additional area. We might want to look at this. We do not want to become Broward County. The other issue was the contract overruns. If a design change originates with the City, of course they will get more money and time. But if it's an error or an oversight on their part, it's about professionalism and being a certified engineer. If they make a mistake and we need to cough up another \$20,000, no way. If they screw it up, they eat it. We can't keep doing this. It can add up to a tremendous amount of money. Mr. Oravec is doing a tremendous job. He has a lot on his plate. But it is also Mr. Oravec and Mr. Orr who will control the language in the contracts. It's important to tell these organizations to be more accurate. I don't think that's unreasonable. They need to be more professional, and we need to be sure we don't give bogus plans to start with."

The City Manager noted, "Density is the opposite of sprawl. Any time you consolidate development on one site through density you are moving in the opposite direction from sprawl. There is still the argument of what the right intensity is. That's a policy issue that the Council has to decide. On change orders, I would just say that we don't like them. We aren't flawless; we can always improve. On a \$35 million project, 1% is \$350,000. Point taken. We have room to improve, and we are. We're not perfect yet." Councilman Kelly said, "Mr. Holbrook, we talked about the CRA and Southern Grove. We talked about the density and the multiple uses. Is the residential still going to be part of the mixed use? Does it stay the same?" Mr. Holbrook answered, "The

residential density is the exact same as what it previously was. There is a cap on the number of dwelling units for the entire development. That did not change."

5. PROCLAMATIONS AND SPECIAL PRESENTATIONS

a) PROCLAMATION - BE A HERO DAY

The City Clerk read the Proclamation for Be a Hero Day. Mayor Faiella presented the Proclamation to Scott Van Duzer.

Cody Hatt said, "Maya Brown, Brittany Fray, Joseph Noble, and I will be going on this extraordinary bike ride. This is an outstanding opportunity for us. I would like to thank Brenda Stokes, Jeff Flint, Scott Van Duzer, and the Boys and Girls Club of Port St. Lucie for putting together this wonderful event. This ride is so important, because people don't realize how important it is to donate blood. We will be educating youth about blood on our way to Washington, D.C. Here are some facts. Someone needs blood every two seconds. Ninety-four percent of blood donors are registered voters. One in seven people entering the hospital need blood. One pint of blood can save three lives. Shortages of all blood types happen during the summer months and winter holidays. Four and a half million Americans will need a blood transfusion each year. A newborn baby has about one cup of blood. The rarest blood type is the one not on the shelf when it is needed by the patient. There is no substitute for human blood. If all blood donors gave three times a year, blood shortage would be a rare event. I didn't know these things until I met Scott and Brenda. Scott is so very passionate about what he does for the Van Duzer Foundation. He puts his best foot forward and does everything he can do. I would like to have Scott recognized."

Mr. Van Duzer said, "Thank you for giving us this opportunity. We want to make a difference in what we do. We're pretty effective in St. Lucie County. We're reaching out to the youth. This is St. Lucie County's finest. We will stop at 30 cities, and these kids will talk to Boys and Girls Clubs along the way. At the end we will meet with the Surgeon General. I'm extremely proud of them. Thank you. On June 12 we will be coming through St. Lucie County. We want to extend the invitation to you. We'll be at the Civic Center from 9:00 a.m. to 3:00 p.m., and then we'll be at my pizza shop in Ft. Pierce. These kids are giving up their summer vacation to ride a bicycle over 1,300 miles. I'm extremely proud." Councilman Kelly asked the City Manager to check whether the Civic Center event has been approved

administratively. The City Manager said that he will find out.

b) SPECIAL PRESENTATION - ADVANCED INSTITUTE FOR ELECTED MUNICIPAL OFFICIALS CERTIFICATE OF COMPLETION FOR VICE MAYOR BARTZ

Mayor Faiella said, "Each of us who are elected officials take a class. Vice Mayor Bartz just completed her advanced class. Congratulations."

ADDED ITEM:

c) SPECIAL PRESENTATION - BRIAN E. REUTHER MANAGER AWARD, POLICE DEPARTMENT

Mayor Faiella said, "I worked with this man for nine years. He is retiring this week. I want to thank him for his accomplishments and his dedication to the Police Department and the City of Port St. Lucie."

Chief Reuther said, "Mayor and Council, I want to thank you for this honor and recognition of my service to the Police Department and the City of Port St. Lucie. It seems like only yesterday that we started with nine officers when there were no traffic signals in the City, just flashing lights. The population was about 12,000, and the City was about 70 square miles. Today we have 264 personnel. The City is over 115 square miles. The population is 166,000. We have really come a long way. It has been an honor to serve the citizens of Port St. Lucie and to serve with the men and women of the Police Department. In 2011 we did have an increase in crime, but many cities around the state experienced a fairly significant increase. We are still the safest City in the State of Florida of the nineteen cities with over 100,000 people. We thank you for your support. Lastly, I would like to recognize my family members: my wife, Ruth Ann. This is my 35th year in law enforcement. Without her support, I couldn't do the job. My son Brian is graduating in two weeks with his Doctorate in clinical psychology. My daughter Kristen couldn't make it. She's a Human Resources Manager for an oncology corporation. I want to thank her, also."

Mayor Faiella said, "Today we had the Awards Ceremony for the Police Department. They presented a plaque to Chief Reuther, but they didn't read what was on it. I was asked if we could read that plaque tonight."

The City Clerk read, "From the Port St. Lucie Police Department, a special presentation to Brian E. Reuther, Chief of Police. Your dedication to law enforcement excellence has resulted in cutting-edge policing strategies, innovative philosophies, and significant agency awards recognized on local, national, and international levels. Throughout your 31+ years of public service, your leadership, courage, and vision for the agency has inspired teamwork and perseverance that is entwined in every aspect of the Port St. Lucie Police Department. For your exemplary leadership and selfless acts of time and dedication, your attention to detail and outstanding work ethic, the 'Manager of the Quarter' Award is renamed in your honor. The 'Brian E. Reuther' Manager Award will continue your legacy of distinguished law enforcement service by recognizing police personnel for innovation, self motivation, professionalism, and the ability to inspire teamwork. Effective with your official retirement date of May 31, 2012, General Guideline #605 will be permanently amended to reflect the 'Brian E. Reuther' Manager Award. On behalf of the members of the Port St. Lucie Police Department, thank you for your exemplary leadership and immeasurable contributions. Congratulations on your retirement!"

Chief Reuther said, "I would like to thank everyone in the audience for recognizing me. I appreciate it."

Councilman Kelly said, "I was on the first Police Advisory Board in 1995-96, so I've watched Chief Reuther work all these years. There are a lot of storms that we weather in government and policing. We've been through a lot. Brian has always weathered those storms. He has always been professional and a gentleman. He has a great attitude. It's a great example for the rest of the Police Department. I always felt safe knowing that Brian was there. Those are big shoes to fill. You're my hero."

6. ADDITIONS OR DELETIONS TO AGENDA AND APPROVAL OF AGENDA

Councilwoman Martin **moved** to approve the Agenda. Councilman Kelly **seconded** the motion. The City Clerk restated the motion as follows: for approval of the Agenda. The **motion passed unanimously** by roll call vote.

7. APPROVAL OF CONSENT AGENDA

a) APPROVAL OF MINUTES

b) **MINOR SITE PLAN**, LOCATED EAST OF DARWIN BOULEVARD, AT THE NORTHWEST CORNER OF KESTOR DRIVE AND N. WAKEFIELD CIRCLE,

CONSTRUCTION OF A 7,037 SQUARE-FOOT SINGLE STORY CHURCH, P12-044, EGLISE HAITIENNE BETHANIE, INC, PLANNING AND ZONING

c) REQUEST FOR RELEASE OF UNITY OF TITLE BY BILTMORE CONDOMINIUM ASSOCIATION, INC., FOR LOTS 9, 10, 27 AND 28, BLOCK 629, PORT ST. LUCIE SECTION 13, LEGAL DEPARTMENT

Vice Mayor Bartz **moved** to approve the Consent Agenda. Councilwoman Berger **seconded** the motion. The City Clerk restated the motion as follows: for approval of the Consent Agenda. The **motion passed unanimously** by roll call vote.

8. SECOND READING, PUBLIC HEARING OF ORDINANCES

a) ORDINANCE 12-25, AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A SECOND AMENDMENT TO SITE LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND CROWN CASTLE SOUTH LLC; PROVIDING AN EFFECTIVE DATE

The City Clerk read Ordinance 12-25 aloud by title only. Mayor Faiella opened the Public Hearing. There being no comments, Mayor Faiella closed the Public Hearing. Councilwoman Martin **moved** to approve Ordinance 12-25. Councilman Kelly **seconded** the motion. The City Clerk restated the motion as follows: for approval of Ordinance 12-25. The **motion passed unanimously** by roll call vote.

b) ORDINANCE 12-26, SUPPLEMENTING ORDINANCE NO. 94-29 OF THE CITY ENACTED ON JUNE 27, 1994, AS AMENDED AND SUPPLEMENTED; AUTHORIZING THE ADVANCE REFUNDING OF A PORTION OF THE OUTSTANDING UTILITY SYSTEM REVENUE BONDS, SERIES 2003 AND A PORTION OF THE OUTSTANDING UTILITY SYSTEM REVENUE BONDS, SERIES 2004; PROVIDING FOR THE ISSUANCE OF NOT EXCEEDING \$30,000,000 UTILITY SYSTEM REFUNDING REVENUE BONDS, SERIES 2012, IN CONJUNCTION THEREWITH; PROVIDING FOR THE PAYMENT OF THE SERIES 2012 BONDS FROM THE PLEDGED REVENUES PROVIDED HEREIN; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AUTHORIZING THE APPROPRIATE OFFICERS OF THE CITY TO PROCEED TO DEVELOP NECESSARY DOCUMENTS TO SELL THE SERIES 2012 BONDS AT NEGOTIATED SALE; AND PROVIDING AN EFFECTIVE DATE

The City Clerk read Ordinance 12-26 aloud by title only. Mayor Faiella opened the Public Hearing. There being no comments, Mayor Faiella closed the Public Hearing. Vice Mayor Bartz **moved** to approve Ordinance 12-26. Councilman Kelly **seconded** the motion. The City Clerk restated the motion as follows: for approval of Ordinance 12-26. The **motion passed unanimously** by

roll call vote.

c) ORDINANCE 12-27, PROVIDING FOR INTERFUND BORROWING; ESTABLISHING THE METHODOLOGY FOR SETTING INTERFUND LOAN INTEREST RATES; PROVIDING AN EFFECTIVE DATE

The City Clerk read Ordinance 12-27 aloud by title only. Mayor Faiella opened the Public Hearing. There being no comments, Mayor Faiella closed the Public Hearing. Councilwoman Berger **moved** to approve Ordinance 12-27. Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: for approval of Ordinance 12-27. The **motion passed unanimously** by roll call vote.

9. OTHER PUBLIC HEARINGS

There was nothing scheduled for this item.

10. FIRST READING OF ORDINANCES

a) ORDINANCE 12-28, PROVIDING FOR AMENDMENTS TO THE PORT ST. LUCIE CITY CODE REGARDING THE CONSOLIDATION OF THE ENGINEERING AND PUBLIC WORKS DEPARTMENTS; PROVIDING FOR THE REPEAL OF PORT ST. LUCIE CITY CODE SECTIONS 32.80, 32.81, AND 32.82 (ARTICLE IX PUBLIC WORKS / UTILITIES DEPARTMENT); AMENDING SECTION 51.02(c)(3), BY SUBSTITUTING "ENGINEERING DEPARTMENT" FOR "PUBLIC WORKS DEPARTMENT;" AMENDING SECTION 97.03(c) BY DELETING REFERENCE TO THE PUBLIC WORKS DEPARTMENT; AMENDING SECTION 97.33(a) BY SUBSTITUTING "ENGINEERING DEPARTMENT" FOR "PUBLIC WORKS DEPARTMENT;" AMENDING SECTION 99.05(e), BY SUBSTITUTING "ENGINEERING DEPARTMENT" FOR "PUBLIC WORKS DEPARTMENT;" AMENDING SECTION 99.09, BY SUBSTITUTING "ENGINEERING DEPARTMENT" FOR "PUBLIC WORKS DEPARTMENT;" AMENDING SECTION 114.05(g)(3) BY DELETING REFERENCE TO PUBLIC WORKS; AMENDING CHAPTER 156, APPENDIX C, BY SUBSTITUTING "ENGINEERING" FOR "PUBLIC WORKS;" AMENDING SECTION 155.08(C)(4), BY SUBSTITUTING "ENGINEERING DEPARTMENT" FOR "PUBLIC WORKS DEPARTMENT;" AMENDING SECTION 158.236(A), BY DELETING REFERENCE TO PUBLIC WORKS DEPARTMENT; AMENDING SECTION 160.84(B) BY DELETING REFERENCE TO THE PUBLIC WORKS DEPARTMENT; PROVIDING AN EFFECTIVE DATE

The City Clerk read Ordinance 12-28 aloud by title only. Mayor Faiella said, "By doing this we are altering the departments, because we are combining them. Correct?" The City Attorney answered, "Yes, ma'am. This is a follow-up ordinance. We had already started down this path. This is picking up some issues

that were pointed out in the codification process. If I may, there are three other minor changes that will be made before the second reading. On Page 1 of 6, Section 52.02 is cited; it should be 51.02. On Page 3 of 6, we should be striking the reference to Utilities in Section 5 and Section 6. The first ordinance combined and eliminated the Public Works Department. I had made reference in there that wherever it was Public Works before it would now be Engineering. When the code company got ready to codify it, they started picking other sections and asking how we wanted them to handle it. I wasn't comfortable saying it would be handled administratively, because I think I covered it in the first ordinance. It was more appropriate for us to search the Code, pull these out, bring them to the Council in the form of this ordinance, and then send it back to the code company so they will be clear on the changes to make."

Councilwoman Berger said, "We've had a chance to live with this for a little while. This is our first consolidation. From a tactical standpoint it's working very well. I like everything about it except calling it the Engineering Department. There is a lot of history that goes with a municipality having a Public Works Department. Eliminating that verbiage really does change historically the way we like to look at ourselves. When you look at history not just at the City level but at the national level, Public Works has a lot to do with how we make people's quality of life better. Almost a year later, I'm glad we got some time to make some alterations. But if I could get the Council to entertain this idea, how about we just call it the Public Works Department? The engineers work for the Public Works Department. I think that would be a better use of terminology for a department name."

Councilwoman Martin asked, "Will we have to change the ordinance?" The City Attorney replied in the affirmative and said, "If you want to go that route, it's a change in nomenclature. We'll have to go back through the Code and pick all those up. If that's what the Council wants to do, I'll take that direction. I would suggest not to go forward with this ordinance, but to let us go back through the Code for a rewrite." Councilwoman Berger said, "It's just semantics. It's the same department. Nothing is changing except the words on a page. But the term Public Works is one that historically means a lot. To me, engineering is a good profession, but they are here to serve the public needs." Mayor Faiella said, "Every time I thought about it, it went under Public Works anyway mentally." Councilwoman Martin commented that she doesn't have a problem with it. Councilman Kelly said, "I'm ambivalent. It doesn't

matter." Vice Mayor Bartz said that she agrees. The City Attorney advised, "Consider this ordinance withdrawn. We'll do it again."

b) ORDINANCE 12-29, AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A SITE LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND PJ DEVELOPMENT, LLC; PROVIDING AN EFFECTIVE DATE

The City Clerk read Ordinance 12-29 aloud by title only. Councilman Kelly **moved** to approve Ordinance 12-29. Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: for approval of Ordinance 12-29. The **motion passed unanimously** by roll call vote.

11. RESOLUTIONS

a) RESOLUTION 12-R46, PUBLIC HEARING, GRANTING A SPECIAL EXCEPTION USE PROVIDED FOR IN SECTION 158.124(C)(11) TO ALLOW AN AUTOMOBILE FUEL SERVICES STATION IN THE CG (GENERAL COMMERCIAL) ZONING DISTRICT FOR VALENTINE PROPERTIES, LLC AND PVD DEVELOPMENT (RACETRAC), LEGALLY DESCRIBED AS LOTS 7-10 AND 27-30, BLOCK 704, PORT ST. LUCIE SECTION 18, P11-167; PROVIDING AN EFFECTIVE DATE

The City Clerk read Resolution 12-R46 aloud by title only. Mayor Faiella opened the Public Hearing.

MIKE BRILL said, "My family and I have owned Rivergate Chevron for 22 years. We've had many ups and downs, like any small business. Believe it or not, we only make about seven cents a gallon on gas. Despite the difficulties I love this business, and I do what I can for my neighbors and the community. We had a hurricane a few years ago, and the Port St. Lucie police were without gas. They asked if they could charge fuel, and of course we agreed. We also kept extra fuel in reserve just for them. We have given the police thousands of free carwashes, sodas and coffee over the years. We also supply the City with fuel when their pumps are out of order. A Racetrac gas station will pump 300,000 to 400,000 gallons a month, with 6,000 to 8,000 cars a day into and out of that facility. This will cause an excess of traffic and possible accidents. If they are allowed to build, they will put two to three gas stations out of business, and one of them might be mine. Please vote no."

VINCE DRISCOLL said, "I'm a resident of Port St. Lucie. I'm here because I heard about this project about two weeks ago. People

in this area didn't even know about this project. This fell out of the sky. Imagine a 24-pump gas station at the corner of Port St. Lucie Boulevard and Bayshore. It's unimaginable how you could allow this to happen. Racetrac has been accused of and practices predatory pricing. In Daytona Beach they justified their pricing by saying that they only put a few people out of business and it didn't qualify under the statute. One business is one too many. I did research on granting Special Exceptions. In order for you to vote yes on this with no public input, you have to be convinced that adequate ingress and egress may be obtained to and from the property with particular reference to automobile and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency. You can draw that up any way you want, but you can't meet that standard. You also have to be convinced that the proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of the hours of operation, or because of vehicular movement, noise, fume generation, or type of physical activity. It can't meet that standard, so there is no way that this Exception should be granted. Picture a 24-pump station at that location. I don't know how the Planning and Zoning Board ever approved it. I would ask that you vote no."

JOHN KELLY said, "I reside at 237 SW Chapman Avenue. Thank you for allowing me to speak tonight. I would ask on behalf of myself and my family that Council vote no on this. I haven't been involved in a lot of this until now, so I apologize for not having more information. I understand there have been all kinds of Exceptions requested by Racetrac. My first concern is safety. I see many of my neighbors here. Chapman Avenue, which runs parallel to Port St. Lucie Boulevard, has become a thoroughfare for the traffic overflow on Port St. Lucie Boulevard. People cut through the neighborhood to and from Bayshore. They cut down Crescent, Trenton, and Wayne where my children play. I'm sure you're aware of the accident on Chapman Saturday night. A young woman was killed two doors from my residence. That was at an hour when there is not a lot of traffic. Now we are proposing to increase the traffic. This business specifically caters to automobiles. It will increase the traffic and congestion and the number of accidents. You cannot get out onto Port St. Lucie Boulevard coming from Wayne or Trenton very easily. Some time ago the turn lane at Trenton was closed due to safety, I believe. Now there is an increased amount of traffic trying to do U-turns at Bayshore. On many occasions coming out onto Wayne I have had to get to that area just to access Port St. Lucie Boulevard to head east. Traffic backs up tremendously in the

afternoon hours. There is about 1,500 to 2,000 feet of stopped traffic. Vehicles entering a Racetrac with 24 pumps and a convenience store, catering to 6,000 to 8,000 vehicles per day, will increase that congestion. There will be more accidents with people trying to get to the U-turn to head east. With 24 pumps they are looking to cater to a large volume of vehicles. How many gas stations do we need in that general area? Within a stone's throw you have a BP, a Shell, and a Chevron. It's a very big concern for me and for my family. My house is immediately behind the proposed site. You can stand in my front yard and look over the existing wall, which in my opinion is not sufficient separation between the residential and the commercial areas. There is a lot of foot traffic between the existing privacy walls. The walls by the newer businesses are higher. The existing wall now is about 5.5 feet. It gives us no privacy. Now the proposal is to put in a 24/7 gas station. That's not even considering the traffic coming down Chapman to bypass that area due to the congestion. It's a very big concern for my family and my neighbors. I would respectfully request that the City Council vote no on this proposal. I'm not opposed to a business. I'm opposed to this type of business because of what it will bring to the area."

ALAAS HASAN said, "I'm also a Chevron owner at Cameo. We always welcome new businesses. Most of us here are mom and pop shops. We're name brand gas stations, but we're not corporate. This will be open 24 hours. There is no way any of us can compete with the gas prices they will set. They mark their gas down about 20 cents below what we can afford. We will automatically start to lose money. Each one of us accommodates our neighborhood. To allow a 6,000 foot convenience store. . . . Most of us are 3,000 foot or smaller. I would like to say vote no, just to keep us alive and keep feeding the community."

BETTY BRILL said, "I've been a member of the community and a business owner for over 20 years. There has always been a strong effort by the City to keep the Port St. Lucie corridor a neighborhood type of corridor. Most of the businesses have historically catered to the neighborhoods. I don't know why we would even think of putting in a business that isn't appropriate. I'm not saying no to Racetrac. I'm saying no to Racetrac there. What is on the corner of Bayshore and Port St. Lucie Boulevard? A gas station. It was originally a Chevron station. Why is it vacant? Because it's not an appropriate location. You can't get in and out of there easily. This is only a few feet away from that. Why would we put in a larger gas station when that station couldn't make it? Racetrac has a good

business model for US 1 or a major road. I do believe that voting no would be the right thing to do for the people of Port St. Lucie and for the businesses on Port St. Lucie Boulevard who have been here through thick and thin. I ask you to say no."

GEORGE TYNES said, "I'm a resident of Port St. Lucie. We are all aware of what we put into our bodies. The reason Racetrac gas is so cheap is the caliber of gas. In the long run it will cost us more to maintain our vehicles. I don't use Racetrac. Think about it in the long term. I saw some nice vehicles parked outside. They will be in the shop. We collected over 518 signatures in a short period of time. We need to watch what we put into our vehicles."

JASON ARIA said, "I live directly behind the proposed gas station at 245 Chapman Avenue. I would like you to vote no. There is too much congestion in the area already. We don't need another gas station."

There being no further comments, Mayor Faiella closed the Public Hearing and stated, "I'm going to vote this down. I'll give you the reasons. We do have too many gas stations that are causing blight that are closed. We have one on Bayshore and one on Gatlin. We have one on US 1 and many more. It happens that there are too many. We had one in St. Lucie West that asked us to change the hours because he was losing business. I am not against Racetrac. Just pick another location. There are too many right there. Where this is going is less than 400 feet from BP, I was told. I don't know if I have to get with Legal on this. In the future, Mr. Oravec, Mr. Orr, is there a way we can have an ordinance in reference to the separation of one gas station from another?" The City Attorney said that they can look at it. Mayor Faiella continued, "The closed station on Bayshore looks awful, and it's right by the turnpike. I am not supporting this item."

Councilman Kelly said, "I'm not going to support this, either. I'm being consistent with these things. I don't give out variances or Special Exceptions lightly. We have ordinances and zoning designations for reasons. I'm not voting against it for any of the reasons said at the podium. The reason is that this is a Special Exception. People forget that they are special. If we're going to give one, you have to show me the hardship we're causing. There is no hardship. All we're going to do is take that property and increase its value 200 or 300% and put a gas station there. Is it appropriate? The problem is that you have to give the City a benefit if I'm going to give this. In this case the benefit may be cheaper gas. I'm sure their octane is

just as high as they say it is. If you're going to give me 70 new jobs, I have to think about that. They might give us that, and we lose two other stations with 110 jobs. There's no benefit. We constantly get calls about the gas station on the corner that has been empty for over three years. It's the gateway to the City. We constantly have to pick up litter there. If we put Racetrac in it will exacerbate that situation. There is no benefit, so I won't support this. Show me the benefit." Mayor Faiella noted, "Did you see the station on US 1 at Walton where the top keeps falling off the sign?" Councilman Kelly answered, "I hear about it all the time. We did this eight or nine years ago in St. Lucie West and I was against it. As soon as that gas station went in, another went out of business. We had two out of business for a while. I'm being consistent. There is no benefit."

Councilwoman Martin said, "I have a question for Daniel. I did attend the Planning and Zoning Board meeting when this went through. There were no issues from Traffic Engineering or the Police Department as to an increase in accidents. Correct?" Mr. Holbrook answered, "The Planning and Zoning Board reviewed this item, as well as the Site Plan Review Committee. Access is one of the items which is considered, as well as the level of service on Port St. Lucie Boulevard. One of the unique things about this location is that Port St. Lucie Boulevard is an FDOT road, not a City road. Ultimately, access will have to be granted by the state, versus the City."

Brian Oats, Racetrac Petroleum, asked for the application to be tabled or withdrawn to a future meeting.

Travis Walker, 10380 SW Village Center Drive, Port St. Lucie, Florida, asked, "Can I have a show of hands as to how many people are here in opposition to this Racetrac? All of these people took time away from their jobs. They came home after a long day at work. They have their children being watched. They have had stress and anxiety over this issue for weeks. Tabling this item will not change the fact that there will be a high volume right in/right out there. It will not change the fact that the applicant had the opportunity to meet with the neighbors. Now he wants to table the item simply because there is a lot of opposition. Tabling the item will not cause a change in the high speed traffic along Chapman that will occur. The residents have made their way here to have their voice heard in opposition. They spent their time, energy, and gas to get here tonight. None of that will change. They will have to go over the same thing if this item is tabled. We respectfully request on

behalf of the residents of Port St. Lucie that you vote no tonight."

Mr. Oats said that they would like the opportunity to have their legal representatives present. Councilman Kelly said, "He asked us to table it and to pull the application. Which is it, sir?" Mr. Oats replied that they would like to table it. Mayor Faiella said, "I don't understand. I'm confused. Why isn't your attorney present tonight?" Mr. Oats replied, "Our attorney isn't available this evening. I'm sorry." Mayor Faiella said, "I don't wish to table this."

Councilwoman Berger said, "I appreciate that you want to move forward with this. I agree. But it is important for us to get our verbiage correct. It's a Special Exception. The reason I will not support this is because of its non-compatibility with the neighborhood. Knowing that it's not a City road, we need to make a decision specifically on the language. I won't support this not because of traffic, but because of compatibility. I hope you join me on that."

Vice Mayor Bartz said, "To the gentleman who owns the Chevron, I have to say that I like healthy competition. I understand where you're coming from, but that's not as much the issue to me. What is more the issue is the health and safety of those neighbors around there. I believe Racetrac had ample opportunity to talk to everyone and get those feelings. Traffic is traffic. Years ago I was in a business that built and serviced gas stations. I know what you guys are doing and what it's like. I also know that when you have a closed station it is tough to get it re-opened because of leakage or anything with the tanks. So when we talk about blight and stations not opening up, there is a lot involved in that. I'm not going to support this, but not because it's competition for you. I do have a concern about the compatibility with that area. I won't be supporting this tonight."

Mayor Faiella said, "Mr. Orr, they are requesting to table this, but we are requesting to make a decision tonight." The City Attorney advised, "It was duly noticed. He can withdraw the application, but then he would have to start from scratch. But it's at the Council's pleasure as to whether or not to table it." Councilman Kelly **moved** to deny Resolution 12-R46. Vice Mayor Bartz **seconded** the motion. The City Clerk restated the motion as follows: to deny Resolution 12-R46. The **motion passed unanimously** by roll call vote. Councilwoman Martin added, "It's not because I don't believe in free enterprise. I absolutely do."

But when it comes to health, safety, and welfare, I have to put that paramount. That is my reason."

The City Attorney said, "As a follow on to an earlier question, does the Council want to give direction that we look into a separation between these types of facilities?" Councilwoman Martin said, "I'm not in favor of that. It impedes free enterprise." Vice Mayor Bartz said, "Once you start doing that, you have to look at all the businesses. Management does that in shopping centers. When they rent the spots they guarantee that if they have one bakery, they won't have another." Councilwoman Martin added, "CVS and Walgreens are competitors. That's free enterprise. Are we going to regulate every business? That's why we have zoning and regulations. People have to apply for their zoning. We have that process. If we do that, it would be over-regulating and impeding free enterprise." Councilwoman Berger said, "I agree. That's why we have the Special Exception option."

b) RESOLUTION 12-R47, PUBLIC HEARING, GRANTING A SPECIAL EXCEPTION USE PROVIDED FOR IN SECTION 158.124(C)(12) TO ALLOW AN RETAIL CONVENIENCE STORE IN THE CG (GENERAL COMMERCIAL) ZONING DISTRICT FOR VALENTINE PROPERTIES, LLC AND PVD DEVELOPMENT (RACETRAC), LEGALLY DESCRIBED AS LOTS 7-10 AND 27-30, BLOCK 704, PORT ST. LUCIE SECTION 18, P11-168; PROVIDING AN EFFECTIVE DATE

The City Clerk read Resolution 12-R47 aloud by title only. The City Attorney advised, "I would point out that this is an entirely different operation. This is for a convenience store only. They can have a convenience store without the fuel isles."

Mayor Faiella opened the Public Hearing.

VINCE DRISCOLL said, "I don't think this can be divorced from the other project. I would ask that you vote no."

JOHN KELLY said, "I'm not opposed to businesses in the area. I agree with you completely on that. However, if something like that were to be approved, my request would be that some consideration be given to the privacy wall that is existing. I know the proposed plan was to keep the wall. I would ask that if any business is approved that the proposed plans increase the privacy wall to be consistent with the newer businesses around there. That would give the residents the privacy we would like to have from the commercial side of things." Councilwoman Berger noted that it would have to be.

There being no further comments, Mayor Faiella closed the Public Hearing. Councilman Kelly said, "They are asking for a Special Exception for a convenience store. The convenience store doesn't need a Special Exception." The City Attorney clarified, "A convenience store can operate without a fuel isle. It still needs a Special Exception." Mr. Holbrook explained, "A Special Exception is needed for a convenience store as well as the fuel pumps. That's why there are two applications and two resolutions." Councilman Kelly **moved** to deny Resolution 12-R47. Councilwoman Berger **seconded** the motion. Vice Mayor Bartz asked, "If that were approved would the wall be higher?" Mr. Holbrook responded, "Yes, ma'am. Code requires that the wall be six feet above the finished floor elevation. The original wall is well below six feet. I would expect the finished floor elevation would be higher if they do construct." The City Clerk restated the motion as follows: to deny Resolution 12-R47. The **motion passed unanimously** by roll call vote.

c) RESOLUTION 12-R48, PUBLIC HEARING, GRANTING A SPECIAL EXCEPTION USE PROVIDED FOR IN SECTION 158.126 (D) (4) TO ALLOW A WIRELESS COMMUNICATION TOWER IN THE CS (SERVICE COMMERCIAL) ZONING DISTRICT FOR PJ DEVELOPMENT, PORT ST. LUCIE SECTION 28, BLOCK 238, LOTS 11 AND 12, P12-031; PROVIDING AN EFFECTIVE DATE

The City Clerk read Resolution 12-R48 aloud by title only. Mayor Faiella opened the Public Hearing. There being no comments, Mayor Faiella closed the Public Hearing. Councilwoman Martin **moved** to approve Resolution 12-R48. Councilwoman Berger **seconded** the motion. The City Clerk restated the motion as follows: for approval of Resolution 12-R48. The **motion passed unanimously** by roll call vote.

d) RESOLUTION 12-R49, PUBLIC HEARING, GRANTING A SPECIAL EXCEPTION USE FOR A RECREATIONAL AMUSEMENT FACILITY (DANCE AND ACROBATIC STUDIO) IN WI (WAREHOUSE INDUSTRIAL) ZONING DISTRICT PER SECTION 158.135 (C) (3) FOR TUCKPOINT BUSINESS PARK, LEGALLY DESCRIBED AS LOTS 1 AND 2, ST. LUCIE WEST PLAT 166 (P12-041); PROVIDING AN EFFECTIVE DATE

The City Clerk read Resolution 12-R49 aloud by title only. Mayor Faiella opened the Public Hearing. There being no comments, Mayor Faiella closed the Public Hearing. Councilwoman Berger **moved** to approve Resolution 12-R49. Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: for approval of Resolution 12-R49. The **motion passed unanimously** by roll call vote.

e) **RESOLUTION 12-R50, PUBLIC HEARING,** GRANTING A SPECIAL EXCEPTION USE FOR A RECREATIONAL AMUSEMENT FACILITY (MARTIAL ARTS STUDIO) IN CG (GENERAL COMMERCIAL) ZONING DISTRICT PER SECTION 158.124 (C) (16) FOR DEPOT PLAZA, LEGALLY DESCRIBED AS PARCEL C, ST. LUCIE WEST PLAT 165 (P12-042); PROVIDING AN EFFECTIVE DATE

The City Clerk read Resolution 12-R50 aloud by title only. Mayor Faiella opened the Public Hearing. There being no comments, Mayor Faiella closed the Public Hearing. Councilwoman Berger **moved** to approve Resolution 12-R50. Councilman Kelly **seconded** the motion. The City Clerk restated the motion as follows: for approval of Resolution 12-R50. The **motion passed unanimously** by roll call vote.

f) **RESOLUTION 12-R51, PUBLIC HEARING,** GRANTING A SPECIAL EXCEPTION USE PROVIDED FOR IN SECTION 158.126 (D) (6) TO ALLOW A RECREATIONAL AMUSEMENT FACILITY IN THE CS (SERVICE COMMERCIAL) ZONING DISTRICT FOR CUPCAKE FITNESS, LLC, PORT ST. LUCIE SECTION 27, BLOCK 72, LOTS 6 THROUGH 9, P12-043; PROVIDING AN EFFECTIVE DATE

The City Clerk read Resolution 12-R51 aloud by title only. Mayor Faiella opened the Public Hearing. There being no comments, Mayor Faiella closed the Public Hearing. Vice Mayor Bartz **moved** to approve Resolution 12-R51. Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: for approval of Resolution 12-R51. The **motion passed unanimously** by roll call vote.

g) **RESOLUTION 12-R59,** SUPPLEMENTING ORDINANCE 12-26 OF THE CITY OF PORT ST. LUCIE, FLORIDA, ENACTED ON MAY 29, 2012, WHICH AUTHORIZED THE REFUNDING OF A PORTION OF THE CITY'S OUTSTANDING UTILITY SYSTEM REVENUE BONDS, SERIES 2003 AND A PORTION OF THE CITY'S OUTSTANDING UTILITY SYSTEM REVENUE BONDS, SERIES 2004; PROVIDING FOR THE SALE AND ISSUANCE OF NOT EXCEEDING \$30,000,000 UTILITY SYSTEM REFUNDING REVENUE BONDS, SERIES 2012, IN CONNECTION THEREWITH; PROVIDING FOR THE SALE OF THE SERIES 2012 BONDS AT NEGOTIATED SALE; PROVIDING FOR THE PAYMENT OF THE SERIES 2012 BONDS FROM CERTAIN PLEDGED REVENUES; AUTHORIZING THE CITY MANAGER TO DETERMINE THE DATE OF SALE OF, AND THE DETAILS OF THE SERIES 2012 BONDS; APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE CONTRACT; APPROVING THE FORM AND AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT; APPOINTING AN ESCROW AGENT; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN

ESCROW DEPOSIT AGREEMENT; AUTHORIZING THE OFFICERS AND OFFICIALS OF THE CITY TO EXECUTE AND DELIVER THE SERIES 2012 BONDS AND SUCH AGREEMENTS AND CERTIFICATES AS ARE NECESSARY AND DESIRABLE IN CONNECTION WITH THE SALE, ISSUANCE AND DELIVERY OF THE SERIES 2012 BONDS; AUTHORIZING THE CITY MANAGER TO OBTAIN A CREDIT FACILITY IN RESPECT OF THE SERIES 2012 BONDS AND TO ENTER INTO ANY AGREEMENTS NECESSARY IN CONNECTION THEREWITH; AUTHORIZING THE TAKING OF ALL OTHER ACTION AND THE EXECUTION OF ALL OTHER AGREEMENTS AND DOCUMENTS NECESSARY TO THE DELIVERY OF THE SERIES 2012 BONDS; AND PROVIDING AN EFFECTIVE DATE

The City Clerk read Resolution 12-R59 aloud by title only. Vice Mayor Bartz **moved** to approve Resolution 12-R59. Councilman Kelly **seconded** the motion. The City Clerk restated the motion as follows: for approval of Resolution 12-R59. The **motion passed unanimously** by roll call vote.

h) RESOLUTION 12-R60, AUTHORIZING THE CITY MANAGER AND HIS STAFF TO ENTER INTO AND EXECUTE A PUBLIC TRANSPORTATION JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION CONCERNING TRANSIT INFRASTRUCTURE IMPROVEMENTS ALONG THE US 1 CORRIDOR BETWEEN MARTIN AND ST. LUCIE COUNTIES, PROVIDING AN EFFECTIVE DATE

The City Clerk read Resolution 12-R60 aloud by title only. Councilwoman Martin **moved** to approve Resolution 12-R60. Councilman Kelly **seconded** the motion. The City Clerk restated the motion as follows: for approval of Resolution 12-R60. The **motion passed unanimously** by roll call vote.

12. UNFINISHED BUSINESS

a) SELECTION OF SEPTEMBER 11 MONUMENT DESIGN VOTING RESULTS, PARKS AND RECREATION

The City Manager stated, "As the Council is aware we had a community-driven design process that was spearheaded by some wonderful volunteers who will be at the mike momentarily. It came to our attention after we went through the first iterations of design that the grass that was meant to capture Pennsylvania. . . . At the national park only the family members are allowed to walk on the grass. As a result we wanted to recast that. We have three wonderful concepts that are based on the first winning design that pays tribute to the Pennsylvania site in a different and more appropriate manner. We have a number of our team here who volunteered to do a lot of work. We can see our winner. After we get to the design, we have 105 days until

September 11."

Raymond Chladny said, "Bill Hughes and I are with the architectural firm Building Innovations. It is an honor to be a part of this. Concept B was chosen. We designed three different grass concepts and B-1 was the choice. If you approve this tonight, within two weeks we will have construction drawings completed and being permitted. Construction can then begin." David Anderson and Jeff Baker of Castle Contractors introduced themselves. Mr. Chladny said that they will do construction.

Dennis McKenna said, "I came before you before and told you the steel would roll in, and it wouldn't cost the City a dime. Here's the start of it. I want to thank the Council for backing us up and permitting us to have this beautiful memorial placed in Port St. Lucie. I want to commend all of you for helping us. On behalf of the USA 911 First Responders, we want to thank the Council."

The City Manager said, "Concept B-1 received the most votes. This features the green granite on the lip of the fountain. It incorporates all of the sites where tragedy befell the nation that day. It pays tribute to the Twin Towers. It has the Pentagon and Pennsylvania. If it is Council's pleasure, we will move forward with Concept B-1." Mr. McKenna added, "There was a lot of input in putting this together. We had Mr. Charles Guapé, a Port St. Lucie resident, who lost his son. He drew his vision of what he would like in remembrance of his son. The architect and engineer did not see Mr. Guapé's drawing, and theirs was exactly the same thing. Mr. Christopher McKnight, a New York Fire Department captain, lost a lot of his guys. He went to the Freedom Towers Memorial and brought back the feeling of the water over the etched names. He suggested some green in remembrance of Pennsylvania. There was a lot of input. Rosemary Cain lost her son George. She had input on what was available for the public to pick. We were able to share with the parents across the United States. The people at the Manhattan memorial are aware of what we're doing. Thank you." Mayor Faiella said, "May White, a volunteer in the Police Department, who lost her daughter, also gave input."

Mr. Chladny said, "Bill Hughes did the renderings. He took the time to make the Pentagon oriented the right way, and it is to scale. The footprint of the World Trade Center actually fits inside the Pentagon. It's all exactly to scale." Mr. McKenna noted, "Mr. Chladny drew the design for the Freedom Tower. It was accepted, but there was some negotiation that wasn't agreed

upon. It's a pleasure working with the City." The Council thanked the participants.

Councilman Kelly **moved** to approve Design B-1. Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: for approval of Concept B-1. The **motion passed unanimously** by roll call vote.

The City Manager said, "It's going to take a whole team of volunteers. Ray and Bill spoke. Castle Contractors, Inc., we know about. Steven Doyle of Culpepper & Terpening will be helping. Summit Engineering is on board. If anyone out there thinks they can lend expertise, I would ask them to call Tonya Taylor in Parks and Recreation. It's 105 days." Mayor Faiella asked, "Is it safe to say that everyone is on their own time and everything is being sponsored?" The City Manager answered, "It is a safe statement. That's why I think it is so important to recognize the volunteers." Mr. Chladny added, "Reprographics Solutions did all the boards for free." The City Manager noted, "This is Team Port St. Lucie in action."

13. NEW BUSINESS

a) PLANNING AND ZONING BOARD, APPOINTMENT OF BRIAN BATTLE AND NICOLE MACKENZIE TO THE AT-LARGE POSITIONS VACATED BY CHARLES ROOKSBERRY AND BRYAN GARDNER, WITH TERMS EXPIRING MAY 2016, AND THE APPOINTMENT OF CHRISTINE SKURKA TO FILL THE ALTERNATE MEMBER POSITION VACATED BY BRIAN BATTLE, WITH THE TERM EXPIRING MAY 2014, PLANNING & ZONING DEPARTMENT

The City Manager said, "This item would appoint the two at large positions to Brian Battle and Nicole MacKenzie. (Clerk's Note: The appointments include Christine Skurka as Alternate.) Councilwoman Berger **moved** to approve Item 13 a). Vice Mayor Bartz **seconded** the motion. The City Clerk restated the motion as follows: for approval of the board member appointments for Item 13 a). The **motion passed unanimously** by roll call vote.

b) MINOR SITE PLAN APPLICATION, CROSSTOWN TOWER, LOCATED ON THE EAST SIDE OF BILTMORE STREET BETWEEN GROVE AND EYERLY AVENUES, TO LEASE A 4,000 SQUARE-FOOT STORAGE YARD TO PJ DEVELOPMENT TO CONSTRUCT A 150' MONOPOLE WIRELESS COMMUNICATION TOWER, P12-032

The City Manager said, "By a vote of five to one the Planning and Zoning Board recommended approval of this Site Plan application. The minutes are enclosed. Staff recommends

approval." Councilwoman Martin **moved** to approve Item 13 b). Councilman Kelly **seconded** the motion. The City Clerk restated the motion as follows: for approval of Item 13 b). The **motion passed unanimously** by roll call vote.

c) MELVIN BUSH CONSTRUCTION, INC., AMENDMENT #22, METAL CULVERT PIPE REPLACEMENT FOR LYNATE DRIVE, #20070008, \$61,344.60 PLUS A \$10 INDEMNIFICATION FEE, PROJECT IS BEING ALLOWED 20 CALENDAR DAYS, FUNDED BY CDBG, FUND 118-5900-5340, ENGINEERING

The City Manager stated, "We have a sidewalk project ongoing on Lyngate Drive. As part of this project, it became clear that a metal culvert pipe needed to be replaced. The contractor that was conducting the sidewalk project gave us a bid of approximately \$90,000. Therefore staff solicited a bid from Melvin Bush Construction, Inc. It came in significantly under. Additionally, the contractor is familiar with all of the federal Davis-Bacon provisions that meet the CDBG requirements. therefore, staff recommends approval of this contract Amendment #22 with Mel Bush, Inc." Councilman Kelly **moved** to approve Item 13 c). Councilwoman Martin **seconded** the motion. Councilwoman Berger said, "The group that is building this particular sidewalk is not Mel Bush's group. Typically that organization does build the majority of our sidewalks. We selected somebody who came in with a good bid that was timely. When we needed something along the way, were they not able to fulfill it?" The City Manager explained, "This would have been a change order to the CDBG sidewalk contractor's contract. However, when they gave us a price, it was about 50% higher than the current bid. That caused us to seek a bid from our City contractor. Under Contract 20070008, Mel Bush replaces metal culvert pipes across the City. They are our drainage contractor. We went to them for a price; that's why we have them on a kind of continuing services contract. They gave us a good price that was significantly less. That's why you have the recommendation. We could have stayed with the original contractor and done a Change Order, but it would have cost us \$30,000 more." Councilwoman Berger said, "I'm glad we didn't. I would hope that as they get new contracts they would make sure that each part of that contract is as low as possible. This organization has decided that it was in their best interests to offer us something 50% higher, so we ended up having to go back to Mel Bush again to ask for a better bid. I am not selecting one person over another, but I want to make a conscious effort to put out there that again we have someone who has been dealing with the City for a long time and has given us very good pricing. How did we steer away from him is where I'm

going." The City Manager said, "The original quote went to Eagle Enterprises. That was for the sidewalk. It's a different type of work. I don't know much about Eagle. Perhaps they don't do as much drainage work as Mel Bush Construction. When they were asked to propose a Change Order that wasn't anticipated at the beginning of the project, they seemed a little high. That happens from time to time. That's why you keep some contractors on continuing services contracts. That being said, I'm a fan of bidding things out. You'll note that Mel Bush's contract is #20070008, so that is stale. I have asked Ms. Shanaberger to bid this again to freshen up the prices. I always feel that the City wins when it encourages competition."

The City Clerk restated the motion as follows: for approval of Item 13 c). The **motion passed unanimously** by roll call vote.

d) DISCUSSION REGARDING HUGGINS PROPERTY LITIGATION FOR THE SOUTH PARCEL, THE EDDIE HUGGINS LAND GRADING COMPANY, LEGAL DEPARTMENT

Ms. Goldstein Siegel stated, "The matter I am about to discuss with you concerns potential litigation over a property known as the South Parcel. The current owner of the South Parcel is the Eddie Huggins Land Grading Company, a dissolved Florida corporation, which I will refer to as Huggins. To better understand why pursuing litigation against Huggins for the failure to comply with certain conditions imposed by the City and the failure to convey the South Parcel to the City, I would like to provide you with a brief history and summary of the matter."

Ms. Goldstein Siegel said, "Dating back to at least 1986, the South Parcel and another property known as the North Parcel were agricultural lands in St. Lucie County. They were owned by Peacock Fruit and Cattle Corporation. To have an idea of the size of the lands, the North Parcel is about 166 acres and the South Parcel is about 108 acres. Peacock and the City desired to have the ultimate use of the land as being City owned for parks and recreational purposes. The City annexed the parcels around August 26, 1986, granted General Use zoning, and granted a Special Exception Use to allow the excavation of fill material in exchange for Peacock and its successors and assigns to eventually dedicate the land to the City for parks and recreational purposes. While the annexation petition by Peacock was being processed, Peacock sold both the North and South Parcels to Union Holding Corporation. Therefore, Union Holding Corporation was the entity that entered into the Annexation

Agreement with the City in 1987 and initially agreed to the terms, conditions, and obligations that were imposed by the City concerning the excavation operations on both the North and the South Parcels via Ordinances 86-79 and 86-80 and Resolution 86-R68, and the 1987 Annexation Agreement. The Annexation Agreement established that \$.03 per cubic yard of fill material that was removed from the City be paid to the City. Union Holding was required to make payments for certain road improvements, specifically to Rosser Road. The time frame for completing the excavation was to be ten years for the North Parcel and a subsequent ten years for the South Parcel. Fee title to both of the properties was to be transferred to the City following the respective completion of the excavation operations. A 1994 Google Earth image shows the North Parcel during the time that Union Holding was performing its excavation activities. Union Holding did not complete its excavation during that ten-year time frame and requested an extension of time in April 1997. The City, however, denied Union Holding's request for an extension, due to its noncompliance with those certain conditions imposed by the City concerning those excavation activities. But around February 1998 another company, called PSL Tractor Service, Inc., applied for a Special Exception Use to continue and complete the excavation of the North Parcel, including correcting the violations of Union Holding, and to eventually transfer title of the parcels to the City. In response the City passed Resolution 98-R34, granting the Special Exception Use. This resolution set forth additional conditions and obligations that PSL Tractor and its future successors and assigns were required to follow. Therefore, in addition to Ordinances 86-79 and 86-80 and Resolution 86-R68 and the 1987 Annexation Agreement, PSL Tractor was required to abide by and follow the terms and additional conditions imposed by Resolution 98-R34. PSL Tractor actually did comply with the City's conditions, and it eventually did convey the North Parcel to the City around June 24, 1999. It conveyed the North Parcel to the City free and clear of all liens and encumbrances. That was after it completed those excavation activities."

Ms. Goldstein Siegel continued, "However, instead of continuing to complete and pursue the excavation activities on the South Parcel, PSL Tractor conveyed fee title to the South Parcel to its current owner, Huggins, in November 2000. A Google Earth image from December 2003 shows the Huggins excavation of the South Parcel. Note that upland areas have not been disturbed, cleared, or excavated at this time, and Huggins has been submitted the requisite payments to the City, which was about \$.03 to \$.05 per cubic yard of fill that was hauled from the

site. A 2005 Google Earth Image shows Huggins' continued excavation; the uplands continue to remain undisturbed. Since Huggins acquired the property in November 2000, the real estate taxes have been paid. A Google Earth Image from 2006 shows Huggins' continued excavation activities; the uplands are still undisturbed. Additional payments, even though not timely, were still made to the City per the cubic yards of fill that were removed. The 2006 real estate taxes were paid. A Google Earth 2007 image shows Huggins' continued excavation operations on the South Parcel. However, the uplands were disturbed, cleared, and/or excavated. In addition, the 2007 real estate taxes were not paid at this time. Eddie Huggins allowed his corporation to become dissolved in 2007, and he still continued to submit his payments. Huggins continued to excavate in 2008. The last payment received by the City for the fill dirt that was hauled was received on April 14, 2008. In addition to the 2007 real estate taxes, the 2008, 2009, and 2010 taxes were not paid, and tax certificates were issued."

Ms. Goldstein Siegel said, "On March 1, 2010, the Legal Department sent a letter to Huggins informing Mr. Huggins of the issues that needed to be addressed prior to the required transfer of title to the City of the South Parcel. A Google Earth image from December 2010 shows that the uplands remained disturbed and that the property is not under City ownership, even though August 24, 2010, was the date that fee title was supposed to be conveyed to the City, free and clear of all liens and encumbrances. The reason why fee title has yet to be conveyed to the City is that there are unpaid real estate taxes for 2007 through 2011. The taxes total over \$400,000. Other conditions were not met, including the restoration of perimeter berms, side slopes, and disturbed uplands. Even though we tried to work out an agreement with Mr. Huggins for conveyance of the property, that was not accomplished."

Ms. Goldstein Siegel said, "I am requesting direction on this matter. The current holder of all of the tax certificates has applied for a tax deed sale that is scheduled for June 4, 2012. We need to do something at this time if the City desires to pursue acquiring title to the property."

Councilwoman Martin asked, "From 2008 when they stopped paying to 2010 is there no correspondence from the City?" Ms. Goldstein Siegel answered, "City staff had monitored the situation to see that there was a stoppage of hauling and that was why the payments stopped. The expiration date of their special use for the fill was not until 2010. That's why there was a lag. They

could still pursue excavation. Staff did monitor the situation. They realized that there was some non-compliance with certain conditions. The Special Exception gave them until August 24, 2010, to transfer to the City and to complete their excavation operations. That's why there is a gap. But in anticipation of that date, the Legal Department on March 1, 2010, submitted a letter raising these issues with Mr. Huggins. I'm not sure of the details of communication before that." Councilwoman Martin asked if payment for the fill was up to date. Ms. Goldstein Siegel responded, "The last payment received was on April 14, 2008. As far as we were aware, that was the last time he removed fill dirt from the site." Councilwoman Martin noted, "So we don't know if he did that after the last payment we received." Ms. Goldstein Siegel said, "I am not aware."

Mayor Faiella asked the City Manager for comments. The City Manager stated, "I have several comments. The facts are that there are two types of payments. There is a fill payment for the volume of fill that is leaving the site. Also Huggins was responsible for property taxes. Those were not paid directly to the City. They were paid to the Tax Collector, so it wasn't monitored directly. This property goes back a long way. It has gone through several different entities. Reading through Ms. Goldstein Siegel's report, you can see that it has had a troubled history the whole way. One thought is that when there is a condition of approval, perhaps on something this complicated the City shouldn't rely on just a general condition of approval. Perhaps it should be subject to an attached contract. Then you have an actual agreement between the parties that is more specific as to the obligations and hopefully more enforceable. Furthermore, I believe it is incumbent upon administration to do a better job of monitoring these contracts. We should do better than this, quite frankly. But it goes back a long way. In 2010 you could see the deal really falling apart. At that point it already became too late, because he let the company go. I don't know what the asset search has revealed, but it may be that he left no assets in that company's name. I have been lobbying Mr. Orr and Ms. Goldstein Siegel for a number of years, even when I was the Assistant, that this was supposed to come to the City. Once you make a deal, you make a deal. I've been begging Mr. Orr to sue or do something on this, because if people think that the City doesn't care whether deals are followed, that is preposterous. We are held accountable; other people should be held accountable. It's very disturbing to me that we were perhaps taken advantage of here. The question now is whether we can exact any repayment, or do we just let it go?"

Councilwoman Martin asked, "If we file suit, does it stop the sale?" Ms. Goldstein Siegel answered, "Yes. In talking with the Tax Collector, by filing a complaint before Monday, June 4, they would put a hold on the proceedings. Obviously, it's not guaranteed, but the general counsel for the Tax Collector did say that that would happen. I believe we have legitimate reasons that are totally supported by filing suit at this time." Councilwoman Martin asked, "Is this something we're going to do in house, or will we have to farm it out?" Ms. Goldstein Siegel answered, "You're looking at the person who would be handling it."

Vice Mayor Bartz said, "We have one entity that bought tax certificates 2007 through 2010." Ms. Goldstein Siegel explained, "There were various entities that bought the tax certificates. In 2010 after the letter was sent to Huggins and there was no response, we tried to figure out other ways to come to an agreement, because we did want the property for parks and recreational purposes. We looked at approaching the tax certificate holders to buy them at a discount, so we could apply for a tax deed sale. The county held one of the tax certificates, as well. The county's position was that after two years they would apply for a tax deed sale. If no one bid on it, because the value on the land was so high and there's not much you can do with it because you would have to get another Special Exception, we figured if it went to the list of lands no one would pay the \$500,000 to bid off the property, we would acquire it that way. But another person came along. The current tax certificate holder bought out all of these people, because we didn't have funding for even the 2007 tax certificate. That's when that became a non-option. So all the tax certificates were bought, and the holder is applying for the tax deed sale. He is making the investment. We have been in conversation with him, and he is willing to sell us the property for however much he has into it, which is the minimum bid plus whatever else. He was also willing to sell the tax certificates to us. But again, funding is an issue. That's why there is one tax certificate holder for all of those years." Councilwoman Martin asked, "So we're going to pay for something we were supposed to receive for free? That doesn't make sense to me." Ms. Goldstein Siegel said, "That's why we decided not to pursue that option. We would still plan on trying to pursue litigation against Huggins. But the thought was to have title in hand for something that we knew we wanted, because there were other options and possible uses for that property. In the end, funding was an issue." Vice Mayor Bartz asked if the City has been in contact with Huggins. Ms. Goldstein Siegel replied, "Yes. Several times. Without getting

into detail, they were not productive." Vice Mayor Bartz noted, "The contract is with his now defunct company." Ms. Goldstein Siegel said, "There is no contract." Vice Mayor Bartz said, "The agreement is with his defunct company." Ms. Goldstein Siegel explained, "Back in 1986 and through all of those transfers of title. . . . There was the 1986 ordinance annexing the land. There was the 1986 ordinance giving it GU zoning. There was the 1989 ordinance putting other conditions and exceptions on. In 1998 the resolution put on additional conditions with Huggins' predecessor PSL Tractor. But there is no actual agreement. We are moving forward with this, because it was the resolution that imposed those obligations on the property owner and his/her successors and/or assigns." Vice Mayor Bartz said, "But those resolutions, those agreements are against a defunct company." Ms. Goldstein Siegel said, "No. Those are with the property. The Annexation Agreement encumbered the land. It was with Union Holding. With the 1998 resolution there was no agreement. To give you an idea of a legal action to pursue, there are different causes of action that I will be throwing into the complaint like breach of an implied in law contract, or the specific performance, because he did submit payments pursuant to the terms and obligations of that resolution. If you're looking for an actual agreement, that does not exist."

The City Manager said, "I think the Vice Mayor makes an important point. There is not a written contract. There is not a written form of agreement. But I hope we're not saying that there is no contract in the verbal sense, or that there is no agreement, because you just stated that you are going to file a cause of action for failure to perform. That is some form of contract. Mr. Orr, does an agreement have to be written to be a contract?" The City Attorney answered, "It doesn't. But the theory is that when he acquired the property, he acquired it subject to these uses and restrictions on the property. He became encumbered by those same requirements. He, stepping into the shoes of PSL Tractor, who stepped into the shoes of Union Holding, became obligated to fulfill those requirements. Indeed, he benefitted from them, in that he continued to excavate the property. He accepted the benefit, and by that we are suggesting he accepted the burden. He did that with the corporation that has since become administratively dissolved." Ms. Goldstein Siegel advised, "There would be about five counts to the complaint. Under one of the counts an actual written agreement is not required in order to prevail." Vice Mayor Bartz said, "We are looking to see if the property is free and clear. That means that has to be signed to us. That means those tax certificates have to be paid, to the tune of approximately \$400,000." Ms.

Goldstein Siegel said, "The minimum bid is \$494,028." Vice Mayor Bartz continued, "So \$500,000. That is what it is our intent to come out of this with." Ms. Goldstein Siegel explained, "Our intent is to come out of this holding fee title to the properties free and clear of all liens and encumbrances and to have him fix all the violations on the property. That is our goal." The City Attorney said, "The other component is that he is supposed to restore the banks where he has done the excavation. It is supposed to be a 3:1 slope out to 20 feet or so. As I understand it, it's a vertical slope. Those are all requirements of the SFWMD excavation permit that he had. He also excavated some areas that were intended to be uplands when they were conveyed to us." Councilwoman Martin said, "Which he wasn't supposed to touch. Correct?" The City Attorney replied, "When it was to be conveyed to us, those were to be uplands. We had conversations with him that he could move fill around and restore those upland areas, but he never did."

Councilwoman Berger stated, "Azlina, I have so much respect for you. You're being such a good soldier today. When did you start working with us?" Ms. Goldstein Siegel replied that it was in 2007. Councilwoman Berger continued, "This started in 1986. Mayor, you asked Mr. Oravec what his thoughts were on this. The presentation was given by Azlina. The reality is that this is Mr. Orr's. As we have questions, remember to look to the left and let Mr. Orr give us the final answers. As you asked Mr. Oravec, these two gentlemen are peers. I know it is important to find out what Mr. Oravec thinks, but the responsibility, if you want to know what Mr. Orr is thinking and how we go from here, is on us. I don't want to lose that." Mayor Faiella said, "He is the City Manager, and we've had discussions in the past in reference to this type of property, so it was important to get his views. I've had discussions with Mr. Orr, too." Councilwoman Berger continued, "My question on the banks and slopes enforcement is who does the enforcement? Why would we as the City want to start enforcing this?" The City Attorney answered, "We don't. What we want is that property restored to that condition. That would be the end goal. In my opinion that should be South Florida Water Management District's obligation to enforce that, because it is a condition of the permit." Councilwoman Berger said, "Agreed. I know we have learned a lot since 1986 on how to create better conditions of approval and contracts. But we do typically have triggers along the way that allow us time to respond and react. So if we see it's going in the wrong direction, we can make some changes. Was there nothing available that we could call a trigger?" The City Attorney answered, "The trigger date would have been the date he was

obligated to turn it over to us. Whatever problems he had, up until then, he could have fixed." Councilwoman Berger said, "So the thought was that he may come in at the last minute and fix the slopes and banks and pay the back fees." The City Attorney said, "In terms of the slopes and restoration of the uplands, he made representations until then that he would do that. The taxes were a different issue. He did not make a representation that he was going to pay the taxes." Councilwoman Berger continued, "Azlina said earlier that there was communication from the City, but she wasn't sure what they were. Do you know what they were?" The City Attorney replied, "I have met with Mr. Huggins, as well as other members of the staff. People have been to the site. There were discussions where he would ask how we wanted him to restore it. Staff would tell him how we wanted it restored before it was turned over to the City. Then over the last year or more there has been conversation as to whether or not litigation should be pursued. I don't know that we have an enormous interest in owning the hole full of water. One of the things the City is interested in owning is additional right of way along Rosser, in the event it is ever improved and widened. I'm sure Mr. Huggins would give us the deed tomorrow, but that doesn't help us because of the outstanding tax obligation. There was discussion that whoever ends up owning this property will have to work with the City to do any development approval. In all probability, we can get that additional right of way on Rosser at the time that the property owner comes to us for development purposes. In the last few years I don't think we have had any vision of being able to expend any money on this property to develop it as a recreation site. That has gone into the equation as to whether or not we sue. It has gone back and forth about suing over the last year and a half or so. The City Manager has said that he wanted to take a hard look and to sue, and that he wanted to put something together to present to the Council. That's why it is here now."

Councilwoman Berger asked, "How about communication to South Florida Water Management? What communication did the City provide that Huggins was not in compliance?" The City Attorney answered, "I know that folks in Engineering or Public Works have had some communications with them. I don't know what was said or what the result was." Ms. Goldstein Siegel noted, "We did meet with them, but it is not something that they would be interested in pursuing, in terms of the enforcement of the permit conditions. They are aware of the violations." Councilwoman Berger said, "We received the benefit along the way by getting paid the percentage. Was Rosser Road improved as a result of those benefits or by any payment from that developer at all?"

The City Attorney replied in the negative. Ms. Goldstein Siegel added, "In lieu of payment for Rosser Road via Resolution 98-R34, it was agreed that the current property owner, PSL Tractor, would convey a 250-foot easement for a communications tower and/or billboards along both the north and south parcels. That was done." Councilwoman Martin commented, "But they probably damaged the road so bad with the trucks. Rosser Road is not a well-paved road."

Councilwoman Berger said, "The question tonight, Mr. Orr, is should we go forward with litigation?" The City Attorney answered, "At this point I don't want to represent to the Council that this is going to have a glorious outcome, because we're going to be dealing with a corporation that has been administratively dissolved. We will look at piercing the corporate veil to get beyond the dissolved corporation. We will handle it in house. Other than the cost of our time I don't see a real downside to it." Councilwoman Berger said, "The best case scenario is we win and we get this property. The property itself has a large hole about 50 feet deep. So we're not going to be using that for parks and recreation." Ms. Goldstein Siegel said, "In 1986 it was approved to go from 25 feet to 50 feet, and the intent was for drainage and retention purposes and parks and recreational purposes. Management and others have been looking at other out of the box ways to use the property." Councilwoman Berger said, "I think I'm going to need to hear those offline, because I don't see any reason why the City would continue to pursue this property. I don't see any payoff. My thought is that we'll get there and not have a written contract. We'll speak to the verbal contract, and they'll say we received benefits along the way, with some other complicated conversations over the next three to four years, and it will take a lot of time in house. It does cost us to run this play book. I think more conversations will happen about what these triggers should have looked like. To me there are some obvious triggers, as far as how the Legal Department should have and could have reacted along the way." Councilwoman Martin noted, "Even if we were to get the parcel, we still have to pay the back taxes. Correct?" Ms. Goldstein Siegel answered, "The tax certificate sale would be put on hold until the outcome of the litigation. We would be in no worse position than we are now without the property. By pursuing the litigation, if that is your direction, we would seek to acquire title to the property free and clear of those taxes." Councilwoman Martin said, "A judgment doesn't mean you get paid. If there are no assets to get payment of the taxes, we're still out of luck." Ms. Goldstein Siegel said, "There are certain ways to go about it." Councilwoman Martin said, "On one hand I agree

with Councilwoman Berger. On the other hand, if we don't pursue anything, we're just letting them get away with it."

Vice Mayor Bartz said, "Do we need this land for drainage? What is the goal?" Councilwoman Berger interjected, "I would love to have more conversations offline. As we're interrogating our staff, these things will be used against us. Perhaps we need more information before we make this decision. Whatever Patricia Roebeling would say now will be used in court." Mayor Faiella indicated that there is a deadline. Ms. Goldstein Siegel advised, "Monday is the sale, so I would have to file something by Friday at the latest." Vice Mayor Bartz asked, "How does that bind us?" Ms. Goldstein Siegel answered, "It would stay the sale and begin the course of litigation." Mayor Faiella asked, "Why is this last minute? Why weren't we presented this two months ago, or even at the last Council meeting?" Ms. Goldstein Siegel responded, "Unfortunately it has been an oversight. We requested to be put on notice of when the tax deed sale was going to be done. But there was no notice served on the City. Based on conversations we believed it would be the end of June or maybe even August. We looked and found out it was June 4. That's why this is before you. I apologize for the delay."

The City Manager said, "I have met personally with each of you on this property. It was one of those things where I wanted to make sure the question was eventually put to the Council before it slipped off into the night. Right, wrong, or indifferent, I wanted you to have a public conversation about this, and I want to own things, whether good or bad. This is a bad one but we have to own it. For me and probably for other people, there is a matter of principle that this guy profited off this property. He was supposed to give it to the City for use as parks and recreation. We were going to get the right of way for Rosser, and it had the additional upside of a stormwater project in that neighborhood. That didn't happen. Our system did not serve us well. We didn't discover it and smack them soon enough, so we have to change that. It is at the last minute. Do you want to let it go and be better in the future, or do you want to hold them accountable? We will do whatever you say, but we can't make those decisions for you. We should not."

Mayor Faiella asked, "Do we have any more of these deals hanging around?" The City Attorney replied, "Not that I'm aware of." The City Manager stated, "I'm not going to hide from questions like that. Personally, I'm concerned about things like the Southwest Annexation area and the Annexation Agreements. There are literally hundreds of conditions in there. I'm working with

staff to create matrices to track all of these things. We lease a number of properties throughout the City, and we don't have an outstanding lease roll that has payment, term, electrical and water if the case may be. I'm trying to put those systems into place to make sure things are properly monitored." Mayor Faiella said, "I know how you have felt about this property. I feel that we should go for it. I don't want someone to get away with something that should have been taken care of." Councilwoman Martin said, "I agree. We should try to hold them accountable. This is a really bad situation."

Councilman Kelly asked how many acres the property is. Ms. Goldstein Siegel answered that it totals 108.39 acres. Councilman Kelly said, "It looks like there weren't a lot of uplands to begin with, and the ones there are pretty much destroyed. How much is this worth, considering the condition? Give me a guesstimate." Ms. Goldstein Siegel answered, "Why the taxes were so high and why Mr. Huggins supposedly refused to pay the taxes anymore is based on the assessed value of over \$3 million. He never challenged the value. He just stopped paying until he exploited all he could out of it. With the pit that is there it's not worth that much. It has been mined. I don't want to commit to a value, but it's not worth what it once was. The 2011 assessed value by the Property Appraiser is \$423,500." Councilman Kelly said, "Obviously, the gentleman who bid on the property and bought the tax assessments must think it's worth more. A deal is a deal. On the other hand, Councilwoman Berger has a point. If the property isn't worth that amount of money, why go after it? I think the property is worth a lot more than \$423,000. It's valuable to the City because it's off Rosser Road. Anytime there's a hole where we can retain water, that's a good thing, too. We're not going for outside counsel here. I've seen Ms. Goldstein Siegel in action. Huggins didn't deal in good faith with us. They took advantage of us. The City may need to go after them. The other kicker is that if this person buys the tax certificates, he can't do anything without the Council. The Council has a huge hammer. If I have to decide tonight, with all that is on our platter, I think we should go after them."

Councilwoman Berger said, "I get that the Council wants to go after them. I appreciate Mr. Oravec wanting to follow up on a deal that was made in 1986. I'm not looking to be a vigilante or retaliatory. I just want to make sure we do good business. I'm not sure moving forward on this is good business. They made a profit, but we made some money on it, too. In the current state of that property, we should be thankful that we don't have anything to do with it. I'm not sure why we're going to chase

after this money pit. It's 27 acres of usable property that somebody else can purchase and pay taxes on." Ms. Goldstein Siegel added, "There is also the 250-foot easement that some cell tower companies are interested in leasing." Councilwoman Berger continued, "We are definitely in the cell tower business apparently, because that seems to be the only thing I hear about anymore. I still think the suit would be a bad business move."

The City Manager said, "I'm not advocating a specific position. I just wanted to have a public discussion of this issue and have the Council make a decision. My problem is to make sure this doesn't happen in the future and try to implement a system so that it can't happen. I'm putting all the pros and cons out there. This is why the Council has a job everyone should respect. It's a conundrum. You have to take all the arguments and do what you think is best for the citizens. I'm okay with whatever the Council decides. I can't get the direction of the Council and Mr. Orr can't get the direction of the Council without having a public discussion." Mayor Faiella said, "As long as Azlina is going to be handling this, I'm okay with going after him." Councilman Kelly said, "If we file, there won't be a tax sale." Ms. Goldstein Siegel said, "According to representations made by general counsel for the Tax Collector." Councilman Kelly added, "This property is encumbered. We encumbered it."

Vice Mayor Bartz remarked, "I'm concerned that we're cutting off our nose to spite our face. I agree that he did not fulfill his obligation. I understand that we would work this in house, but that is not free. It costs us money, and it also puts us in the position where we have somebody on it who could be working on something more beneficial. It does cost us. We found that out when we did the Sign Committee. It cost us about \$45,000 for staff to do their portion. We have a defunct business that we would be trying to hold to repairing the property and settling the tax certificates." Councilwoman Berger said, "If we win and we have the property, we are then held accountable for the banks and slopes. Correct me if I'm wrong." Ms. Goldstein Siegel advised, "That would be included in the lawsuit, for him to implement the restoration plan. It would be the existing company or whoever is held liable." Vice Mayor Bartz continued, "I agree that there may have needed to be more offline conversation where we would feel more comfortable about asking those questions." The City Attorney said, "We don't want to own that property unless those slopes are dealt with, for safety reasons." Councilwoman Berger asked, "From a trigger standpoint, when do we find out that that would be part of the agreement? Are you

going to be two or three years into this and find out we get everything, and the only thing we can't do is guarantee that this is going to get fixed with somebody else's dime? Then the taxpayers are going to have to foot the bill for putting that property back in shape, property that we didn't own to begin with but would then be responsible to SFWM for managing."

The City Attorney advised, "We can't be compelled to take the title to the property as a result of the litigation. We may acquire it as a result of the litigation. We could get the title to it tomorrow, but it comes with those burdens that have been previously discussed. We weren't willing to take on those burdens by just taking the deed and letting Mr. Huggins go. That has been the dilemma that has been looked at time and time again. I do apologize to the Council that it comes with a very short time frame. We thought we had a longer time to complete the analysis and make the recommendation. It came on more quickly because we didn't get a notice. You are starting from a position of chasing after a now dissolved corporation. In order to get any relief whatsoever, we're going to have to pierce that corporate veil. That is not an easy process, but we think there is a shot at it. If we talk about the individual and not the corporation, this individual by all indications has assets. We don't want the property without being prepared to deal with the slopes." Councilwoman Berger asked for Mr. Orr's recommendation. The City Attorney stated, "I suffer from the same dilemma that has been discussed here. I have met with Mr. Huggins. I've said some unkind things to him. I don't like the fact that he would get away with it. But I am certainly troubled by whatever resources we put into this litigation, and whether it will be a cost-effective result or a result we'll be happy with. That doesn't mean I want to shy away from the litigation, if for no other reason than to make the point. But if we were looking strictly from a business point of view on this specific transaction, I would say that the better position we're going to be in is to let that property go into someone else's ownership and then we will deal with them. There were some other considerations we looked at that may have yielded a different result. I can't remember the name of the road that might have gone across that property if we crossed I-95, but that isn't going to happen anymore, so we don't need the property for that. Aside from the principle of a deal is a deal, I would say it is probably not a good business decision." Councilwoman Berger said, "Mr. Oravec, you wanted this to be brought forward to have a discussion. But then when we started having the discussion, you said you weren't taking a position on it. I'd like you to take a position on it and make a recommendation." Councilman

Kelly commented, "Before he even does that, because this is our decision, I'm out. I'm not going to support going after it. Roger just totally sold me. Let's keep the big hammer. I hate the fact that the man didn't deal in good faith, but I'm not going to support going after it." Councilwoman Martin added, "I'm changing my mind, too. Based on what Roger said and going back to what we did with Ravenswood, we made a business decision to cut our losses because of the position we were in."

The City Manager stated, "I did not have a recommendation prepared, and I'm not going to provide one at this point. It was a matter of what the Council wanted to do, and we will implement it. My only recommendation is that as your administration we can't allow this to happen in the future. I would like Council's direction to work with Mr. Orr and all staff to make sure that the systems are in place to catch these much sooner." Councilwoman Martin said, "That absolutely has to happen."

Councilman Kelly **moved** to not pursue legal action on the issue. Vice Mayor Bartz **seconded** the motion. The City Clerk restated the motion as follows: to not pursue legal action for Item 13 d). The **motion passed unanimously** by roll call vote. Councilman Kelly noted, "I hope that in the years to come somebody remembers this conversation, so that huge hammer is used when somebody tries to do something with the property."

e) CONSTRUCTION ENGINEERING INSPECTION (CEI) FOR THE MARION AVENUE SIDEWALK PROJECT, APPROVE FIRMS SHORT LISTED BY EVALUATION COMMITTEE: #1 CAPTEC ENGINEERING, INC., #2 CALVIN, GIORDANO AND ASSOCIATES, INC., #3 KEITH AND SCHNARS, P.A., AND BEGIN NEGOTIATIONS WITH #1 RANKED FIRM, #20120052, FUND 304-4105-5630, OMB

The City Manager said, "The City issued a Request for Proposal to carry out construction engineering inspection services for the Marion Avenue sidewalk project from Bayshore to Curtis. An evaluation committee reviewed the responses and ranked Captec Number 1, Calvin, Giordano Number 2, and Keith and Schnars Number 3. This item would allow us to move forward with negotiating a contract with the Number 1 firm. If we cannot come to terms, we would then negotiate with Number 2, and if necessary we would go to Number 3. Staff recommends your approval of the rankings." Councilwoman Berger **moved** to approve Item 13 e). Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: for approval of Item 13 e). The **motion passed unanimously** by roll call vote.

14. CITY MANAGER'S REPORT

The City Manager stated, "With regard to the Huggins items, the reforms that will come out of that are hopefully a Citywide lease roll for any properties we have a financial or ownership interest in, and also enforcement of development conditions. We have to have a master list of those conditions to make sure we don't drop any balls and that we take care of business. The Chief mentioned the Safest City. We were again the safest City for a city of over 100,000. But our crime rate did go up, and that brings to our attention that to be Number 1 you can never stop working. We have to push on. As a result of the Sportsman Park incident and some other things, some safety issues have come to our attention in parks. As a community we can't tolerate the intolerable: we can't accept the unacceptable. If there are suspicious activities in your neighborhood or park, please call 911. If there is something that concerns you, please call Sherman Conrad or me or the Council, so we can know about it. If we don't know about it, we can't address the problem. I don't want our community to ever be okay with weird things going on in their parks or neighborhoods. We can never say it enough. Do not leave your valuables in your car, whether you are at a park or in your driveway. On the park safety issue, June 1 is at the end of the week. That's when Sportsman's basketball courts will be open. We will be there with our court pass system and attendants in place. The parks officers have been appointed, so they are ready to go. We continue to work on the camera plan for the September rollout."

The City Manager said, "On tonight's Agenda we had a couple of items where we continue to try to save money. Based on current interest rates we're at about a \$1.5 million savings over the life of the utility bond. We're working to save every dollar we can. Team Port St. Lucie is working on a food drive. Mr. Dramis is leading the charge. We have a friendly competition. If anyone wants to donate food to Harvest Food and Outreach Center, feel welcome to participate. We are moving along with the Chief selection process. Tomorrow I will issue a memorandum to the Mayor, Council, and the team regarding the selection of three finalists. Everyone should mark their calendars for June 14 through 17. That's when the finals will occur. We are planning some outstanding activities. The finalists will have a chance to interact with the selection committee, the public, and the Mayor and Council." Mayor Faiella asked how many applications were received. The City Manager replied, "We had about 48 applications. They were waiting for me when I became City Manager. We whittled it down to twelve. Three people withdrew."

We conducted phone interviews with nine, and then the committee scored everyone. As a result, the three finalists were identified."

15. COUNCIL COMMENTS AND COMMITTEE REPORTS**VICE MAYOR BARTZ - 100 CITY SUMMIT/ENERGY SAVING IDEAS/MEMORIAL DAY**

Vice Mayor Bartz said, "I had the opportunity to go to West Palm for the 100 City Summit, which is put on by the Chamber Foundation. They brought out a car called the Fisk, which is totally electric and solar. At \$110,000, the City says we probably can't incorporate it. We talked a lot about renewable energy and what other cities are doing. The Mayor of Tallahassee was there. They seem to be very innovative. Leon County is using compressed natural gas for their school buses. They built a pump station. As they replace their buses they are making them compatible with CNG. The savings are incredible. The problem they had was that the pump station wasn't big enough. Somebody else is going to buy another pump station so they will be able to fill the buses much quicker. We have a CNG station coming up on Selvitz. It's a great possibility to change out replacement vehicles. Gas is going up. Honeywell was there to present. We talked about how long it would take to become sustainable. It can be done and we're working on it. I've had conversation with our School Board about what Leon County is doing. It was a very informative seminar."

Vice Mayor Bartz said, "Friday night I went out to Tradition. Col. Weierman put on the Memorial Day salute to all of the fallen soldiers. They put out crosses and Stars of David so people could honor their loved ones. Memorial Day is not just one day a year. Councilman Kelly, Councilwoman Berger and I were at the Memorial Day services at Veterans Memorial Park. Our Parks and Recreation Department did a great job."

COUNCILWOMAN BERGER - ST. LUCIE COUNTY INLET ADVISORY BOARD

Councilwoman Berger said, "I sat in as alternate for Mr. Kelly at the St. Lucie Inlet Advisory Board. There was no progress. They are still dealing with the lobbyist on whether there can be a referendum in their county, or if it goes to their neighbors."

Councilwoman Martin said that she has no updates.

COUNCILMAN KELLY - MEMORIAL DAY/CONVENIENCE STORES/LEASES

Councilman Kelly said, "Veterans Day was great. It should be 365 Days a year. I want to bring something up concerning two things we did tonight, about do we go after things and are there loose ends. There are. I'll ask Mr. Holbrook a question. I learned something tonight. We did a resolution on Racetrac. Then we did a resolution for a convenience store in General Commercial. If I can't have a convenience store in General Commercial, where can I put it?" The City Attorney answered, "It's a Special Exception Use in General Commercial and Neighborhood Commercial." Councilman Kelly asked if a convenience store can be put in the City without a Special Exception Mr. Holbrook answered, "I'd have to verify, but I believe that is true." Mayor Faiella asked if a plaza is an exception. Mr. Holbrook said, "It depends on the zoning district. How the City's Code is structured is that uses that have been identified as having greater impact to a community are required to go through the Special Exception Use process. Some of the zoning districts are nestled into neighborhoods." Councilman Kelly asked if a dry goods Dollar Store is a convenience store. Mr. Holbrook answered, "General retail, no." Councilman Kelly said, "Now I have a Dollar Store in a shopping center, and I'm 99% sure that there was a big grocery anchor in this area. All of a sudden the Dollar Store is selling milk and bread. It is no longer a dry goods retail store. It's now a convenience store, isn't it?" Mr. Holbrook replied, "You would have to look at the specifics of each case and the definition in the Zoning Code. Uses blur lines. As soon as we make a definition, things start changing. People add a little of this and that." Councilman Kelly said, "Mayor, now you can see why I was confused when we got to the convenience store." The City Manager said, "The definition of convenience store is an establishment limited to the sale of convenience goods and not exceeding in gross floor area 5,000 square feet. Mr. Holbrook, is that listed as a specific use or is it lumped under retail?" Mr. Holbrook responded, "I believe convenience store is listed as a specific use in various zoning districts." The City Manager said, "I'd like to read something about Special Exceptions: 'Certain land uses, due to their unique functional characteristics and the potentiality for their incompatibility with adjoining land uses require special consideration on an individual basis of their suitability for location and development within particular zoning districts. These uses have been designated as Special Exception uses. . . and only after affirmative findings that they can be developed at particular locations in a compatible manner shall they be approved.' That's where compatibility comes in on a case by case basis, because some uses are so problematic due to traffic and other criteria, that you have to look at them on a case by case basis."

Councilman Kelly noted, "That's what we did tonight. The definition of convenience store is totally ambiguous. When I asked Dan if the Dollar Store is a convenience store, he said no. What about a Dollar Store with food in it? According to that, it's ambiguous." The City Manager said, "It depends on how many square feet it is." Councilman Kelly remarked, "It's less than 5,000 square feet. It's selling food and bread and all the other dollar items. Is it a convenience store?" The City Manager explained, "That's why we can't ask Mr. Holbrook to give an answer on the fly." Councilman Kelly continued, "That's a loose end. That's why I'm bringing it up. I think it should be looked at."

Councilman Kelly said, "All over the City we have leases that we started with HOA's for right of way and entrances. The leases started in 1985 and 1990. They went for five years at a time. Then they just were over, and the HOA's are still using them, and there's no lease. We're working on one now, but there are others. Those loose ends have to be tightened."

MAYOR FAIELLA - SAFEST CITY/CHINESE SISTER CITY

Mayor Faiella said, "The Chief did announce that we are still the Safest City. I was proud to hear that. The crime rate did go up, but we're still the Safest City. My main concern is that we are still below policy on police officers. We want to tackle crime, but we need to have the appropriate force to do it." The City Manager noted, "June 1 is the day we should get property valuation from the Appraiser. To a large degree our ability to carry out the good work of the people depends upon our revenue. Keep your finger crossed." Mayor Faiella said, "A while back we did a proclamation making the City of Wuxing our Sister City. Twelve delegates are coming on June 5 to tour our City and to open communications." Councilwoman Berger noted, "I'm traveling that day with my work, so I won't be there. Good luck."

16. ADJOURN

There being no further business, the meeting adjourned at 9:55 p.m.

Karen A. Phillips, City Clerk

Margie L. Wilson, Deputy City Clerk