

**CITY OF VERO BEACH, FLORIDA
OCTOBER 20, 2009 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Roll Call

Mayor Sabin Abell, present; Vice Mayor Tom White, present; Councilmember Debra Fromang, present; Councilmember Bill Fish, present and Councilmember Kevin Sawnick, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

B. Invocation

The invocation was given by Pastor Shelly Satran of Our Savior Lutheran Church.

C. Pledge of Allegiance

The audience and the Council joined together in the Pledge of Allegiance to the flag.

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mayor Abell reported that Mr. Jeff Luther is attending the County Commission meeting and is on our agenda under item 2B-2). He may be a little late for our meeting, but has requested to speak when he arrives for the meeting.

Mayor Abell requested that item 2D-5) be added to the agenda "Flag presented by Congressman Bill Posey."

Mr. White made a motion to adopt the agenda as amended. Mrs. Fromang seconded the motion and it passed unanimously.

B. Proclamations

1) Downtown Friday Day – October 23, 2009

Mayor Abell read and presented the proclamation.

2) Mr. Jeff Luther to speak regarding the promotion of Census

Mr. Luther arrived at the meeting at 10:26 a.m. He talked about the census that will be undertaken in 2010. A short Power Point presentation was given. He reported that he

was elected Chairman of this Census Count Committee which was formed to make sure that the census is completed. The representative for the City is Councilmember Kevin Sawnick. He thanked Council for allowing him to come to their meeting and speak.

3) Mr. Don Dexter to talk about United Way

Mr. Don Dexter, Public Works Manager, spoke about United Way and what United Way does for our community. He then passed out brochures covering the different agencies that United Way partners.

4) Community Rating System

Mayor Abell congratulated the City Manager and presented him with a plaque acknowledging his success with Community Rating System (CRS).

5. Flag Presented to the City of Vero Beach from Representative Bill Posey

Mayor Abell reported that this flag was presented to the Council at their 90th Anniversary party on Friday night. The flag was flown over the United States Capitol on September 29, 2009.

C. Public Comment

Mr. Paul Terese (spelling may not be correct), Taxpayers' Association of Indian River County, read excerpts of a prepared white paper from the Taxpayers' Association (please see attached).

Mr. Charlie Wilson, 1835 36th Avenue, wanted to discuss the request from the Mayor for \$5,000 that is on the agenda (item 10-A). He wanted to know if they were going to use this \$5,000 to tell the public that after January 1st they are going to be paying 30% more, are they going to be using this \$5,000 to tell the public that the City declined to engage FP&L in a possible sale, are they going to use that \$5,000 to tell people that the plan that he and others have offered will save the average resident \$1,000 a year, are they going to use the \$5,000 to tell people that they will never be competitive, are they going to use the \$5,000 to tell the public that the City doesn't know how much the utility is worth, are they going to use the \$5,000 to tell people that the City is preparing to commit the public to another twenty to thirty year contract without considering a sale option or without an escape clause, and are they going to use the \$5,000 to tell people that there is a question about the validity of this latest one-billion dollar contract. He said that if these things are not going to be told then they are not giving the public information, which he feels is inappropriate use of City funds. He has a better idea. He challenges a representative from this Council and whoever they would like to bring along, to have a public debate on the matter where they can go back and forth with proper information. He objects to the use of \$5,000 for propaganda.

Mayor Abell explained to Mr. Wilson that one thing that his so called “propaganda” would do is clarify all eight items that he made that were clearly wrong. Also, Mayor Abell questioned the validity of Mr. Wilson’s 1835 36th Avenue residency. He understands that he is renting this property and has for the last two months and that he is a County resident.

Mr. Bob Blumstein reported that at the last Utilities Commission meeting the members voted unanimously not to become a Utilities Authority. He said that they did not think that the City Council should form a Utilities Authority. He said that it will not get them where they want to go. The City of Vero Beach will lose their measure of control of their own utilities. The outside residents will end up with less representation instead of more. He said that these Authorities are almost impossible to remove once they are in place. He suggested keeping the Utilities Commission and making it mandatory that all budget rate changes, asset changes, etc., are reviewed and submitted to Council with the recommendations of the Utilities Commission. He felt by forming this Utilities Authority it will cost the City more money in the long run.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – October 6, 2009**
- 2. Final Payment – Southeast Power Corp. – Bid #370-08/PW – Transmission Line Construction for South Substation #8**
- 3. Request Approval of Florida Inland Navigation District (FIND) Project Agreements for Dry Storage Re-Rack Project #IR-VB-09-45 and City Marina South Complex – Part 2 – Project #IR-VB-09-46**
- 4. Interlocal Agreement and First Addendum – Indian River Crime Laboratory**
- 5. Monthly Capital Projects’ Status Reports**

Mr. Fish made a motion to approve the consent agenda. Mr. White seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, amending Article II, “Boats,” Section 46-34, “Sunken, Abandoned, Wrecked or Derelict Vessels”; 46-35, “City Property”; 46-37, “Vessel Operating Restrictions”; Article III, “Municipal Marina,” Section 46-61, “Operation”; 46-62 “Definitions”; Section 46-63, “Permit Required”; 46-64, “Application Procedures for Permit”; 46-65, “Termination of Permit”; 46-66, “Fees”; 46-67, Marina and Anchorage Regulations”; of the Code of the City of Vero Beach.**

Mayor Abell read the Ordinance by title only.

Mr. Tim Grabenbauer, Marina Director, reported that this Ordinance would make revisions to Chapter 46 (Marine activities, Structures and Facilities) of the Code. The

updated Marina Regulations would remove a rule on Commercial Operators not being provided space in the Marina. He summarized some of the other changes. He said that he took the entire package to the Marine Commission and they approved it.

Mayor Abell opened and closed the public hearing at 10:00 a.m., with no one wishing to be heard.

Mr. White made a motion to approve the Ordinance. Mr. Fish seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes and Mayor Abell yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

None

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS THAT REQUIRE A FUTURE PUBLIC HEARING

- A) An Ordinance of the City of Vero Beach, Florida, creating a Utility Authority charged with defined responsibilities relating to the provision of Electric, Water, Wastewater, and Reuse Water Services by the City; providing for limited City Council oversight of Utility Authority decisions; providing for the termination of the existing Utilities Advisory Commission; providing for an effective date.**

Mayor Abell read the Ordinance by title only.

Mr. James Gabbard, City Manager, explained that this document sprang from an effort in the Legislature by the late Mr. Stan Mayfield. Mr. Mayfield was trying to pass a bill in Tallahassee that required the City of Vero Beach to create a Utility Authority. It would primarily allow people outside the City limits to participate and have representation. Mr. Gabbard said that he has recently met with both Representative Ralph Poppell and Representative Debbie Mayfield. They both have received copies of the Ordinance and have had some input. In coming up with this Ordinance they have also sought input from a number of different people, mainly the Utility Commission. The Utilities Commission is not in favor of the Ordinance. Staff believes that even though the current Utilities Commission has five members that live outside the City limits that this Ordinance will better define where people live and how they are selected and what their roles are. It vastly expands the power of the now Utilities Commission and gives them much more responsibility. It will also give people living outside the City limits much more representation and this Ordinance could very well be the model for utilities facing similar situations in Florida. Staff feels that this is an appropriate addition to how the City does business. He said that Mayor Abell has offered a suggestion on how to describe the members that are eligible and he wanted to make sure that anyone that served as a member on the Utility Commission would be eligible to also serve on the Utilities

Authority. He urged Council to schedule a public hearing for the Ordinance to find out how the public feels about it.

Mr. White wondered if they were putting the cart before horse. He suggested waiting until after they know what their plans are with the County (consolidating utilities, etc.).

Mr. Gabbard explained that if down the road Council wishes to remove the Utility Authority that they could do so by passing an Ordinance. He noted that this is something that they have been talking about for over a year.

Mr. White noted that now they have committed themselves to providing funds for a consultant, along with Indian River Shores and the County, which will be expensive. He felt that they had an excellent Utilities Commission and should wait on creating a Utility Authority until they know what is going on with the County. They may be opening Pandora's Box, which could cost them a lot of money.

Mr. Gabbard commented that this was part of a hand shake agreement with the Legislatures so that they would not seek to pass a State Statute that would force the City to do things that may not be in the best interest of the City. He said that this was the tradeoff. However, he hears that there are Legislative initiatives being discussed by Mr. Faherty and some of his friends. He said by drafting this Ordinance it was not something that they took lightly. It was part of their plan to change how they do business. There will be new responsibilities given to people who live outside the City, although five of the sitting Utility Commission members also live outside of the City. Staff has worked hard on this Ordinance and feels that it is very fair. But, of course it is the call of the Council.

Mr. White expressed that this Council has never turned anyone down or away who wanted to come and talk to them. He doesn't want to create this extra level until they know where they are going.

Mayor Abell interjected that they know where they are going until 2017. So they need to have some sort of Utility Authority/Commission until that point in time. All they are doing is taking advantage of the information that they collected over the last three months of meetings with utility experts. This Ordinance will formalize the way people are selected to be on this Utilities Commission/Authority. He understands the comments made by Mr. Blumstein earlier in the meeting. He has heard three people from the present Utilities Commission say that this is a City asset and they have an obligation to protect their City asset. With this new mixture there will be at least one more member residing in the County than what they currently have. There still will be more County representatives than City representatives involved in their Commission/Authority; which is more than in any other city in the State of Florida.

Mr. White said that this will be a paid Board.

Mayor Abell made it clear that these members would not be paid. The only payment that might be made is for reasonable expenses, such as if a member would have to fly in for a meeting. The City might pay their airfare or for rental of a car. They are asking the present Utility Commission members who would like to be considered to serve on the Utility Authority. They are advertising for possible new members and within the next couple of weeks they will interview the applicants and come up with the members who will serve on this Authority. They hope to have the Authority formed by the November 3rd meeting.

Mr. Gabbard added that they would like to have the new Utility Authority have their first meeting before the December Legislative Delegation meeting. He has talked to a lot of former City of Vero Beach City Managers who have said that they always kept in the back of their minds that they should do something that would be a little more responsive to the public and take a little of the load off of the City Council.

Mr. White has been talking to municipalities who do have Authorities in place and they are telling him to stay away from forming an Authority because the Authority will take over.

Mr. Gabbard requested that they hold a public hearing at their next meeting to discuss this Ordinance and let the public be heard.

Mr. White expressed that this was a hard decision for the Council and they want to make sure that they make the right decision.

Mayor Abell reported that the Consultants Competitive Negotiation Act Committee will meet on Thursday at 9:30 a.m. and hopefully will be able to give their recommendations to the City, County and Indian River Shores, by next June.

Mrs. Fromang appreciates the Utility Commission's concerns. They have several Boards who take their responsibilities very seriously when they volunteer. The fact that they might ask for compensation is a serious issue. She said that in the Ordinance under Section 3, it states that members will serve on the Utilities Authority without salary. She also has talked to Representative Poppell who expressed to her that he would like to have a solution in place by December 4th.

Mr. Fish recalled that it was at least six months ago when they asked staff to look into this. He said that this Utility Authority is nothing like what Ft. Pierce has. He said that the City Council is the representative for our utilities. The citizens of Vero Beach own the utilities and we (City Council) are their representatives.

Mr. Sawnick made a motion to approve the Ordinance and hold the public hearing on November 3, 2009. Mrs. Fromang seconded the motion and it passed 5-0 with Mr. Sawnick voting yes, Mr. Fish yes, Mrs. Fromang yes, Mr. White yes, and Mayor Abell yes.

6. CITY CLERK'S MATTERS

A) Permission from Council to pay Annual Membership Dues for the Florida League of Mayors

Mrs. Fromang made a motion to instruct the Clerk to pay the annual membership dues for the Florida League of Mayors. Mr. White seconded the motion and it passed unanimously.

7. CITY MANAGER'S MATTERS

A) Vision Implementation Plan Update

Mr. Tim McGarry, Planning and Development Director, reported that he recently received the comments back from DCA on some comprehensive plan changes that were sent to them. They have asked for some updated data, which he will send to them.

Mr. McGarry expressed that the proposed Tree Ordinance is about ready to come to Council and he will be bringing the proposed Stormwater Ordinance to them at their next meeting for first reading.

Mrs. Fromang asked if it was true (referring to the Tree Ordinance) that if someone removes a tree that they must replace it with three trees. Mr. McGarry explained that it depends on the size of the tree. They must replace a certain percentage of the tree caliper. He is still working on finalizing the Ordinance.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

B. New Business

Mr. White commented that there have been some things that have come up that he would like to talk about. He said that the City has their own charter and the voters approve items for the charter. He said that recently there has been a County Commissioner who feels that their charter can be overturned (referring to the land that the Water and Sewer Plant sits on). He then brought up that the charter states anyone running for City Council must have lived in the City for one year prior to the filing date. He wanted to know from their City Attorney if legally they could enforce this.

Mr. Vitunac reported that himself and the City Clerk called the State Division Legal Department and told them that they have a candidate who has not lived in the City for

one year and wants to file for City Council. Their question to the Lawyer was what do they do. They were told by the State Lawyer in charge of elections that the Clerk's office is an administrable body and must accept the application if the candidate swears that the facts are true. He said in which the candidate in question did. However, they did say that this doesn't absolve the candidate from problems if they are not true. They said that the State Attorney could look into fraud or perjury charges or secondly any citizen of the City or any of the other candidates who are running can challenge that candidate's right to run for office or right to be seated in office. The case law states that the cities should not be challenging candidates' office because it is a conflict of interest. The State Attorney has bowed out saying that he cannot prove a criminal case and that it is up to a challenger who is a resident of the City to file some sort of action.

Mr. White expressed that their charter is the constitution for the City of Vero Beach. He then brought up the referendum item that the public voted on concerning allowing the property that the Power Plant and the Water and Sewer Plant sits on to remain for Park use.

Mrs. Fromang asked Mr. Vitunac that if there is a challenge to the City land wouldn't he become involved. Mr. Vitunac answered yes. She then asked why he wouldn't do the same thing for any other portion of the Charter.

Mr. Vitunac said because there is a State election law that comes into play for someone filing for office.

Mrs. Fromang did not understand. She said did the law say that they don't challenge their own criteria.

Mr. Vitunac explained that there is a procedure for filing challenges to candidates and it doesn't include the City Council taking action against them. He said that the land issue is totally different because it is not covered by the election law.

Mr. White asked why they can't tell someone that they are not eligible to run. He said that he is the City Attorney who wrote the law that the voters approved.

Mr. Vitunac said that was going to be his opinion until after talking with the State Election's office who said that the Clerk must take his candidacy. The issue will be brought up in full court if someone challenges it.

Mr. Gabbard added that what makes this different is that this candidate is claiming residence at a date prior to a year of residence. The wording of the charter is somewhat "muddy" in that regards.

Mr. Vitunac agreed that it was susceptible to that interpretation, however the same language has been brought before the Court in another state and they thought it was absurd to take that stance.

Mrs. Fromang suggested getting an advisory opinion from the court as to whether or not their language was ambiguous.

Mr. Vitunac said that after the election they will amend the charter to make sure that the wording is crystal clear. If the candidate is elected who doesn't meet the qualifications then someone could challenge him and it should not be a long court battle.

Mrs. Fromang suggested asking for an advisory opinion from the court right now. She felt that it was their responsibility to look at their own charter.

Mr. Vitunac said that there was not enough time to do that between now and the election and the seating of this candidate. However, he will look into this.

Mr. White stated that they needed to look at their language to make sure that this doesn't happen again. He said it is important to make sure that their charter is protected.

Mayor Abell agreed that there is a loop hole and they need to close this loop hole. He asked Mr. Vitunac to do whatever he could do between now and November 3rd otherwise they would have to rely on a citizen to do it until they can get the wording straight.

Mr. Fish then mentioned that there was a huge ad in the Press Journal today paid for by Florida Power and Light, which didn't have the correct information. He thought that the City needed to respond to it.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Sabin Abell's Matters

- 1. Correspondence**
- 2. Committee Reports**

Mayor Abell reported that he attended the Coffee with the Mayor and Council, a Utilities Commission meeting, the United Way luncheon, a Marine Industries dinner, the Candidate Tea Party, the Joint meeting they had with Indian River County and Indian River Shores, a Treasure Coast Regional Planning Council meeting and the 90th City of Vero Beach Anniversary/Birthday party.

3. Comments

- A) Permission from Council to spend up to \$5,000 for advertising explaining to the Public where they are and where they are going regarding utility rate studies**

Mayor Abell stated that he is looking for permission from the Council to spend up to \$4,000 for space for a statement explaining to the public where we are and where we are going regarding utility rates and results. He thought that the FP&L ad that appeared in the paper today was positive for the City. He then asked for commitment from the

Council to spend up to \$4,000 to make a statement, which would be primarily bullets that would be simple straight forward comments about facts. They could also could provide copies to the public and insert it in their utility bills. This would show the public what they can expect and what is happening. He has also talked to people who have suggested that maybe one of the best things to do would be to put an opt-ad column in the paper. He is looking at doing this in all four local newspapers. They consist of the Press Journal, 32963, Hometown News and Beachside News. If he is able to do the opt-ad in these newspapers then they will not need to spend money for space. So far he has an agreement with Beachside News to do the opt-ad in their newspaper. He mentioned that when he has talked to someone from the public about the utility issues and presented the facts they walk away saying now I understand.

Mr. Fish was amazed that some of the people he has talked to feel they (the City) have done something, but don't know what. Even some of their customers living in the County don't understand that they have a contract. He is in favor of doing this because of the misinformation that people are hearing.

Mrs. Fromang asked when could they expect rate approval back from the Public Service Commission (PSC).

Mr. R.B. Sloan, Utilities Director, stated that their thirty days ran out this Sunday, so they are expecting an answer any day now. He said that they did receive back some review comments where there was one suggestion from the PSC.

Mrs. Fromang asked Mr. Sloan if there was anything else that they could do in order to educate the public.

Mr. Sloan understood what the Mayor was looking at doing, but didn't have an answer to Mrs. Fromang's question.

Mrs. Fromang suggested maybe having another Town Hall meeting. She hated to take money and put it in a newspaper ad if people are not going to believe it. She was concerned about putting something in the paper that people may or may not read. She asked the Mayor when he was planning to put this in the paper.

Mayor Abell felt that he could have something prepared to be in the paper for next Wednesday.

Mr. White made a motion to approve the request if it is the last resort (up to \$4,000). He first suggested utilizing Channel 13 and sending information out in their utility bills. Mr. Fish seconded the motion.

Mr. Sawnick liked Mrs. Fromang's idea of having another meeting. He said if they print something in the paper then there is not any two way communication. He also suggested that if they were going to do this that they should wait until after November 3rd (Election

day). He said that this is a campaign issue and they should not be spending money on a campaign issue.

Mayor Abell replied by saying that some of the candidates don't know enough about certain issues to talk about them and others that don't know what they are talking about do talk. One of the reasons that he proposed this is because he feels that it is an urgent measure to get the word out.

Mr. Sawnick reiterated that right before election the public might perceive it to be suspicious. Otherwise he agreed with the idea. He said that they need to inform the public on everything that they do.

Mrs. Fromang asked Mr. Sawnick if he felt that the voters would think that if they put out this information in a couple of days that it would be to benefit the incumbents.

Mr. Sawnick was not sure how everyone thinks, but said it is election time.

Mrs. Fromang said in that case she would have to abstain from the vote.

Mr. Fish also had that same feeling. He only seconded the motion for discussion.

Mr. White asked if there was any money in the utility budget for advertising.

Mr. Gabbard stated that there is an emergency fund/account where if something unforeseen comes up that they can take that money out of that fund.

Mr. White did not want to make this an election issue. The only thing that he wants to see is to have some correct information reach the public.

Mr. Fish said that as a candidate running for City Council, at this time he wished to withdraw his second to the motion.

Mr. White didn't feel that they even needed a motion. He said that the money is available and as long as there is a consensus of the Council to do this there shouldn't be a problem.

Mr. Vitunac disagreed. He said that there is not a clear consensus of the Council to move forward on this, so a motion is needed.

Mayor Abell seconded the motion made by Mr. White.

The motion failed 3-2 with Mr. Sawnick voting no, Mr. Fish abstaining, Mrs. Fromang abstaining, Mr. White yes and Mayor Abell yes. The voting conflict forms both from Mr. Fish and Mrs. Fromang are attached to the original minutes.

B. Vice Mayor Tom White's Matters

- 1. Correspondence**
- 2. Committee Reports**

Mr. White attended most of the same meetings as Mayor Abell with the addition of a Beach and Shores meeting and a dinner at the Italian American Club.

- 3. Comments**

C. Councilmember Debra Fromang's Matters

- 1. Correspondence**
- 2. Committee Reports**

Mrs. Fromang commented on the 90th Birthday party by saying that it was great and the history lessons for Vero Beach were wonderful.

- 3. Comments**

D. Councilmember Bill Fish's Matters

- 1. Correspondence**
- 2. Committee Reports**

Mr. Fish also attended most of the same meetings as Mayor Abell and Vice Mayor White with the addition of a Mainstreet general meeting.

- 3. Comments**

E. Councilmember Kevin Sawnick's Matters

- 1. Correspondence**
- 2. Committee Reports**

Mr. Sawnick noted that tomorrow he would be attending a meeting where they will be discussing extending the recycling program into commercial areas. The other meetings that he attended were mostly the same as the rest of the Council.

- 3. Comments**

11. ADJOURNMENT

Mr. Fish made a motion to adjourn today's meeting at 11:22 a.m. Mr. White seconded the motion and it passed unanimously.

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