

**CITY OF VERO BEACH, FLORIDA
NOVEMBER 17, 2009 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Roll Call

Mayor Kevin Sawnick, present; Vice Mayor Sabin Abell, present; Councilmember Tom White, present; Councilmember Brian Heady, present and Councilmember Charlie Wilson, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

B. Invocation

Reverend Karl Aull of Unity Church gave the invocation.

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

The Clerk asked that item 2B-2) be added to the agenda under Proclamations “A plaque presented to the Public Works Department.”

Mr. Heady added under his Matters item F) Council Pay and item G) Buy American.

Mr. Heady made a motion to adopt the agenda as amended. Mr. Wilson seconded the motion and it passed unanimously.

B. Proclamations

1. Christian Heritage Week – November 22-28, 2009

Mayor Sawnick read and presented the proclamation.

2. A Plaque presented to the Public Works Department

Mr. Monte Falls, Public Work’s Director, presented Council with a plaque that he received from The Veterans Memorial Island Sanctuary Advisory Committee thanking his department for their services and dedication to Veterans Memorial Island.

C. Public Comment

Mr. Rusty Bragg commented that he has a neighbor who received a \$284.00 electric bill who doesn't have the money to pay the bill. He asked Council what he can tell this person.

Mr. Heady commented on the moratorium that they placed after the hurricanes to extend the cut off period for people who were unable to pay their utility bills and thought that maybe they could initiate something similar to that to help people who are unable to pay these high electric bills. They could expand the time frame on when they are required to pay their bills rather than disconnecting their electricity.

Mr. James Gabbard, City Manager, stated that all the policies that relate to utility disconnects are set by the City Council. He said that the City's policy is much more liberal than Florida Power and Light (FP&L) is right now. He said that FP&L turns someone's electricity off when they get behind at \$50.00 and the City waits until someone gets behind \$200.00.

Mr. Heady made a motion to do an extension of 60 to 90 days. He said that people are in situations that they didn't cause themselves. He said maybe at this point the situation is as serious as they were after the hurricanes.

Mr. John Lee, Customer Service Manager and Acting Utilities Director, was not sure that this could be done because there is an Ordinance that talks about their cutoff policy and how they should apply it. He then went over the problems when they give people extensions. He explained that if a person owes \$200.00 today and the City gives them an extension of another 60 days, then two or three more bills are going to come out and then when this person hits the cut off list they are probably going to owe close to \$600.00. What they try to do is allow people to at least pay eighty percent of their past due bills to avoid being cut off. He also explained that if they say everybody then that includes their commercial accounts and this also reduces the income that comes into the City. He expressed that there is a cost to doing this. If all they are really saying is we are going to help the customer until after the first of the year and then the money that they owe is tripled, he is not sure that they have accomplished much.

Mr. Heady stated that what he is asking and suggesting is that the last few months the bills have been very high and they have been told that the new contract will dramatically drop the rates. So the recurring bill is not going to happen because they have been told that the rates are going to drop. All he is asking is that people in situations like the one that Mr. Bragg just brought up be given an extra thirty days. He said maybe they want to restrict this to people living in the City.

Mr. Lee said again if they wanted to do this until the end of the year/January 1st it could certainly be done, but what he is saying is come mid-January or mid-February they are going to have two or three times as many people that are going to be behind.

Mr. Abell suggested having an installment schedule.

Mr. Lee felt that having an installment schedule would be a nightmare. He said it would be better to suspend everything then to try to work out an installment schedule.

Mr. Heady did not want to make extra work for staff. However if they gave the residents a thirty day extension, the installment plan as suggested by Mr. Abell would fall into place.

Mr. Lee explained that this happens almost naturally in December and January. He said that when there is a holiday they will not have any cut offs before or after a holiday. He said that what Mr. Heady is suggesting could be done, but it is just a temporary measure or relief not a long term solution.

Mayor Sawnick asked Mr. Heady to bring this item up under his matters so that they could move along with Public Comments.

Mr. White asked Mr. Lee what they did after the hurricanes.

Mr. Lee said that they had a sixty day cut off period because a lot of people were still not back in their houses.

Ms. Lee Regan thanked the Council for listening and felt that they really were listening to some degree. She had a point that she wanted to make about yesterday's meeting. Their Consultant, Ms. Sue Hersey, talked about the benefits that they were going to be getting from OUC. She said that money will be coming back to Vero Beach. They have been told to wait and see how OUC does. Her point right now is when talking about raising the base rate at a time when they tell the residents to wait and see then are they going to push this rate increase through now. Why can't they wait and see the kind of money that will come back to them from getting into this contract. This would take the pressure off all of their consumers. She was asking them to take a moment and wait and see.

Dr. Stephen Faherty complimented the City Council on a good meeting that was held yesterday. He brought up the RFQ that they have before them for the Consultants Competitive Negotiation Act Committee (item 2D-5). He strongly urged Council to approve it.

Pastor Frank Ellis, of King's Baptist Church, read a letter signed by over 400 members of his Church concerning the information that they (his Church) received that Planned Parenthood has acquired a state license to commit first trimester abortions at its facility at 3106 20th Street in Vero Beach.

Mr. Gabbard commented that they have received a number of inquiries about this. He said that they have a long term relationship with the people at Planned Parenthood because of issues relating to security, etc. They made an inquiry as to what this meant and apparently there is a potential for money to become available in some Federal

funding programs very soon that might be available to expand what was just discussed by Pastor Ellis. However, after speaking with the local Planned Parenthood office, they indicated that they have no plans to perform any medical procedures in Vero Beach. He said that the strategy nationwide is when money becomes available they are seeking not only in Florida, but nationwide the licensing of additional facilities to do these procedures.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – November 3, 2009**
- 2. Organizational Meeting Minutes – November 6, 2009**
- 3. Request for Street Closures in connection with the Hibiscus Festival scheduled for April 16-17, 2010**
- 4. Marina South Complex Submerged Land Lease Renewal**
- 5. Request for Qualifications (RFQ) – Consultants Competitive Negotiation Act Committee – City of Vero Beach, Town of Indian River Shores and Indian River County**
- 6. Monthly Capital Projects' Status Reports**
- 7. Commercial/Office Lease Agreement between the City of Vero Beach and Flightline Group, Inc., d/b/a Southeast Piper**

Mr. Wilson pulled item 2D-6) off of the consent agenda.

Mr. Heady pulled items 2D-3), 2D-4), 2D-5), 2D-6) and 2D-7) off of the consent agenda.

Mr. Wilson asked that in the regular minutes of November 3, 2009 that on page one, last paragraph, where Mr. Glen Heran was speaking, that the figure of two million dollars be changed to two billion dollars.

Mr. Wilson made a motion to adopt the consent agenda as amended. Mr. Heady seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, amending the Text of the Capital Improvements Element and Intergovernmental Coordination Element and adopting a New Public School Facilities Element of the City of Vero Beach Comprehensive Plan; providing for an effective date.**

Mr. Tim McGarry, Planning and Development Director, stated that this Ordinance was heard by Council last June and they approved to send a transmittal to the Department of Community Affairs (DCA). DCA raised one objection, which he has handled. There is a sign up list in the back of the room for anyone who would like to be informed of the notice of intent from DCA.

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

Mr. Heady mentioned that this Ordinance incorporates some parts and figures and one of the things that it does is incorporate the charge and figures with respect to the enrollment projections for students. It includes the number of full time equivalent students, which is not the actual number of students that are in the schools. This is an inflated number or a funding number that is meant for funding for the public schools for special students, etc. He said that if you go back through the documents, by incorporating an inflated number then these number of students have an impact with respect to concurrency and several pages involve the number. He said rather than incorporate those numbers as part of their Ordinance they could incorporate them as a matter of reference or alternatively they could use the actual number of students. Their goal should be to reduce the cost of government and not increase it.

Mr. McGarry explained that they have a process that they go through with the School Board (referring to the Interlocal Agreement) and there is an official Committee that approves this. The City is required to adopt this at this time. He said that in their next process they could go through and question some of the numbers that have been put in there. At this point in time it is a little late for them to be making changes.

Mr. Heady commented that it is always interesting to him when they listen to governing bodies and when something is being heard as a public hearing and they are being told by staff that at this late date things are too late to change. He asked how could it possibility be too late to change when it is coming before the public for their consideration and approval. He said the request that he has made doesn't at all slow this process down or stop it. What he is asking is rather than incorporate those charts in a City Ordinance, that you just simply reference those documents.

Mr. McGarry explained that by referencing the documents you are incorporating them. He said this can be done, but it still ends up being the same thing. However he said that the school utilization numbers have to be in there because that is what sets the number for the concurrency. He said that he has worked with the School Board through this process and they would probably create more problems for themselves if they deviate too far at this point and time.

Mr. Wilson asked if they were to make changes, would that have any financial impact on the City.

Mr. McGarry said there would not be any financial impact unless DCA has a problem with this and finds them noncompliant. If they are put in a noncompliant state then it could affect them as far as grants that they were trying to achieve.

Mr. Wilson then asked if they make changes here does it have to go back before the School Board.

Mr. McGarry answered no, but that they would probably have a say in this since it goes back to DCA.

Mr. Heady made a motion that they approve the Ordinance with the change that the actual number of students, actual student population, be incorporated into their Ordinance (not the inflated full time equivalent number). The motion died for lack of a second.

Mr. McGarry explained that the full time equivalent number is a derived State approved way to do these things. They, as a City, have agreed to this process and for them to change it makes it a little difficult. They could put a comment in the document that they have problems with these numbers because they are inflated and therefore they lead to unnecessarily increased public expenditures. He would put this in the Ordinance or the document, or both, as a caveat which would get people's attention.

Mr. Heady still could not support a document that gives the impression that the student population is considerably higher than what it actually is. He felt that it was important that government use real numbers and not inflated numbers.

Mr. White asked if they put in the actual numbers and next year they have a 500 student increase, would this be null and void.

Mr. McGarry explained that these numbers are reviewed every year.

Mr. Sawnick made a motion to adopt the Ordinance noting that the comments made by Mr. Heady would be put in both the Ordinance and the document. Mr. White seconded the motion.

Mr. Heady amended the motion to include in the document the actual population numbers. Mr. White seconded the amendment.

The Clerk polled the Council and the motion passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

B) An Ordinance of the City of Vero Beach, Florida, amending Title VI Zoning, Article III, C-1A, C-1B, B-1, and C-1, Commercial District Section 62.35 to add Places of Worship as a permitted use in the B-1 Zoning District; providing for conflict and severability; and providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry explained that this was a request by Vero Worship Center, Inc., to allow within the B-1 district places of worship. At this time they are prohibited from this district. In review of this proposed change staff has looked at it and recommends approval. The Planning and Zoning Board also recommends approval.

Mr. Heady commented that as he looks through the Ordinance he does not see the actual address of the property in question.

Mr. McGarry explained that it is not a property in question. They are looking at a change in the district. They are requesting places of worship be allowed in the B-1 district. He will get them a map of all the B-1 districts.

Mr. Heady felt that if an applicant was going to pay for these kind of changes and the City is going to spend the money necessary to make these changes they should know where the change is being considered.

Mr. McGarry explained that the applicant is making a change to the text amendment, which is a universal change so you are not looking at it as a quasi-judicial change. However, he will provide Council with a map showing where the B-1 districts are.

Mayor Sawnick opened and closed the public hearing at 10:15 a.m., with no one wishing to be heard.

Mr. White made a motion to approve the Ordinance on first public hearing and to set the next public hearing for December 1, 2009. Mr. Sawnick seconded the motion and it passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes and Mayor Sawnick yes.

C) An Ordinance of the City of Vero Beach, Florida, amending Article II, Administration, of Chapter 78, Utilities, of the Code of the City of Vero Beach; creating a Utility Commission 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 Commission decisions; providing for abolishment of the Existing Advisory Utilities Commission; providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. Vitunac reported that he made the changes to the Ordinance as requested by Council at their last meeting. He then mentioned the editorial that recently appeared in the Press Journal, which was written by Representative Debbie Mayfield concerning this matter.

Mr. White appreciated that Representative Mayfield sent them a copy of the article before it appeared in the Press Journal. He felt that they should probably postpone adopting this Ordinance because of what Representative Mayfield was proposing to do.

Mr. Heady felt that this whole change was at the request of non-city residents. He made it clear that Council is elected by City residents and City taxpayers. That is not to say that they don't have an obligation to those residents who live in the County. This Ordinance will take powers from Council who is elected by the people and transfer that power to an Authority. One of the concerns yesterday at the workshop was the governance of FP&L and the difference that OUC and Vero Beach were unregulated. There is a governance problem, as he sees it, with this Authority being set up. He feels

that the only thing that this Ordinance does is eliminate an advisory committee and transfers their power to a non elected body. He did not think that they needed this added level of government.

Mr. Wilson felt that one of the things that came out of yesterday's meeting was that it would be good for the City to have the backing of the public that they serve and in some cases they don't have that backing right now. He understands that this was brought forth by their City Manager and the request of some State Legislators who wanted to have some changes happen. It has been very clearly said that that Legislation is going to happen regardless of what they do. He was not sure that bringing it forward would accomplish its goal. He said that is not to say that down the road they might need to include how they get utility information if they are still in the utility business. He mentioned the Utilities Commission who are very knowledgeable people, but he was not sure that they have been as accessible as they need to be. At some point he is going to support some changes as to how this Commission is organized. It sounds to him that it needs to be organized more like the Planning and Zoning Board is and that they (Council) receive recommendations that mean something. He made a motion to postpone adopting this Ordinance.

Mr. Abell mentioned that because of the interest of the Legislature they have been working on this Ordinance for over a year. He went over the primary differences that the new Utilities Commission would be able to do then what the Utilities Commission in place now does not have the authority to do. He said that at least three of the current Utilities Commission members have said to him that the City is responsible to contract and take care of its own assets. He said if Council wants to postpone passing the Ordinance or not pass it, that at least they add to the current Commission the recommended person from Indian River Shores. He said that the City Manager and the City Attorney could formulize how this works into the present Commission or pass this Ordinance in an effort to satisfy the local Legislature.

Mayor Sawnick agreed that whatever they do Representative Mayfield is going forward with Legislation, which could override whatever they do anyway.

Mayor Sawnick made a motion to postpone this Ordinance. He was told that Mr. Wilson had already made a motion.

Mr. Wilson stated that his motion is to table this until probably sometime in January. Mr. Sawnick seconded the motion.

Mr. Heady agreed with Mr. Abell's suggestion that they add to the existing Advisory Committee a member from Indian River Shores. He did not mind tabling the Ordinance, but not to a date certain. He didn't think it was necessary for them to have to review it in January.

Mr. Vitunac suggested doing Mr. Abell's suggestion as a separate motion and take care of the motion that is on the floor first.

The Clerk polled the Council and the motion passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

Mr. White made a motion to add the person from Indian River Shores to the Utilities Commission. Mr. Heady seconded the motion and it passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick 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, abandoning all that portion of 17th Street right-of-way lying between Highland Avenue and Old Dixie Highway, South of Block 18 and North of Block 19, Highland Park Subdivision.**

Mayor Sawnick read the Ordinance by title only.

Mr. Falls reported that in the earlier part of the year they received an application from four property owners in the area between Highlands Drive and Old Dixie to abandon a section of 17th Street. Staff has reviewed this section of right-of-way and does not object to the abandonment. He showed on the screen the section in question to be abandoned. Staff does not see a need to maintain that right-of-way and does not object to the abandonment with the condition that easements be retained for all of the utilities being currently retained in there. If the land is abandoned it will go back on the tax rolls and the City will receive property taxes from it.

Mr. White asked what this property was originally used for.

Mr. Falls said that it was platted as 17th Street and never opened as a road.

Mr. Heady wanted to add some words in the Ordinance that the abandonment and the people that end up with the property know that the easement is there and that they don't plant Live Oak (large) trees in the middle of the easement.

Mr. Falls explained that any work that a property owner would take title to would be subject to any type of development order, site plan, etc., and those conditions would be added at that time.

Mr. Heady understood that, but in the meantime once you abandon the property, the property owner gets the deed and if a Oak Tree is planted and ten years later the City may need to go through the easement. He just wants the property owners to clearly

understand that there is an easement there and that there are some restrictions as to what could be planted.

Mr. Vitunac stated that this is a standard easement law, but they could put in the easement release that no obstructions can be put in the easement without approval. Mr. Falls did not have any problem with adding this as long as Mr. Vitunac was comfortable with the language.

Mr. White made a motion to approve the Ordinance on first reading and hold the public hearing on December 1, 2009. Mr. Sawnick seconded the motion and it passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

B) A Resolution of the City of Vero Beach, Florida, adopting certain New Rates, Fees, and Charges for the Vero Beach Municipal Electric System; providing for an effective date of January 01, 2010.

Mr. Sawnick read the Resolution by title only.

Mr. John Lee, Acting Utilities Director, reported that the last rate study that was done was on August 12, 1991. He wanted to tell them the difference between the 1991 rate study and the one that they recently did. It used to be that the City of Vero Beach produced most of its own power so the base rate included all the rates to run the City plus some of the cost to produce some of the power. So the fuel adjustment back then was just some minor adjustment based on the cost that they needed to produce fuel for the Plant. Then when they joined the All Requirements Project fuel adjustment changed. So when they asked the consultants to come in and do this Cost of Service Study we told them that we want them to take it apart and put it back together the right way. This would show the charges where they belong and display the way that they are. This can cause some problems with customers because they are not used to seeing it this way. Mr. Lee showed on the screen what the rates look like now and what they will look like in the future (please see attached). He then went over what the new rates for City customers living outside of the City will be.

Mr. Sawnick made a motion to approve the Resolution on first reading and to set the public hearing for December 1, 2009.

Mr. White was expecting instead of a \$46.00 savings a \$112.00 savings.

Mr. Lee explained that what they did as part of the Cost of Service Study was approach rate making the same way as FP&L. The first 1,000 Kwh are at a lower rate, then after that it goes to a higher rate. This is to promote conservation and help people at the lowest end to keep their bills as low as possible.

Mr. White agreed with waiting two or three months before doing this.

Mr. Lee explained that when you say it is a rate increase it is only a rate increase from \$721 to \$7.95. He said every other element goes down. He said overall it will be a 25% reduction in the bill. He will be putting an insert in everyone's January bill so that the customers will understand how their new bill reads.

Mr. Heady asked Mr. Lee if there was anything that they could do in this Resolution to change the words so that the ratepayers clearly understand that this is not a rate increase, but rather a rearrangement. He said over and over again that he will not vote for a base rate increase. However, he will vote for a rearrangement of fees. For the County residents it puts them equal with the City residents. He appreciates the document just presented by Mr. Lee and understands clearly the difference in putting things in the right column.

Mr. Lee said that if he could put a flyer in the January utility bills that will be his best shot at explaining it to their customers.

Mr. Wilson asked Mr. Lee if this is defeated, would it have to be reapplied to the Public Service Commission to make changes. Mr. Lee answered yes and that these rates would stay. Mr. Wilson then asked what would the results be in tabling this until February or March after they see what the changes are and that the reductions are actually there before they do anything. Mr. Lee said that the customers living outside the City would still be charged the 10 percent surcharge. There is a formula right now for calculating the power cost adjustment if it is modified in this document and that formula would stay in place until they resubmitted it to the PSC. If they wanted to resubmit with a new service date and not change any numbers that would be one thing, but if they wanted to change any of the numbers they would have to resubmit with justification of the numbers and reasons for changing those numbers.

Mr. Wilson asked Mr. Lee how this affects commercial properties and trying to keep people employed in the City.

Mr. Lee said that obviously most people use the first 1,000 Kwh. The average residential bill is about 1,100 and about 80% of their residential customers will see an instant benefit to this and the commercial customers will obviously see a smaller decrease. But, they have reduced some of the costs for their commercial customers.

Mr. Wilson said it sounds to him that this should go to a public hearing so that he can get additional information. However, he will not vote for an increase at this time. If there are alternatives then maybe Mr. Lee can present them at the public hearing.

Mr. Heady asked Mr. Lee to explain the negative or positive effects that this will have if they adopt this change.

Mr. Lee said that whether they adopt these rates or not they will still sell power to a prospective buyer. These are rates that are just a collection of revenue that they need to

do their business. If they don't adopt these rates the relief that they were seeking for their outside City customers would not take place.

Mr. Abell stated the point is that this Resolution is an overall decrease in the bill and he felt that they needed to move forward. He made a motion to approve the Ordinance on first reading and to set the public hearing for December 1, 2009. Mayor Sawnick seconded the motion.

Mr. Heady said if we do not adopt this one of things that has been a problem in the community is the equalization of rates in the County and the City. He said this Ordinance allows for equalization of rates to the County ratepayers and he thinks that is vitally important for the health of the City that this change is made.

Mr. White said lets say that we agree to approve this effective February or March, he said wouldn't their customers fuel adjustment charges drop because they have switched to OUC.

Mr. Lee said that it would not and the reason is because they will not get the final bill from FMPA until mid-January (for December usage). Their customers won't see any impact because of the fuel adjustments until their bills are rendered in February. They would still have their 10% outside City surcharge applied even though the fuel portion would go down the 10%.

The Clerk polled the Council on the motion and it passed 5-0 with Mr. Wilson voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

6. CITY CLERK'S MATTERS

A) Approval of Committee Appointments 2009-2010

Mr. Wilson made a motion to approve the Council Committee Appointments for 2009-2010. Mr. Abell seconded the motion and it passed unanimously.

7. CITY MANAGER'S MATTERS

A) Fiscal Year 2009/2010 Vehicle and Equipment Purchases

This item was pulled off of the agenda.

B) Vision Implementation Plan Program Update

Mr. McGarry reported to Council that the Tree Protection Ordinance would be coming to them for first reading on December 1, 2009.

Mr. Heady noted that he did not receive any backup for this item.

Mr. McGarry told him that is because he usually just does an oral report when he gives an update on the Vision Implementation Plan.

Mr. Wilson wished to have Mr. McGarry brief him on this Ordinance.

Mr. McGarry invited Council to visit him at any time.

C) SRF Funding

Mr. Rob Bolton, Water & Sewer Director, explained that in May 2009 the City secured two loans through the Florida Department of Environmental Protection (FDEP) that were funded by the Federal Government via the American Recovery and Reinvestment Act of 2009 (ARRA), aka the stimulus bill. The first loan through the Clean Water State Revolving Fund (CWSRF) was for \$10,000,000 @3.02% interest with no administration charge. The second loan through the Drinking Water State Revolving Fund (DWSRF) was for \$3,000,000 at 3.02% interest with no administration charge and 85% principal forgiveness. The two loans were designed to fund five projects which are: 1) Deep Injection Well, 2) Storage Tank and Pump Stations, 3) Force Main from Wastewater Treatment Plant to Water Treatment Plant 4) Field Services Complex and 5) Water Treatment Plant Maintenance Building. The DWSRF was designed to fund half of Project 1. The CWSRF was designed to fund the other half of the Project 1 and all of Projects 2 through 5. During the bid preparation for Project 1 (Deep Injection Well System) the City was notified that the "Buy American" requirement would add a significant cost to the total steel cost for the project. The City therefore requested guidance from the FDEP on the possibility of a waiver from the "Buy American" requirement. At that time the Environmental Protection Agency had not completed the guidelines for the "Buy American" requirement and the interpretation of the rule was that if a specific component of the bid was 25% greater for American products than Non-American products then the project could receive a waiver from the "Buy American" requirement. Therefore, the City structures its bid to evaluate the true costs of American Steel verses Non-American steel. The bids for the Deep Injection Well were opened and the results yielded a 56.3% difference of American Steel verses Non-American steel at a cost of \$362,388.00. Unfortunately after the bid and award process, EPA finalized their "Buy American" requirements and the original guidelines had changed. No longer did the 25% apply to a specific component, but it applied to the entire project. In fact the structure of the loan required that the 25% difference be applied to the entire \$10,000,000 CWSRF Loan. The City found out about this issue on October 28, 2009 and notified FDEP and EPA. On October 29, 2009 EPA and FDEP confirmed the problem and FDEP offered to cancel the \$10,000,000 CW ARRA project and issue a \$10,000,000 conventional CWSRF Loan under the same conditions except that a 2% administration charge would apply. This is standard for all conventional SRF loans. In addition, FDEP shifted the DW SRF projects from funding half of Project 1 to funding Projects 4 and 5. This change increases the total unfunded balance from \$1,119,388.78 to \$1,277,283.58. The difference in the unfunded balance is a result of funding the Field Service Complex and Maintenance Buildings under DWSRF instead of half of the injection well. The City has brought this to the FDEP's attention and they have agreed to fund the remaining

balance of the projects in next year's SRF allocation. Mr. Bolton recommends authorizing the Mayor to enter into a new loan agreement with FDEP for the amount of \$10,000,000 with a 2% Administration fee, capitalized interest of \$109,000.00 and annul the original CWSRF Loan.

Mayor Sawnick announced that the new loan will only include the Deep Injection Well, the storage tank and pump stations, and the force main Wastewater Treatment Plant to Water Treatment Plant. He said what they are approving now is just for these three items.

Mr. White made a motion to approve the funding for the Deep Injection Well, the Storage Tank and Pump Stations and the Force Main Wastewater Treatment Plant to Water Treat Plant. Mayor Sawnick seconded the motion.

Mr. Heady asked Mr. Vitunac that under contract law the contracts that they entered into with the various companies, are there provisions in those contracts that relate to the loan. If they don't get the loan is the contract null and void.

Mr. Vitunac explained that he did not think that the source of funding was important to them and by law the City has to have a source of funding when they sign a contract.

Mr. Bolton added that they are still bound by the contracts for expenses. Before they entered any contracts they already had the loan in place.

Mr. Heady questioned how much work has been completed.

Mr. Bolton explained that they have not received any invoices yet, but with the Deep Injection Well they are about thirty percent completed with the project. In essence they would be on the hook for more than three million dollars if they went to court and tried to cancel the contract.

Mr. Wilson said it was obvious that they were trying to figure out whether they are spending money on projects that will impact the other projects that they are having with regionalization. He asked if they were spending money that they don't need to spend if they were to do something with regionalization or spending money that would make it harder to do regionalization.

Mr. Bolton explained that what they are doing makes it more financially reasonable for regionalization. He explained that they are under consent order to put in this Deep Water Injection Well. He then explained in great detail why these things need to be done whether we go with regionalization or not.

Mr. Wilson wanted to make sure that they were not spending money unnecessarily. He said that what he is hearing is that they are committed to this loan. He was told both by Mr. Gabbard and Mr. Vitunac that is true.

Mr. White commented that they are not allowed to put any more water into the lagoon. The City is mandated to have this Deep Water Injection Well.

Mr. Wilson asked what is the minimum that they have to do.

Mr. Bolton stated what they are doing.

Mr. Abell added that what they are doing is what they are required to do by DEP.

The motion passed 4-1 with Mr. Wilson voting no.

At 11:24 a.m., the Council took a five-minute break.

**2D-3) Item Pulled from the Consent Agenda –
Request for Street Closures in connection with the Hibiscus
Festival scheduled for April 16-17, 2010**

Mr. Milt Thomas, Chairman of the Hibiscus Festival, was at today's meeting. He started off by saying that Main Street doesn't make a whole lot of money from the Hibiscus Festival, but they enjoy doing it. The estimated attendance last year was between 15,000 and 20,000 people and they feel that attendance will probably be even larger this year. The streets that they are requesting be closed the entire day on Saturday include 14th Avenue between 20th Street and 23rd Street and 21st Street from 13th Avenue to just east of the Vero Furniture Mart. They plan again to welcome the City as a presenting sponsor. It seems only yesterday that our Committee visited the City Council and received their unanimous support of the 2009 Festival, again with a \$5,000 "safe guard" guarantee against loss. He said that they have never had to use the money, but would like to request it again for this year's Hibiscus Festival.

Mayor Sawnick thanked Mr. Thomas for putting this event on. He said that he would be participating in the 5K race and would be asking the rest of the Council to also participate.

Mr. Heady went over the reason that he pulled this item off of the consent agenda. He said it was because of the \$5,000 guarantee by taxpayers. He understands Mr. Thomas's concerns, but his concerns go to the taxpayers right now about being taxed to death. He would move approval absent the provision of the \$5,000 safe guard. He doesn't think that they should be in the business of putting taxpayers dollars out for this. He thought that there probably are a lot of places that Mr. Thomas could go where businesses would put up the money for the guarantee. He made a motion to approve this absent the \$5,000 taxpayer safe guard. The motion died for lack of a second.

Mr. White added that the economic impact that this event brings to our Downtown makes \$5,000 a worthwhile investment even though they have not had to contribute for the last six years.

Mr. Thomas commented that the tax rolls in downtown have increased over the years.

Mr. Wilson thanked Mr. Thomas and Main Street for all the efforts that they put into this event.

Mr. Abell made a motion to approve the street closures and the guarantee. Mr. White seconded the motion and it passed 4-1 with Mr. Heady voting no.

**2D-4) Item Pulled from the Consent Agenda –
Marina South Complex Submerged Land Lease Renewal**

Mr. Tim Grabenbauer, Marina Director, reported that this lease renews the submerged land lease through 2019. It also includes the lease fee for 27,676 square feet for approximately 10.5 cents per square foot.

Mr. Heady said that one of the reasons that he pulled this item off of the consent agenda is because the Mayor's name on the signature page needs to be changed from Sabin Abell to Kevin Sawnick. The other reason is that there is a provision for lease fees and what we find in government often is this "shell game." He said one governing authority moves money to another authority who moves it over to another governing authority and if you ever try to chase the money through the red tape of government it is an incredible journey. He felt that as a government they need to stop the shell game of money. If there is any governmental purpose for the need for submerged lands we shouldn't have to pay the State of Florida. The dollar amount is listed as \$2,895.00 and it probably cost the State and the City more money than the fees just to do this paperwork. He reiterated that these fees should be eliminated.

Mr. Abell asked Mr. Grabenbauer why does the City pay sales tax. Mr. Grabenbauer told him that they do not. It just states on the lease if applicable. He explained that they pay sales tax at the Marina on the things that they resale.

Mr. White made a motion to approve the Marina South Complex Submerged Land Lease Renewal. Mr. Wilson seconded the motion and it passed unanimously.

**2D-5) Item Pulled from the Consent Agenda
Request for Qualifications (RFQ) – Consultants Competitive Negotiation Act
Committee – City of Vero Beach, Town of Indian River Shores and Indian
River County**

Mr. Heady referred to the front of the cover page where they are asking the City to authorize advertising by Indian River County. He questioned whether or not the City had the authority to authorize the County to do anything. On the second page where you get down to funding it states that funding will be determined once the consultant is selected. The bottom line is there is no dollar amount inserted. It seems to him that when they approve something and there is no dollar amount it is like writing a blank check. He clearly objects to writing a blank check. He said that this is a request for a qualification

for a consultant. He feels that City staff is made up of some pretty qualified people and the same thing can be said for the County staff. He wondered why their qualified people could not figure out these things without spending a lot of money on consultants.

Mr. Vitunac referred back to the joint meeting that was held where the City of Vero Beach, Indian River County, Indian River Shores, and Fellsmere discussed this matter and no one trusted any one party to provide a consultant or staff. They wanted to have an independent consultant. In fact they asked that the consultant not be someone from this County (far away). He explained that there is no money in this document because it is a request for qualifications only. The Committee will come back with a recommended list of best consultants then if the County and the cities want them to go forward then they would talk money. The City has been very specific that it reserves the right to withdraw if they don't like the money part.

Mr. Heady felt that if there was no funding required then they don't need the statement about funding in the RFQ. He understands there was a feeling of mistrust at that joint meeting, but since then there has been an election and he can't speak for Mr. Wilson, but he speaks for himself and he does trust staff. He trusts our City staff to work with the County staff. He did not think that the need for a consultant is here yet, therefore there is no need for an RFQ. He said lets save the taxpayers some dollars and see what we can do that benefits the whole County and the City.

Mr. Wilson said that he attended the last meeting that the Consultants Competitive Negotiation Act Committee met. He said one thing that struck him at this meeting is that they made tremendous strides to clear up some things that are going to be huge issues in the future. He said that staff does not have all the qualifications needed for this project. They will need an outside consultant who has an independent view.

Mr. Wilson made a motion to approve the RFQ. Mr. Abell seconded the motion.

Mr. Falls commented that the County and each of the cities were going back to their respective boards and asking that the County be the clerical house to actually put out the RFQ. There was one small change that he made to the draft. He said that on page two, number two, it should read "The successful consultant must be experienced in performing the following tasks associated with water and sewer design for ensuring future demands are met for 10 year and 20 year horizons. This will go in the final document.

The motion passed 4-1 with Mr. Heady voting no.

6. Monthly Capital Projects' Status Reports

Mayor Sawnick commented on a letter that they received about 18th Street and Oak Trees (letter on file with the Clerk's office).

Mr. Falls said that he received a copy of the letter yesterday and his staff is taking care of it.

Mr. Heady pulled this item off of the agenda, but said that his questions have been answered.

Mr. White made a motion to approve the Monthly Capital Projects' Status Report. Mr. Abell seconded the motion and it passed unanimously.

7. Commercial/Office Lease Agreement between the City of Vero Beach and Flightline Group, Inc., d/b/a Southeast Piper

Mr. Eric Menger, Airport Director, reported to Council that the Vero Beach Municipal Airport recently completed a total renovation and expansion project resulting in the availability of several rentable spaces of varying sizes ranging from a 333 square foot single room to a 1,200 square foot office suite. The lease is for the 1200 square foot office suite for a period of one (1) year with an option to renew this lease for an additional year. He recommended approval of the Commercial/Office Lease Agreement with Southeast Piper, with an effective date of December 1, 2009.

Mr. Heady could not understand why something like this that has such a small dollar amount was coming before Council. He made a motion to approve the Commercial/Office Lease Agreement between the City of Vero Beach and Flightline Group, Inc., d/b/a Southeast Piper. Mr. White seconded the motion.

Mr. White explained that it has been the policy of the City that the City Council review the Airport leases. It is good that they are aware of what is going on at the Airport.

The motion passed unanimously.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

None

B. New Business

Mayor Sawnick mentioned that the City of Sebastain had a referendum item on the recent election ballot concerning tax abatement. He thought that this was something that the City should consider putting on the 2010 ballot. He said that it is good for businesses.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

- A. Mayor Kevin Sawnick's Matters
 - 1. Correspondence

Mayor Sawnick reported that he attended the Veterans Day ceremony, the Stan Mayfield dedication, New City Voice, Coffee with the Council and the City Council workshop.

- 2. Committee Reports
- 3. Comments

- B. Vice Mayor Sabin Abell's Matters

- 1. Correspondence
- 2. Committee Reports

Mr. Abell reported that he attended an MPO meeting, A Chamber of Commerce function for Economic Development, he had a meeting with Teaparty Board, he met with a group from Atlanta that was invited here by the Chamber of Commerce and the Chamber did a good job of showing them around, he attended the Organizational Meeting, the Veterans Day Ceremony, Dedication of Route 60 Memorial Highway, Coffee with the Council, and the City Council workshop.

- 3. Comments

- C. Councilmember Tom White's Matters

- 1. Correspondence
- 2. Committee Reports

Mr. White attended Coffee with the Council, the Organizational meeting and the City Council workshop.

- 3. Comments

- D. Councilmember Brian Heady's Matters

- 1. Correspondence
- 2. Committee Reports
- 3. Comments

Mr. Heady made a motion that they add a thirty day grace period to residential customers, for the months of November and December so their electric is not turned off until the new rates have a chance to kick in and people's finances catch up with it. Mayor Sawnick seconded the motion.

Mayor Sawnick asked Mr. Lee if this was possible.

Mr. Lee mentioned that they have a cut off list today, tomorrow and Thursday. He said that they could suspend tomorrow's and Thursdays and the rest of the month of November and all of December. What he would suggest is even in January that they do

the cut off list but say to the customer that they have to pay at least fifty percent of the past due bill. This would soften it so that they don't stop it for a month and a half and then hammer the customers on the third month. He asked them to direct the City Manager to discuss this with him.

The motion passed unanimously.

A) Matters by the Public

Mr. Heady commented that the concerns that he has have disappeared under the direction of the new Mayor. The Mayor is allowing the public to speak and the timer has disappeared.

Mr. Heady attended the Recreation Commission meeting and their Matters by the Public is at the end of the meeting and he would ask that Council direct all of the Advisory Committees to put Matters by the Public in the front of the meeting and not restrict citizen input.

B) Council Pay

Mr. Heady commented that he added this as one of his items because one of the things that he thinks that they need to do as governing authorities is to reduce the cost of government. He suggested reducing costs that involves their pay. He said at one time the Council's pay was split. It was split between compensation for their expenses and their pay and this was changed and the whole salary was put into one lump sum. When it is in a lump sum as pay then the employer pays half of the social security that is required. If they went back to the old way of paying Council then the end result would be a decrease in the employers side of the social security and the net savings to the taxpayers would result in somewhere between \$1,000 and \$2,000. This is one way of reducing the cost of government without affecting anyone. He would like to have this brought back before the Council as a consideration.

Mr. Vitunac explained to Mr. Heady that this would require a referendum vote because it is in the charter.

Mr. Heady did not want to spend a lot of money to have a referendum.

Mr. Vitunac said that the next time there is a referendum this could be put on it.

C) Buy American

Mr. Heady wanted them to spend their money as close to home as possible. If that costs them a couple of dollars to purchase an item that is American then bottom line is that it would increase the money flowing throughout their community.

D) Time of Meetings

Mr. Heady suggested holding their first meeting early in the day and that their second meeting held later in the month should be later in the day. This way they are accommodating everyone in the community.

E) Options Available for Electric Plant

Mr. Heady mentioned that there were a lot of things that happened at the workshop yesterday and one of the things was a clarification of some interest by FP&L. He felt that they needed to look at all of their options. He said asking FP&L if they are interested in their Plant doesn't cost them a dime. FP&L made that clear at yesterday's meeting.

Mr. Heady made a motion that they do this but not only with FP&L, but also with Orlando. He said maybe Orlando would be willing to buy and perhaps there is a third or fourth utility. They could just send out a letter and tell them that they would be interested in looking at an offer. The motion died for lack of a second.

Mr. Wilson said that he was not against what Mr. Heady was suggesting. He is concerned that they are bringing up a whole reform package under Members Matters late in the meeting that has not been advertised to the public. He planned to put forth basically a reformed package that talks about things like the time of the meeting and whether people should participate in the furlough program and things like that. He thinks that these things should be done as items on the agenda. He personally would like to see what Mr. Heady has just suggested but in another procedure where they can agenda the items, discuss them and have the backup on them.

Mr. Heady commented that all of these items are listed on the agenda. He disagreed with Mr. Wilson's analysis that the public was not informed.

F) Options Available for Transmission and Distribution

Mr. Heady had the same thoughts for the transmission and distribution that applied to the generation plant that we need to have before them options and a way to get these options in front of them is to ask. He does not recommend spending any money on consultants to come back and tell them what the transmission and distribution is worth any more than the generation plant. However, it would be prudent for them to take and ask the parties who are interested in a sale with respect to the transmission and distribution. He said perhaps selling the portion that is outside the City limits would make sense. He wanted these options to come back before them at the earliest possible meeting. It needs discussion and all they have to do is let these entities know that yes we are interested in looking at their proposals.

- E. Councilmember Charlie Wilson's Matters
 - 1. Correspondence
 - 2. Committee Reports
 - 3. Comments

Mr. Wilson commented that in the future he does not plan on talking about everything that he has done since their last meeting. He will report on the Committees that need to be reported on, but he doesn't plan on going over everything that he has done every day.

Mr. Wilson noted that Coffee with the Mayor was excellent. He continued by saying that it has been an eventful week. He was sworn in and sued so this has kept him busy. He did have a couple of questions and was not sure if this was the proper place to ask the questions. He said that Mr. Vitunac has publically made a determination about what the legal situation is for different people on this Council and he wanted to make him aware that Council will probably be discussing that with him and it may involve more than one Councilmember and he wanted them to be aware that he may need to revisit that decision.

Mr. Wilson brought up yesterday's meeting and said that a lot of things happened. He said one of the reasons that he was careful about Mr. Heady's recommendations was because he has had discussions with FP&L and he intends to ask them as well as Orlando Utilities, but there are certain things that they have to agree to before they ask them. He plans to put this on the next agenda and that is what is required of them to be able to solicit help from FP&L. One of the things mentioned in the presentation at the meeting on Monday was that the City was going to be buying the fuel that is in the tanks as of January 1st.

Mr. Vitunac explained that FMPA paid the City for the fuel when they entered into the contract and now the City will have to buy it back from them in the end.

Mr. Lee added that as part of the exit there will be costs. He said that there are multiple oil tanks and they are not filled. He said on the last day of their contract it will be determined and we will pay the wholesale price that we purchased it for back to them. Whatever the volume is in the tanks at that last day is what they will get billed for from FMPA.

11. ADJOURNMENT

Mayor Sawnick made a motion to adjourn today's meeting at 12:21 p.m. Mr. Heady seconded the motion and it passed unanimously.

/tv