

**CITY OF VERO BEACH, FLORIDA
NOVEMBER 3, 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 Mr. R. B. Sloan, Utilities Director.

C. Pledge of Allegiance

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

The Clerk requested that item 2B-2) be added to the agenda “Veterans Day Proclamation – November 11, 2009.”

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

B. Proclamations

- 1. Vero Beach Bridge Center 50th Anniversary**
- 2. Veterans Day – November 11, 2009**

Mayor Abell read and presented both proclamations.

C. Public Comment

Mr. Glen Heran took these three minutes to discuss a 100 million dollar budget. He said they are an unregulated price monopoly and 61% of their customers have no vote on City Council. City Council, who is the real Utility Authority, is an unregulated price monopoly soon to be buying their power from another unregulated power monopoly. You will be buying this power under a two billion dollar contract that most of the Council did not read because some of the numbers were blacked out. He said Mr. Sloan will tell them that the jewel of this contract is a thirty percent fixed capacity. That means seventy

percent is not fixed with the OUC, which is an unregulated price monopoly. He said that they are not a generating utility, just a middle man buying and reselling eighty percent of their power. He said what they should have done is studied selling the utilities to Florida Power and Light (FP&L). He went over the study that he has designed with Dr. Faherty. They would like the opportunity to present the study to Council in the public which shows that they will be better off with the sale of the utilities to. Mr. Sloan likes to say that the model has holes in it. He said that Mr. Sloan has said that the City of Vero Beach can compete with FP&L. He has looked at utility rates for every month in the last ten years and there has not been a single year in the last ten years when the City of Vero Beach had less than or equal rates to FP&L. The average rate for the last ten years has been 21% higher than FP&L.

Mr. White asked Mr. Heran if he receives any compensation from FP&L.

Mr. Heran answered no. He said that he was just volunteering his time. He said that he does have 150 rental properties on this utility grid.

Mr. White wanted to make it clear that you just can't go out and sell the Power Plant. They would have to go out to bid.

Mayor Abell stated that he has personally read the OUC contract, there was a Power Point Presentation outlining the contract and there was an attorney at one of their meetings to go over what options that they had. They talked about selling the Plant and decided not to because it would have to be done by an auction. The utility bills will be lower in January and this will give the utility customers some relief.

Mr. Robert Walsh commented that this Council was elected to represent them and they are suppose to make decisions by the will of the govern. The Council violates rules by silencing the speaker. He then read an excerpt from the Declaration of Independence. He said that it was time to have a Council who will listen to them. This Council continues being liars, cheats and thieves. He did not agree with the spending of \$4,000 as discussed at their last meeting.

Mayor Abell informed Mr. Walsh that Council did not vote to approve the spending of \$4,000.

Pastor Frank Ellis arrived at the meeting. He apologized for being late. He said that he was on the agenda to give the invocation. He requested permission to lead the Council through a prayer.

Mr. Peter Gorry, 10 Seagull Avenue, addressed the issue of the pension funds. He said that for the three pension funds that the City has there has been a loss of over 17 million dollars. In addition, the benefit payouts are more than what was contributed for the year. He said that in order to recoup the money to go back in the Enterprise funds there would need to be \$890,000 additional contributions made. His question to Council was what are

they doing to address these issues and what is the status of the pension funds for the three funds.

Mr. Gabbard explained that the Council commissioned that a study be done, which is to be completed by the first week of December. He knows of some actions that will be proposed that will have immediate effect. Also a study is being done about their health benefit packages. He told Mr. Gorry that he would be happy to meet with him any time.

Mr. Fish expressed that with the election he found it impossible to talk about financial issues because the utility issue was always being brought up.

Mr. White mentioned that the Police Officers in Sebastian are having the same problems that Vero Beach is. The City of Sebastian has now made it mandatory that the police officers contribute to their retirement plan.

Mr. Fish added that as a member of the Florida League of Cities Finance & Taxation Committee, he knows that a lot of the municipalities are having this problem.

Mrs. Fromang agreed that this is a serious issue and the City is going to address it.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – October 20, 2009**
- 2. Commercial Lease Agreement between the City of Vero Beach and the Honorable Debbie Mayfield for the Rental of City Hall Office Space**
- 3. Unit 5 Repair**
- 4. Final Payment – Bid #030-08 – M.D. Henry Company – Structures & Equipment for Substation #8**
- 5. Final Payment – Bid #180-08 – Graves Construction – Substation #8**

Mr. Fish made a motion to adopt the consent agenda. Mrs. Fromang seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

- 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. Gabbard reported that Council was given a document that describes what they are doing. In the plan a rate study was included, as well as appointing a Utility Authority who had some authority.

Mr. Sloan went through the document that was published last January. He then went over the Electric Utility Action Plan (attached to the original minutes).

Mr. Vitunac said that he would go through all the different Sections of the proposed Ordinance.

Mr. White felt that there should be term limits for these members.

Mr. Vitunac said that there was no problem with having term limits. They just tailored this Ordinance the way that all their other Commission/Boards operate in the City.

Mr. White suggested either going with two or three year terms, with a max of eight years being allowed to serve. He said they could also put in there that after a year off of the Commission that a previous member could reapply to be reappointed to the Commission.

Mr. White would recommend that they sit down with their State Representatives and ask them what they want from us. He also felt by forming an Authority that they were circumventing the Council and the buck should stop here. He said that it was important that the City Council maintain control and that everything pertaining to utilities is done correctly. He commented that Council has been working on this for the last five years and in a few months things will be better. He reiterated that it was important that the City Council maintain everything the way it should be. He said that if they choose to go with an Authority then he felt that the person appointed to the Commission needs to have some knowledge of utilities.

Mrs. Fromang called both Representative Poppell and Representative Mayfield. She spoke with Representative Poppell who did not express any displeasure with it. Representative Mayfield returned her call but she was not available to talk to her. She called her back and left her a message that if there were any problems with the Ordinance to please let her know. She told Representative Mayfield in the recorded message that if she didn't hear back from her then she would assume everything was fine.

Mr. Gabbard added that he and the Mayor met with Senator Negron who is aware of the situation, but did not have any strong opinions. They did not meet personally with Senator Haridopolos, but spoke with his aide. His aide informed them that that Dr. Faherty had made a Power Point presentation to Senator Haridopolos. He said that Representative Mayfield has had a copy of this document for a couple of months now. She was in favor of the Authority being passed. He reminded her that this was what the Legislation wanted to enact and she told him that she was actively pursuing Legislation. However, she did not want her actions to stop this process.

Mrs. Fromang agreed that the City Council has the responsibility to keep abreast of this vital issue. She has always been in favor of having the Utilities Commission look at some of the expenditures because of the knowledge that they have. She referred to the criteria to be appointed to this Authority and said that she would hate for someone who has the knowledge that they are looking for not to be reappointed because they don't meet the criteria. She recalled that at this time there are more County residents sitting on the Utilities Commission than City residents.

Mr. White felt that they could incorporate these new qualifications for the Utilities Commission that they have now. He reminded everyone that the Utilities Commission voted against this Ordinance. Again, he felt that it was important for them to meet with Representative Mayfield so that they know where they stand.

Mayor Abell went over some changes that he felt were important to be made to the Ordinance. He said first he would change "authority" to "commission" throughout the whole Ordinance. Then in the middle of the paragraph in Section 1 on page 2, he would change the sentence "from outside the City" to "at large" and this would depend on who was the most qualified applicant. He agreed with having term limits that would max out after six years and then the member could take a year off and reapply if they wished to do so. He then said for the record that this document was prepared and brought forward to address the concerns of the outside-the-City customers. If and when our franchise agreements outside the City expire, we should revisit the issue of governance of our utilities.

Mr. Sawnick agreed with meeting with their State Representatives on this Ordinance. He said with the amount of time that they have spent on this Ordinance they want to make sure that it is correct and will be in place for a long time. He didn't know if having term limits is the best thing to do.

Mayor Abell felt that term limits was easier to address than the way the County does their appointments, which is totally political. He said on their Commissions they have very qualified people.

Mrs. Fromang was sorry that Representative Mayfield did not work with them on this. It is important that if there is a problem that Representative Mayfield should come and talk to them. She said that if there is proposed legislation then they (City Council) should know about it. She agreed that it should be called a Utility Commission instead of a Utility Authority.

Mayor Abell did not feel that they all needed to meet jointly with their Representatives. He said that could be done individually or have the City Manager go with them, but he felt that they needed to move forward today on this Ordinance.

Mr. White asked if they make changes to the Ordinance today would they have to readvertise it and have another public hearing.

Mr. Vitunac said if Council wished they could postpone their hearing until their next meeting. In the meantime they could ask Representative Mayfield to appear before them and address her concerns.

Mrs. Fromang expressed that Representative Poppell is also interested in this Ordinance. She just didn't want them to single Representative Mayfield out.

Mr. White said that they were very concerned with what Representative Mayfield has to say because the City residents reside in her district.

Mr. Gabbard expressed that there was one important piece and that was the time limit. He planned to have the new Utility Authority meet this week for their first meeting and then they would be in place by December 4th when the Legislative Delegation meeting takes place. He said that this proposed Ordinance is what the City Council asked for. This will also take some burden off of the City Council if some of their responsibilities were handled by the Utilities Authority.

Mrs. Fromang said that if time is a problem then they could make the changes to the Ordinance and then have a Special Call meeting.

Mr. Vitunac explained that they could make amendments to the Ordinance and still pass it today.

Mr. Gabbard reiterated that Representative Poppell wanted to have the Ordinance passed before the Legislative Delegation meeting. He recommended moving forward.

The Council went through the changes that they wanted made to the Ordinance. They wanted to change "Authority" to "Commission"; have term limits - three years for a maximum of six years and change "Alternate at Large" to "Outside the City."

Mr. White also wanted to see that someone applying for the position must have some utility knowledge.

Mrs. Fromang wanted it made clear that any discussions of mergers or consolidations with the County will remain the responsibility of the Council.

Mr. White continued going through the Ordinance and said he didn't agree with giving them authority to borrow money and issue bonds.

Mr. Gabbard reminded Council that they have the authority to change any recommendations made by the Utility Authority.

Mr. Vitunac commented that the Utility Authority could advise Council concerning the merger and consolidation, but it would only be in their advisory capacity.

Mrs. Fromang asked if the Utility Authority would be attending the meetings of the Consultants Competitive Negotiation Act Committee.

Mr. Gabbard said that they would not be attending those meetings.

Mrs. Fromang didn't have a problem with the Utility Authority giving them advice on the merger or consolidation with the County.

Mr. Gabbard explained that the intent of the Ordinance is to assist with the actual running of the utility.

Mr. Sloan added that the Council has the right to reject any decisions that the Utility Authority makes.

Mr. Vitunac continued going through the Ordinance. He now explained Section 4.

Mr. White suggested taking out "dispose of assets."

Mr. Rob Bolton, Water & Sewer Director, suggested keeping things the way that they are now regarding the disposal of assets. He explained that the way it works now is that the different departments go through the City Manager when it comes to disposing of assets.

It was agreed to change the word "decisions" to "recommendations" and strike out dispose of assets.

Mr. Sawnick did not think that it could hurt to wait and speak with their State Representatives concerning what they are proposing.

Mayor Abell explained that they could not afford to wait and keep their time line. They have to move forward and have the Commission in place before the Legislative Delegation meeting takes place on December 4th.

Mr. Sawnick still would like to see what Representative Mayfield is proposing if anything.

Mayor Abell explained that they are passing this Ordinance as a good faith issue and they needed to move forward.

Mr. White asked Mr. Vitunac with the changes that they made today to this Ordinance, what is the difference between their Utilities Commission and this Utilities Authority.

Mr. Vitunac said that the Utilities Commission is strictly an advisory commission and the Utilities Authority can take action unless Council intervenes.

Mr. Sloan said that there is a significant difference. He said that if this Ordinance passes that everything dealing with utilities that now goes before the City Manager and City Council, will go to the Utilities Authority first.

Mr. White asked Mr. Sloan how he felt about this.

Mr. Sloan said that it will add more work for staff. It will require them to look further ahead in trying to plan things.

Mrs. Fromang referred to the three items on their agenda today under the consent agenda that had to do with utility expenses. She asked if those items would now go before the Utilities Authority. Mr. Sloan told her yes.

Mr. Gabbard added that in passing this Ordinance it gives residents living outside the City limits a chance to participate and address a commission that has some authority to take some action.

Mr. White felt that this was just another layer of government.

At this time (10:59 a.m.) Council took a break and reconvened at 11:11 a.m.

Mayor Abell opened the public hearing at 11:12 a.m.

Dr. Faherty thanked Council for having this meeting. He referred to the report and said that it is the result of five different meetings. The report presented on January 8th had the public comments eliminated. He agreed with most of the comments made by Mr. Sloan. He said what is being proposed today is not much different than the existing Utilities Commission. He felt that Council needed to look at the terms they have been discussing for the members. He said that a majority of the Utility Authorities in place around the State have the authority to set the budget and gain some control. He suggested going back to their existing Ordinance and making a few changes to it. He was concerned that rushing to get this passed would end up with some serious problems. He told Mr. Fish that he was not interested in control. He suggested to Council that they do some more research and look at the prior reports.

Mr. White asked Dr. Faherty if he was paid as a consultant for FP&L.

Dr. Faherty answered no. He said that he receives no pay and is not interested in any property. He is just focusing on the 61% of residents who pay City utilities, but live outside of the City.

Mr. Ken Daige asked the City Council to wait a little bit and not to rush into this. He said make the changes to the document so that it can be reviewed. He also urged them all to speak with the Representatives who have some concerns. Once the document has been drafted then everyone should be given time to look at it and give their feedback. He

suggested having a Special Call meeting if one was needed. He did not think waiting a few more weeks would hurt anything.

Mr. Brian Heady noted that by passing this Ordinance it will be additional work for staff and that would cost money for the extra time being put in and it is clear that the citizens of this community are concerned about costs. He doesn't think they should be passing anything that would increase cost. He said by electing this Authority they would be making decisions that should be made by the Council. He felt that the public should be able to review the changes that have been made. If the goal here is to give representation to residents living outside of the City limits then let them opt out and go to FP&L. They should treat all the ratepayers fairly and that has not been the case. He felt that they needed to wait on passing this Ordinance.

Mayor Abell closed the public hearing at 11:26 a.m.

Mr. White made a motion to continue this public hearing until November 17, 2009 at 9:30 a.m. and ask Representative Mayfield to attend the meeting. 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, 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 Abell read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, explained that this proposed Ordinance would be to amend the text of Section 62.35 to allow "Places of Worship" as a permitted use in the B-1 Zoning District. He said that they are required to have one of the two public hearings held after 5:00 p.m. unless the Council votes to change that time of the meeting and have it held during the day.

Mr. White asked where is Vero Worship Center located.

Mr. McGarry did not know. He said that if this Ordinance passes then Vero Worship Center would have to come in and make an application.

Mr. White made a motion to approve the Ordinance on first reading and set the next two public hearings for November 17, 2009 and December 1, 2009 at 9:30 a.m. 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.

6. CITY CLERK'S MATTERS

None

7. CITY MANAGER'S MATTERS

1. Discussion of Electric Utility Issues

Mr. Sloan stated that the City has received the final approval for the electric rate increase from the Public Service Commission. He briefly went through the document (attached to the original minutes) and said that they could hold the first reading on November 17th and then have the public hearing on December 1st. The Public Service Commission only had one comment to make, which was corrected. He then went over the memo that he prepared titled "What should the future of the Vero Beach Electric Utility be?" (attached to the original minutes).

Mr. Sloan discussed the price to do a study to sell the Power Plant. He would be surprised if they could get it done for a quarter of a million dollars and it would take several months for the study to be completed. He said then the sale could take several years before it would occur. He felt that eventually the City probably would be forced to do a study.

At this time, Mr. Sloan wanted to make a few personal comments. He said that he accepted this job about two years ago because he wanted to get back to his first love, which was being an engineering operations person. He accepted the job quickly and still believes it was a good decision. When he arrived in Vero Beach there were several things that had already been done. Council recognized six or seven years ago that there was a problem with FMPA even when their rates were lower than FP&L. They tried to negotiate with FMPA, arbitration took place and then when that didn't work they gave their five years opt out notice. Then they started looking at the options they had and one of those was to sell the system and they agreed that would not work. They issued an RFP for a new power supplier and that is when he was hired. Staff looked at all the RFP's they received and then met with all the bidders. During this process they developed a selection criteria on how they were going to select their next power supplier. They narrowed the proposals down to two. They were between FP&L and OUC, which they negotiated for months. Based on the selection criteria the City made a choice to go with OUC which was not a hard choice but it was a clear choice. Council approved the OUC contract in April 2008. Then he worked with the department heads to cut costs where they could. The big cuts have been made. He feels that they are well positioned for the future and at this point he has accomplished all that he can do. He said their rates are too high and you have been working on a solution for seven years. There are a number of

reasons he is submitting his resignation. He said that after 35 years in this business it is apparent that his opinion has little significance in this community. Council has approached this whole thing in a professional matter. Over the last few weeks the critics have come out with more and more unsupported facts. He said that time will validate their actions.

Mayor Abell complimented Mr. Sloan on a great job that he has done and told him that the City will miss him. He appreciated that Mr. Sloan has agreed to return when they need him. He then presented him with a plaque recognizing the services that he provided to the City of Vero Beach.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

Mr. White requested that there be some information mailed out in their utility bills explaining to their customers how they can recycle and where recycling bills can be obtained.

B. New Business

None

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Sabin Abell's Matters

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

Mayor Abell met with some employees at Piper, he attended the 50th Anniversary for the Bridge Club, he also met with Senator Negron and with Senator Haridopolos's aide, he attended the grand opening of John Michael Matthew's jewelry store and walked in the Halloween parade.

3. Comments

B. Vice Mayor Tom White's Matters

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

Mr. White read an email that he received from Mrs. Karen David about some repairs that needed to be made to the Riverside Park playground equipment.

Mr. Gabbard said that he went over and looked at the playground equipment and agreed that there are some problems and they will be taken care of.

Mr. White reported that he also attended the ribbon cutting of John Michael Matthew's new jewelry store and walked in the Halloween parade.

3. Comments

C. Councilmember Debra Fromang's Matters

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

Mrs. Fromang said that she has enjoyed working with everyone.

3. Comments

D. Councilmember Bill Fish's Matters

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

Mr. Fish reported that he represented the City of Vero Beach at the new Gifford Fire Station, he attended Downtown Friday, School Board Legislation Day and the Halloween parade. He thanked the citizens of this community for allowing him to serve on the Council.

3. Comments

E. Councilmember Kevin Sawnick's Matters

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

Mr. Sawnick reported that he attended the Economic Development Council, a meeting where they discussed recycling in the County and the City, which he will provide some information on that, he attended Downtown Friday and a meeting to get people under the age of 40 interested in Downtown.

3. Comments

11. ADJOURNMENT

Mr. Fish made a motion to adjourn today's meeting at 12:15 p.m. Mr. White seconded the motion and it passed unanimously.

tv