

**CITY OF VERO BEACH, FLORIDA
JANUARY 5, 2010 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; and Councilmember Brian Heady, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

B. Invocation

The invocation was given by Father Michael Goldberg of St. Augustine Episcopal 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

Mr. Heady requested that the following items be added on to the agenda under his matters: 1) Request to Finance Commission, 2) Request to Utilities Commission, 3) Meeting with Public Service Commission (PSC) complainants and City; 4) Early discussion of budget savings, 5) Public interviews of applicants; 6) Flyer Representative Debbie Mayfield sent out; 7) Spokesman for the City and 8) OUC Contract with Attorney's answers.

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

B. Proclamations

1. Plaques presented to Employees Retiring from the City

Mayor Sawnick presented Mr. Joe DeMarzo and Mrs. Sue Siket with plaques thanking them for the services that they have provided to the City of Vero Beach.

C. Public Comment

Mr. Charlie Myers, City Employee, was thankful for all of the years that he has worked for the City, but had some concerns about the things that he is hearing that Council wants to take away from the employees, such as their sick time and retirement benefits. He mentioned that this was the first time that his Department did not have a Christmas party. He said at their annual Christmas party it was always a tradition that the employees bring gifts in for the needy and that was not done this year. He told Council if they decide to do away with benefits then they will not get the quality of employees that they have now. They will have people come to work for the City, but won't stay because they will just be waiting until something else comes up. He has been working for the City for 26 years and some of the employees that he talks to are scared about what this Council is going to do concerning their benefits, especially their retirement benefits.

Mr. Heady said that he was not aware of any proposal to eliminate retirement benefits.

Mr. Gabbard agreed that there have been no decisions made. In the next couple of months they will be discussing it more and there will be some tough decisions that will have to be made. He expressed that it was his decision to do away with the funds for the Christmas parties that the Departments have every year. He said hopefully that one day they can be reinstated. He wanted to make it clear that they all realize how valuable their employees are.

Mr. Heady did not want the public to think that benefits have been taken away. He knows of no proposal and doesn't think legally they could take away an employees retirement when they have vested rights.

Mr. White suggested that staff meet with some of the employees around the City and explain to them what is going on.

Mr. Gabbard said that he would put something together and send it out to all the employees.

Mr. Joseph Guffanti commented that Council was about to select a new Councilmember. He hoped that all of them realize that the days of the smoke free, back door rooms away from the press, and the wheeling and dealing is over. He suggested that they hold all the interviews in public so that the public has the advantage of knowing what is going on.

Mr. Heady told Mr. Guffanti that the Mayor has put discussion of the interview process on the agenda and it will be addressed.

Mrs. Pilar Turner is aware of all the budget considerations and wanted to know if the people who were taking down the Christmas decorations on Sunday were being paid overtime.

Mr. Gabbard assured her that was not the case. He said that they have a contract with the company that puts the Christmas decorations up and also takes them down and it is based on a flat fee.

Ms. Faith Russell, St. Francis Manor, addressed her utility bill. She said that most people living at St. Francis Manor have a very low income. Her electric bill is more than half what she pays for rent. She came to the meeting today to see if there was anyone who could help her. She doesn't want to live on the street because she can't afford to pay her electric bill.

Mayor Sawnick explained to Ms. Russell that since the City has switched over to OUC, she should see a decrease in her utility bill. He said that their Customer Service Department is available to help her with working out a plan to pay her bill. He said that this Council will continue to look at ways to reduce the utility rates.

Mr. Gabbard said that he would meet with Ms. Russell to discuss her circumstances.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – December 1, 2009**
- 2. City Council Workshop Minutes – November 16, 2009**
- 3. Special Call City Council Minutes – December 8, 2009**
- 4. Solid Waste Franchise Agreement – Fletcher's Hauling, Inc.**
- 5. SR A1A from St. Lucie/Indian River County Line to Coquina Lane – Landscape Maintenance Memorandum of Agreement**
- 6. Award of Bid No. 370-09/PW – Relay Testing Service Contract for the Power Plant and Electrical T&D**
- 7. Change Order and Final Payment for Televent Miner & Miner – ArcFM Implementation with Data Collection Services**

Mr. White made a motion to adopt the consent agenda. Mr. Abell seconded the motion. Mr. Heady asked that items 2D-4) and 2D-6) be pulled off of the consent agenda. Mr. White amended his motion to adopt the consent agenda with the exception of items 2D-4) and 2D-6). Mr. Abell seconded the amended motion and it passed unanimously.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, amending the definition of "Restricted Sales and Services" of Chapter 60, Appendix, Definitions, of Part III, Title VI, Vero Beach Code; limiting Retail and Personal Service Stores to 4,000 square feet of floor area; excluding stores with Warehousing, Heath and Fitness Clubs, and Stores that sell Motor Vehicle Parts; excluding Hardware Stores with outdoor merchandise displays and laundry and dry cleaning stores with on-site cleaning and clothing repair services; excluding stores with Drive-In, Drive-Up, or Drive-Through Facilities and Stores that offer for sale predominately pre-packaged food products, beverages, and other frequently or recurring needed household items between the hours of 11:00 p.m. and 6:00 a.m., including deliveries between this same time period; providing for conflict and severability; providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, explained that the intent of this Ordinance is to amend the definition of “restricted sales and services” in the City’s Land Development Regulations. Also, the intent of the Ordinance is to eliminate problems with interpretations as well as the application to the definition of limiting retail and personal service stores in the code. He said that staff and the Planning and Zoning Board both recommend approval of the Ordinance.

Mr. Heady asked Mr. McGarry to give three examples of interpretation problems that this has caused.

Mr. McGarry recalled that there was an individual who wanted to have a hardware store in this district and hardware stores are excluded from the district under the present conditions.

Mr. Heady said then this opens things up by allowing more businesses in this district.

Mr. McGarry answered yes.

At 9:58 a.m. Council took a short break because the sound system was not working.

Mr. Heady thought that by having a larger retail store in this district it might bring in more traffic.

Mr. McGarry explained that the intent of the C-1A district is too have small stores in place.

Mr. White brought up that the Vision Plan which called for the maximum square footage of 4,000 square feet.

Mr. McGarry explained that in the Vision Plan they are referring to Miracle Mile.

Mayor Sawnick opened and closed the public hearing at 10:05 a.m., with no one wishing to be heard.

Mayor Sawnick made a motion to approve the Ordinance on first public hearing and set the second public hearing for January 19, 2010. Mr. Abell seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

B) An Ordinance of the City of Vero Beach, Florida, amending Chapter 72, Landscaping and Tree Protection, of the Code of the City of Vero Beach, relating to Landscaping Requirements, Tree Classification and Protection; providing for Tree Grades and Standards; providing for Tree Removal

Permit Procedures; providing for Protection of Trees before and during Site Development; providing for Pruning Guidelines; providing for Enforcement and Penalties; providing for Conflict and Severability; providing for an Effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry reported that this Ordinance would amend Chapter 72 of the City's Land Development Regulations. The Vero Beach Vision Plan adopted by the City Council in 2005 identified the need to better protect the City's tree canopy. The tree protection aspects of the current Ordinance are difficult to enforce and the penalties for removing trees without a permit, especially older more significant trees, are totally inadequate. He felt that the passing of this Ordinance would clear things up. The Planning and Zoning Board has been involved in putting this Ordinance together and the Tree and Beautification Commission has reviewed it twice. Both the Planning and Zoning Board and the Tree and Beautification Commission recommend approval.

Mr. Heady referred to item 2D-5) on the agenda, "SR A1A from St. Lucie/Indian River County Line to Coquina Lane – Landscape Maintenance Memorandum of Agreement" and asked if they will be complying with this new Ordinance.

Mr. McGarry explained that this Ordinance would not apply to them because the landscaping that they are doing is in the right-of-way.

Mayor Sawnick opened and closed the public hearing at 10:09 a.m., with no one wishing to be heard.

Mr. Sawnick made a motion to approve the Ordinance. Mr. Abell seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

C) An Ordinance of the City of Vero Beach, Florida, amending Article III, Section 2-119, of the Vero Beach Code of Ordinances relating to Eligibility for Appointment to the Utilities Commission; providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mayor Sawnick reported that this Ordinance will allow a representative from Indian River Shores to have representation on the Utilities Commission.

Mr. White asked if Indian River Shores does not renew their franchise agreement with the City of Vero Beach can they remove the Indian River Shores representative that will be sitting on the Utilities Commission.

Mr. Charles Vitunac, City Attorney, explained that if Indian River Shores decides not to renew the franchise agreement then they would have to look at this Ordinance at that time.

Mr. Heady suggested putting a sunset clause in this Ordinance saying that if Indian River Shores does not renew their service agreement that there would not be a need to have a representative from Indian River Shores on the Commission.

Mr. Vitunac said that he would add that to the Ordinance.

Mayor Sawnick opened and closed the public hearing at 10:12 a.m., with no one wishing to be heard.

Mr. Abell made a motion to approve the Ordinance with the amendment made. Mr. White seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

Mr. Heady requested that item 9A-1) be moved up and heard at this time.

1. Interview Process for the New City Councilmember – Requested by Mayor Sawnick

Mayor Sawnick did not see a need for Council to interview each applicant one on one since there were only a total of five applicants. He said that they would hold public interviews on January 12th. The candidates will come into the Chambers (one at a time), then Council can ask them a question, they will go through all five applicants; they will rank them and then make a motion to appoint someone.

Mr. Heady brought up the suggested guidelines that he came up with to handle the interviews. He thought that it was important that when they first interview the candidates that only one candidate present in the room and then the second phase would be to have all five candidates come back in to see how they interact with Council.

Mr. Vitunac explained that they can ask the applicant to leave the room, but they can't make them because they have a right to be there.

Mr. Abell did not think it would be a fair process if one candidate stayed for all of the interviews and the rest did not.

Mayor Sawnick said that they could randomly draw names to see who will go first.

It was made clear that one applicant would come in at a time to answer questions, and the second round of questions all the applicants would be present.

The date set for the Special Call meeting to hold the interviews will be on Thursday, January 14, 2010 at 1:30 p.m.

D) An Ordinance of the City of Vero Beach, Florida, amending the Future Land Use Map by changing the Land Use Designation of Annexed Land from Indian River County Designation of C-2 (Conservation-2) to a Comparable City of Vero Beach Designation of ES (Environmentally Significant) for the property consisting of three separate parcels, located between the 45th Street and Gifford Dock Road along the Western Shore of the Indian River, including a portion of Government Lot 3 lying in Section 24, Township 32 South, Range 39 East, containing 16.7 acres, more or less; and providing for an effective date.

Mayor Sawnick read both Ordinances 3-D) and 3-E) by title only and both Ordinances were discussed together.

Mr. Abell made a motion to approve the Ordinance. Mr. White seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

E) An Ordinance of the City of Vero Beach, Florida, amending the Official Zoning Map by changing the designation of annexed land from Indian River County designation of RM-6 (Multiple Family Residential) to a comparable City of Vero Beach designation of R-1AAA (Single Family Residential), for the property consisting of three separate parcels located between 45th Street and Gifford Dock Road along the Western Shore of the Indian River, including a portion of Government Lot 3 lying in Section 24, Township 32 South, Range 39 East, containing 16.7 acres, more or less; and providing for an effective date.

Mr. McGarry reported that back in September Council adopted a Resolution transmitting these Ordinances to the Florida Department of Community Affairs (FDCA) for review and comments. FDCA reviewed the transmitted amendments and did not identify any objections to the amendments. He said in the back of the room there is a sign up sheet for anyone who wished to be notified by FDCA of their notification of compliance.

Mayor Sawnick opened and closed the public hearing at 10:27 a.m., with no one wishing to be heard.

Mr. Heady asked how does this change the development rights of this property owner.

Mr. McGarry explained that currently under the County zoning regulations it is RM-6 and basically because of the wetlands the County would recognize one unit per parcel. He said right now this property would be very difficult to develop because of the wetlands.

Mr. White commented that looking at the future the County land future use designation is C-2 Conservation and under the existing it is RM-6 Multi-Family up to six units per acre.

He said that the City's future land use will be ES (environmentally significant) up to one unit per two acres. He asked Mr. McGarry if that was correct.

Mr. McGarry said that the only designation allowing development on this property would be ES.

Mr. White asked if this will have any effect on the future plans that they have been talking about for this area. He said that they talked about leaving the large parcel strictly for conservation and then hopefully someday a walk-thru Park could be developed on the other land.

Mr. Vitunac told Mr. White that at this point all those plans are dead. He said that some staff members and Mr. Abell had a meeting with St. John's Water Management and discussed some potential plans for the area and they said that they would not allow anything to be developed there. Staff asked them to take the request before their Board of Directors and they never heard back from them.

Mayor Sawnick asked Mr. Vitunac that if he had any documents on this matter to please forward copies to Council.

Mr. Abell made a motion to approve the Ordinance. Mayor Sawnick seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

F) An Ordinance of the City of Vero Beach, Florida, amending the Future Land Use Map by changing the Land Use Designation of Annexed Land from Indian River County designation of C-2 (Conservation) to a comparable City of Vero Beach designation of CV (Conservation) for the property located along the Western Shore of the Indian River, South of 45th Street including Government Lot 1 and 2 together with the Northwest ¼ of the Southeast ¼ and the North ¼ of the Southeast ¼ of said Section 25 lying in Section 25, Township 32 South, Range 39 East, containing 124 acres more or less; and providing for an effective date.

Mayor Sawnick read this Ordinance by title only.

Mayor Sawnick opened and closed the public hearing at 10:35 a.m., with no one wishing to be heard.

Mayor Sawnick made a motion to approve the Ordinance. Mr. White seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

G) An Ordinance of the City of Vero Beach, Florida, amending the Official Zoning Map by changing the designation of annexed land from Indian River County designation of RS-1 (Single Family Residential) to a comparable City

of Vero Beach designation of P-1 (Park-Conservation) for the property located along the Western Shore of the Indian River, South of 45th Street including Government Lot 1 and 2 together with the Northwest ¼ of the Southeast ¼ and the North ¼ of the Southeast ¼ of said Section 25 lying in Section 25, Township 32 South, Range 39 East, containing 124 acres more or less; and providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mayor Sawnick opened and closed the public hearing at 10:37 a.m., with no one wishing to be heard.

Mr. White made a motion to approve the Ordinance. Mr. Abell seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

H) An Ordinance of the City of Vero Beach, Florida, amending the Future Land Use Map by changing the Land Use Designation of annexed land from Indian River County of designation M-1, (Medium Density Residential-1) to a comparable City of Vero Beach designation of RM (Residential Medium) for the property North of the intersection of 33rd Street and 13th Avenue, including a portion of the Northeast Quarter of Section 35, Township 32 South, Range 39 East, containing 22.17 acres, more or less; and providing for an effective date.

Mayor Sawnick read both Ordinances 3-H and 3-I) by title only.

Mr. McGarry reported that this is a vacant parcel owned by the Historian Corporation and it is designated M-1 by the County. Its zoning under the County is six units per acre and under the proposed Ordinance the land would be designated in the City's future land use plan as RM (Residential Medium) which is ten units per acre.

Mr. Abell made a motion to approve the Ordinance. Mr. Heady seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

I) An Ordinance of the City of Vero Beach, Florida, amending the Official Zoning Map by changing the designation of annexed land from Indian River County designation RM-6, Multiple Family Residential to a comparable City of Vero Beach designation of RM-8, Medium Density Multiple Family for the property North of the Intersection of 33rd Street and 13th Avenue, including a portion of the Northeast quarter of Section 35, Township 32 South, Range 39 East, containing 22.17 acres, more or less; and providing for an effective date.

Mr. White asked why are they going to RM-8 and not keeping it at RM-6.

Mr. McGarry explained that they do not have an RM-6.

Mayor Sawnick opened and closed the public hearings for both 3-H) and 3-I) at 10:40 a.m., with no one wishing to be heard.

Mr. Abell made a motion to adopt the Ordinance. Mr. Heady seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution of the City Council of the City of Vero Beach, Florida, releasing from all City Easements the Northeasterly 3 feet of Lot 3, Block 35; the Northeasterly and Southwesterly 3 feet of Lot 4, Block 35; and the Southwesterly 3 feet of Lot 5, Block 35, Royal Park Subdivision Plat No. 7.**

Mayor Sawnick read the Resolution by title only.

Mr. Monte Falls, Public Work's Director, reported that the easement release that Council has in front of them was submitted by the Applicant back in November. The different City Departments as well as outside utility providers have reviewed the application and there were no objections to the release of easement. This house is located in the Royal Park subdivision and has been torn down. The applicant is Andy Beindorf and he is planning to build a house on this lot and wants to have the easements released.

Mr. Heady complimented staff on moving so quickly with this matter. He said that they did not even receive the application until November and it is only the beginning of January and the problem is being taken care of. He said that this speaks highly of staff.

Mr. White made a motion to approve the Resolution. Mr. Abell seconded the motion and it passed 4-0 with Mr. Heady voting yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

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 Chapter 77, Architectural Review, Section 77.04 by creating new paragraph (I); providing that building elevations, construction of site plans, design drawings, or similar materials submitted as part of Architectural Review application be prepared by a State licensed design professional, if required by the Florida Statutes or Florida Building Code for submittal of a building or other development permit application; providing for conflict and severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry reported that an issue came up regarding design materials included in applications submitted to the Architectural Review Commission (ARC) for design review that have been prepared by individuals not licensed as an architect or engineer to practice in the State of Florida. Recently the ARC was unable to review an application prepared by architects not licensed to practice in the State, as any review would have constituted a violation of the professional standards for the licensed architects serving on the Commission. The ARC unanimously recommended approval of the proposed Ordinance at its meeting held on October 28, 2009. At a public hearing held on December 3, 2009, the Planning and Zoning Board recommended the draft Ordinance for consideration and approval by the City Council.

Mr. Heady put on the overhead the actual rendering submitted by the applicant that appeared before the ARC. If they were to approve this Ordinance what it would do is prohibit the ARC from looking at this rendering because it wasn't prepared by a licensed architect in the State of Florida. A rendering like this to cause a developer additional expense by having to have an architectural stamp on the rendering seems to him a burden that should not be placed on developers. He felt that the ARC should be able to look at a rendering even though it is not prepared by a licensed architect.

Mr. McGarry reminded Council that the ARC is only an Advisory Commission. The problem that occurred was that the ARC would not review the application. It didn't matter what the rendering looked like. The fact was that it was prepared by an unlicensed State of Florida architect. Some of the Commission members expressed that it was against their ethics to do this and they could be brought up by the State and charges could be imposed.

Mr. Abell mentioned that renderings are very preliminary in the process and Mr. McGarry deals with that issue. He said that once Mr. McGarry has approved a rendering then an architect is needed to get the final details before it is taken to the ARC.

Mr. McGarry briefly went over how the process works. He said that the ARC has the opportunity when they have a new design to review it before it comes to him for a permit review.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for January 19, 2010. Mr. White seconded the motion and it passed 3-1 with Mr. Heady voting no, Mr. White yes, Mr. Abell yes and Mayor Sawnick yes.

At this time, Council took a five-minute break.

6. CITY CLERK'S MATTERS

None

7. CITY MANAGER'S MATTERS

A) Item Pulled off of the consent agenda 2D-4) Solid Waste Franchise Agreement – Fletcher's Hauling, Inc.

Mayor Sawnick was concerned that this company was doing business in the City before this franchise was ever granted to the hauler.

Mr. Falls explained that they issue these franchise agreements to private haulers who are offering roll off dumpster services. Sometimes what happens is a new contractor comes into the City and is not aware of the requirements.

Mr. Heady noted in the backup material it shows that there is a contractor from Malabar. He understood that this is a non-exclusive franchise agreement. He asked Mr. Falls if there were other haulers who wanted to have a franchise agreement with the City could they come in and ask for one. He recalled that a couple of months ago there was a local hauler (Rigby family) who went before the County Commissioners requesting a franchise agreement.

Mr. Falls answered yes and said that they have about a dozen of these franchise agreements.

Mr. Heady just wanted to make it clear that a hauler providing these services could come to the City requesting a franchise agreement.

Mr. Heady made a motion to approve the Solid Waste Franchise Agreement for Fletcher's Hauling, Inc. Mr. Abell seconded the motion and it passed unanimously.

B) Item Pulled off of the consent agenda 2D-6) Award of Bid No. 370-09/PW – Relay Testing Service Contract for the Power Plant and Electrical T&D

Mr. Randall McCamish, Transmission and Distribution Director, explained that every five years they do test relays to make sure everything is operating properly.

Mr. Heady commented that in looking over the bids, if a split bid was possible on a portion of this they could have saved some money. He asked if any consideration was given to split the contract.

Mr. McCamish said that the question was asked but the company declined to do it.

Mr. Abell made a motion to approve Award of Bid No. 370-09/PW – Relay Testing Service contract for the Power Plant and Electrical T&D. Mayor Sawnick seconded the motion and it passed unanimously.

8. CITY ATTORNEY'S MATTERS

Mr. Vitunac wanted to give Council a quick outline on what is going on concerning the PSC complaint. He said that on December 1st Dr. Faherty and Mr. Heran filed a complaint with PSC (copy on file in the Clerk's office). His office retained a PSC specialist because an answer had to be filed by December 31st which it was. It was a motion for an extension of time and a motion to dismiss. He said the five main issues of the complaint are 1) Changes to the City's electric rate structure; 2) Elimination of City Municipal Surcharge under 25-9.0525; 3) PSC enforcement of Section 366.04(7)(a); 4) Review of Territorial Agreement (Docket No. 800596-EU, Order No. 10382, dated November 3, 1981) between City and Florida Power and Light (FP&L) and 5) Representation of, and Equal Protection for 61% of outside City electric customers.

Mr. Heady explained that when he learned that the City was going to hire an expert out of Tallahassee he was concerned with the cost associated with hiring an attorney. He then met with the City Attorney, City Manager, Acting Utilities Director and the two people who filed the complaint, Dr. Faherty and Mr. Heran. Within a very short period they came to an agreement and the complaint was pulled back. Mr. Heady said that the complaint at this point is a non-issue to the extent that it is in abeyance and will stay there as long as the City shows good faith in their promise to extend to FP&L an open door to look at their utilities to see if there is some room to selling it and as long as they agree to sit down and involve Indian River Shores. He thought that they were moving forward on the things that he felt would satisfy the complaint.

Mr. Vitunac stated that he called the attorney in Tallahassee and told him to call off the motion to dismiss until he tells him to do so. He thought after attending that meeting, Dr. Faherty was happy with the way things were moving and the fact that Mr. Heady set the meeting up and he said that they would voluntarily withdraw or put in abeyance the hearing. They always have the right to restart it and the City always has the right to call up their motion to dismiss. In the interest of saving a lot of money they will let it sit and see what happens.

9. CITY COUNCIL MATTERS

A. Old Business

1. Interview Process for the New City Councilmember – Requested by Mayor Sawnick

This item was heard earlier in the meeting.

B. New Business

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters

1. Correspondence

2. Committee Reports

Mayor Sawnick reported that he took a tour of OUC. He said that they began taking steps to lower City electric bills and it was a great step that the Council took five years ago to get out of the FMPA contract. He also attended the Royal Palm Pointe Tree Lighting Ceremony and Boat Parade, he spoke to some students at the Charter School, he attended Coffee with the Council and the groundbreaking for the new Boys and Girls facility.

3. Comments

A) Pension & Insurance Plans to be reviewed by the Finance Commission

Mayor Sawnick asked Council for permission to ask the Finance Commission to meet and give their recommendations on the City's pension and insurance plans.

Mr. White agreed that this was a good idea.

Mr. Steve Maillet, Finance Director, mentioned that the Finance Commission will be meeting in late February or early March and he asked if these items could also be heard at that meeting.

Mayor Sawnick said that was fine, but he wanted to make sure that the Finance Commission brought back their recommendations to Council.

Mr. Heady noted that under his matters that he also had Finance Commission listed. He said that he would like to request permission from Council to allow the Finance Commission to hold a brainstorming workshop to discuss the declining revenues being experienced throughout the State of Florida. He asked that the workshop be held in the month of January. Council had no problems with this request.

B. Vice Mayor Sabin Abell's Matters

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

Mr. Abell reported that he also attended the Royal Palm Pointe Tree Lighting Ceremony and Boat Parade, the City Council Quarterly meeting, a Land Acquisition Committee meeting and Coffee with the Council.

3. Comments

C. Councilmember Tom White's Matters

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

Mr. White commented that 2009 has been a very interesting year for the City of Vero Beach. The City Council has worked hard with staff over the years to make sure that things are done correctly. There has been a lot of misinformation starting from utilities right down to what is happening with employees. The employees are upset mainly because of rumors and because of the big push to get the City of Vero Beach out of the utility business. The City of Vero Beach has a millage rate of \$1.93. Over the years the City Council has continuously voted to lower the millage rate. We are operating a four million dollar less budget then we were three or five years ago. So they have to make constant cuts and do what is right. The increases with the utility bills this year came as a pass-through from FMFA. He said that five years ago they did exit the contract and are now officially out of it. They have made the right decision in going with OUC. He said this year they have spent more time defending the utilities of the City and explaining the facts. However, he has found out that people don't want to hear the facts, they just want their bills lowered. He said that if there was any feasible way of doing it this Council would do it. Hopefully everyone's first bill in January will show a decrease and then in February there will be another decrease and they also will be very competitive with FP&L. His whole point in making this speech was to wish everyone a happy New Year. He said that 2010 will be a banner year for the City of Vero Beach.

3. Comments

D. Councilmember Brian Heady's Matters

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

1. Request to Finance Commission

This item was discussed earlier in the meeting.

- 2. Request to Utilities Commission**
- 3. Meeting with PSC complainants and City**
- 4. Early Discussion of Budget Savings**
- 5. Public Interviews of Applicants**
- 6. Flyer that Representative Mayfield Mailed Out**
- 7. Spokesman for the City**
- 8. OUC Contract with Attorney's Answers**

Mr. Heady commented that he received a flyer in the mail that was paid for by taxpayers' expense and mailed out by their Representative Debbie Mayfield. When he received the flyer he called the City Attorney and City Manager because if you read through this important petition that their Representative sent out, it identifies things that is misinformation and is not true. He thinks that all of their citizens in the rate area should be concerned about their utility rates. They clearly had reasons to voice their concerns when their electric bills went through the ceiling, but there also should be concerns raised

when a Representative that is paid to represent you sends out things about the City that just is not true.

Mr. Abell added to Mr. Heady's comments that he has circled things in the flyer that are wrong and that have been addressed. He said that Representative Mayfield has an office across the hall and he has not seen her in a year. They have been trying to get an appointment with her to no avail. He said that nothing in this flyer is correct and many things that are in there have been addressed and she has been sent copies of the information.

Mayor Sawnick mentioned that he met with Representative Mayfield about a month ago and she said that she would let him know about things before they are taken public. He had not seen this flyer until this morning. He is the type of person that even if you disagree on a matter that you still need to talk about it, which means even though they disagree on certain issues they need to work with their Representatives.

Mr. Gabbard stated that he is trying to contact Representative Mayfield to meet with her about this flyer. He said that it is incorrect and had they been contacted and informed that she was going to do a piece like this they could have helped her.

Mr. John Lee, Acting Electric Utilities Director, reported that he was at the County Commission meeting this morning and this flyer was brought up by Commissioner Gary Wheeler. Commissioner Wheeler said that the flyer was intended to insight and inflame people based on inaccurate information. Mr. Lee said that the flyer is a very well crafted piece of misinformation. He said the reality is that their rates are competitive with other rates in the State of Florida. This notion that they are not regulated by PSC is true, but they (PSC) do look at their rates and have oversight with them.

Mr. Heady commented that the City Council, prior to the Election, debated sending out some information to the public and the public came in and spoke out and had the opportunity to "fuse" the City Council from spending money and the City Council was wise by not sending anything out. He referred to the flyer and said that the citizens have no representation in preventing a waste of tax dollars.

Mr. Heady brought up one thing that was discussed at the meeting that he had with staff and Dr. Faherty and Mr. Heran, which was that the City set up a joint Committee to sit down and debate different issues. This kind of Committee can bring before Council some facts and figures so that they know what they are talking about before they have to hire consultants to tell them where they are and where they should go.

Mayor Sawnick asked Mr. Heady to bring this up at their next meeting and to have something in writing as to what he would envision that this Committee would meet about.

Mr. Heady explained that the Committee would be similar to the CCNAC Committee, but without the consultant. They would have a couple of citizens from the County,

Indian River Shores and from the City and this Committee would sit down and look at different issues.

Mr. Gabbard mentioned that one of the things that was discussed in that meeting was selling off pieces or giving up service territory, specifically they talked about Indian River Shores and South Beach. He told Council that he felt they were setting themselves up for failure because they have already sent a letter to FP&L and other major utilities that are interested or may be interested in purchasing the entire system. He said anyone interested in their utilities are interested in the customers so if there is uncertainty about how many customers there will be, he thought it would severely impact the offers that they might generate.

Mr. Heady wanted to borrow Mr. Gabbard's crystal ball because he was telling them what a Committee that has not even been formed yet is going to come up with. This Committee is to meet and put the facts out. The problems that have been in existence is because there has been an unwillingness to sit down at the table and discuss the issues.

Mr. Abell excused himself from the meeting at 11:42 a.m.

Mr. Gabbard continued by saying that if they are going to have a Committee like what Mr. Heady is describing that the marching orders need to be clear.

Mayor Sawnick mentioned that they have invited electric providers to come to their March utility meeting. He suggested waiting until after that meeting and then discuss this again at that time.

Mr. Heady said that he had no interest in waiting until March to discuss the idea of creating a Committee to put the facts on the table. He said that is what the problem has been in the past. He said this is not at all like the water issues and why CCNAC meets. He said with that Committee the parameters have already been set.

Mayor Sawnick suggested asking the Utilities Commission to look at these things.

Mr. Heady stated that he also wanted to ask permission from the Council for the Utilities Commission to meet for this exact purpose. They need to hear from the Utilities Commission and they need to be on board with this and they can make recommendations to the Council on who they feel should sit on this joint Committee. It is important to do this in order to stop unwanted and unnecessary litigation, which are great expenses to the City.

Mr. White felt strongly that the City Council is where the buck stops. They are the ones responsible no matter what staff or Committees do. They get blamed or credited for whatever goes on. He agreed with taking this to the Utilities Commission and let them look at it. Council are the ones that need to go out and do the research and find out what is going on.

Mr. Heady mentioned that he went to Orlando and took a tour of OUC. He came back with a list of questions for OUC and the forty-four questions were answered by OUC and have since been given out to the complaints so that they know there is a meaningful effort to get answers to questions that are legitimate questions about their utilities.

Mayor Sawnick again suggested to Mr. Heady that this be taken to the Utilities Commission and then they can go from there.

Mr. Lee brought up again that he was at the County Commission meeting this morning and something similar to this came up. He said that the County Commission recently expanded the role of their Utilities Commission. Their Utilities Commission used to just discuss water issues but now they are also discussing electric issues. The person that did the presentation at the County Commission meeting today suggested that the County take some serious action immediately. He would encourage that when these discussions are taking place that some people from the City attend those meetings and listen. It seems that they are following the same path that the City is and he would suggest that they first allow the County to have their meeting, they attend the meeting and then invite them to attend their Utilities Commission meeting in March and then as a collective body decide how they want to move forward.

Mr. Heady was given the approval from Council to allow the Utilities Commission to meet in the near future to discuss some of these issues.

Mr. Heady mentioned the letter that they received from OUC, which included the answers to his questions. Also in the letter it mentioned that they would like for someone to be the spokesperson/point person for the City of Vero Beach. He said that he would volunteer to be that person and requested that he be given the responsibility.

Mr. Gabbard commented that FMPA requested that one of their elected officials sit on their Board and that person was former Councilmember Ken Daige. He was not exactly sure when OUC was talking about a point person what they meant. He said that himself and Mr. Lee have contact with OUC on issues almost daily. He said they would gladly volunteer to take that role as they do now. He thought that OUC was concerned that they were going to have different Councilmembers and staff calling them all the time with various questions and they would rather just have one person doing it.

Mr. Heady thought that they were looking for someone on the Council to be the point person. He made it clear that he did not want to be involved in the daily discussions that staff has with OUC.

Mayor Sawnick felt that Mr. Gabbard should be the point person.

Mr. Heady expressed that Mr. Gabbard was not on the Council.

Mayor Sawnick had no problems if OUC actually wanted to have someone from Council being that point person. He said if in fact that is what they are requesting then they can

discuss it at their next meeting. Mr. White wanted to see something in writing from OUC saying that this is what they are requesting.

Mr. Heady brought up the OUC contract. He said that the OUC contract was a bone of contention during the election as to who read and who didn't read it. There were questions about a redacted contract versus a non redacted contract. Clearly the contract signed by then Mayor White contained many changes. He went through the contract and 32963 went through it also. They found 115 changes they said that they counted. At the time this was being discussed he asked to see a copy of the contract and was told it was not available to the public. He protested to the City Clerk and wanted to see the contract that Council was voting on. At that time he was told that Council was voting on recommendations by the consultant and then he was given a copy of the redacted contract.

Mr. Heady referred to the document that was recently prepared by the City Attorney (on file in the Clerk's office) that shows the redacted contract and the final contract and the different changes that were made. The question comes up as to if these are material changes. He said that they are "material" to someone or they would not have been changed. He thought that when Mayor White signed the contract, he signed it with the belief that it was the contract that was voted on. Mr. White confirmed that was true. Mr. Heady continued by saying that he has concerns that the Mayor is given a contract to sign that has 115 changes and the list of changes has been identified by the City Attorney. He asked that before their next meeting that Councilmembers are supplied with who requested these changes, when were they made, at whose expense and which changes is not material.

Mr. Vitunac commented that first of all what was redacted was just numbers. He said that there was some time between the redacted contract and the adoption of the final version. He said that all the changes are material and make the contract better, but doesn't change the meaning of the contract.

Mr. Heady mentioned that there were portions excluded from the contract.

Mayor Sawnick asked Mr. Vitunac to write up a report on what the changes were in the contract.

Mr. Vitunac said that he can provide the Council with a copy of that right now, but he will go back and make what he has even clearer. He has reviewed each of the changes and there was nothing materially changed and the essential understanding of the contract has not been changed.

Mr. Heady asked who requested these changes.

Mr. Vitunac said it was the consultant.

Mr. Heady said that when the consultant presented the contract to City Council for approval it was stamped final draft. Then she went and made these changes. He asked Mr. Vitunac who paid for these changes.

Mr. Vitunac said that the City did.

Mr. Heady asked Mr. Vitunac to get him a number, before the next meeting, of the total dollar amount charged by this consultant after the contract was approved by the City Council.

Mr. Heady then brought up a meeting that he attended that was held at the 3 Avenues location. He said one of the things that came up at that meeting was about the cooperation of City staff on this project. He thanked Mr. McGarry for his hard work and that it was reassuring to hear that City staff was so cooperative.

Mr. J. Rock Tonkel, from Grand Harbor, requested to speak. He said that it was encouraging to see the attention that is being made to the issue regarding the utility rates. He has three specific requests. He asked where would he get a copy of the changes to the contract as referred to earlier (he was given a copy of this), his next question was where does he get the specifics about where different funds are used.

Mr. Maillet explained the general administrative charges (operating system of the electric company) and the transfer. The profit portion is transferred to the General Fund for operations within the City. He will talk in depth to Mr. Tonkel after the meeting.

Mr. Tonkel said that his third and final request was to get a copy of the questions and responses from OUC that Mr. Heady referred to earlier in the meeting. Mr. Heady provided Mr. Tonkel with this information.

11. ADJOURNMENT

Mr. White made a motion to adjourn today's meeting at 12:11 p.m. Mayor Sawnick seconded the motion and it passed unanimously.

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