2D-2)

SPECIAL CALL CITY COUNCIL MINUTES
TUESDAY, DECEMBER 11, 2012 1:30 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

PRESENT: Mayor Craig Fletcher; Vice Mayor Tracy Carroll; Councilmember Pilar Turner; Councilmember Jay Kramer and Councilmember Dick Winger **Also Present:** James O'Connor, City Manager; Wayne Coment, City Attorney and Tammy Vock, City Clerk

1. CALL TO ORDER

A) Roll Call

Mayor Fletcher called the meeting to order and the Clerk performed the roll call.

B) Pledge of Allegiance

Mayor Fletcher led the Council in the Pledge of Allegiance to the flag.

2. PUBLIC COMMENT

*Please note this item was heard after Item 3 – Adoption of Consent Agenda.

Ms. Sharon Young, 2204 Vero Beach Avenue, was present for today's meeting to address the article that was in the newspaper on December 5, 2012 regarding building codes on the beach. She said that she went to Vero Beach High School and remembers stories about the wisdom the City fathers had in watching the growth rate in Indian River County. She hoped that the City fathers are still wise enough to sit on their hands when it comes to building higher buildings on the beach.

Mrs. Carroll noted that one of the aspects of the overlay district is a preservation of the current 35 feet maximum with embellishments of any properties being redeveloped or new construction on the beach.

At this time, Mayor Fletcher noted that Mrs. Carroll has asked to add an item to today's agenda.

Mrs. Carroll said that on September 4th the City Council voted on members to serve on the Airport Commission. One individual went to three votes and the vote was decided on the first alternate. This individual barely missed being voted in and she would like to request that the Council appoint him as the second alternate to the Airport Commission.

Mayor Fletcher noted that under the Charter, it would take a unanimous vote to add an item on the agenda.

Mrs. Carroll made a motion to add this item on the agenda. Mrs. Turner seconded the motion and it failed 3-2 with Mr. Kramer, Mr. Winger and Mayor Fletcher voting no.

Mayor Fletcher said that Mrs. Carroll would need to place this item on their next meeting agenda.

3. ADOPTION OF CONSENT AGENDA

A) Renew Lease Agreement to Representative Debbie Mayfield
B) Unit 2 Water Box Condensers – Power Plant
C) Emergency Approval for Unit 2 Steam, Turbine and Unit 5 Gas Turbine Overhaul Extra Work Authorization #216504 – Power Plant

*Please note that this item was heard before Item 2 – Public Comment.

Mrs. Turner requested to pull item 3-B) off of the consent agenda.

Mrs. Turner made a motion to adopt the consent agenda as amended. Mrs. Carroll seconded the motion and it passed unanimously.

B) Unit 2 Water Box Condensers – Power Plant

Mrs. Turner said that this was more of a matter of format on how they were presenting this. She noted that in the documentation it states that the money would come from a certain fund, but it does not state how much is in the fund or what it would look like after the contract. She would like to see more accounting in that area and that the bid tabulations placed in the front rather than in the back of the documents. She said that there were a lot of exclusions and changes between one bidder and the other, but she felt that the disparity between the bidders in the pricing is a bit concerning and she would like to see an explanation for this. She said the low bid was $477,000 and the high bid was at $765,000. She felt that was alarming.

Mr. James O'Connor, City Manager, said that they can rearrange the bid packaging. He clarified that in this case, they were building the condenser box. They tried to bid this before and did not receive any bids because it is a specialized instrument. He reported that when they started cleaning out the interior of the box they found substantial corrosion and issues that dealt with the structural integrity of the box. He did not know why there was so much of a differential between the two bids that they received.

Mrs. Carroll said that this was noted during the April 2012 cleaning and coating of the water box. She asked what is the reason for the length of time it has taken to get this back to the City Council and make it imperative that it was placed on the agenda as an emergency item.

Mr. O'Connor said that it was not an emergency item. He said that they were awarding the bid. He said the reason it has taken so long was trying to find how to spec out the box itself, as well as finding a bidder that could build what they want. He noted that this box handles salt water, which is one of the reasons for the corrosive effects of it.

Mrs. Carroll noted that this was ongoing maintenance that is required for the aging Power Plant.

Mr. O'Connor said that is correct.

Mr. Kramer made a motion to approve the Unit 2 box condensers. Mrs. Carroll seconded the motion and it passed unanimously.

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

A) An Ordinance of the City of Vero Beach, Florida, pertaining to the City of Vero Beach Electric Utility; Calling for a Binding Referendum to be held on Tuesday, March 12, 2013 to Present a Ballot Question to the Electors of the City of Vero Beach on whether or not such Electors approve selling and otherwise disposing of the City of Vero Beach Electric Utility and substantially all of its assets; Providing for Conflict and Severability; and Providing for an Effective Date – Requested by Mayor Craig Fletcher

The City Clerk read the Ordinance by title only.

Mayor Fletcher asked Mr. Coment to explain the Ordinance and why it does not include "sell to Florida Power and Light (FPL)."

Mr. Wayne Coment, City Attorney, explained that he started with the simple question "do you want to sell the electric utility." Mr. Rick Miller, Transactional Attorney, pointed out, and he agreed with him, that adding FPL was not a good idea because in reality not all assets of the electric utility would be going to FPL. Mr. Coment noted that during the Utilities Commission meeting this morning there were some suggestions made to add some wording to the question.

Mrs. Carroll asked do they have a document showing exactly what the Utilities Commission voted on this morning. She said that she does not have that information in front of her and it is hard for her to put the wording together in terms of how she feels this may move forward.

Mr. Coment noted that in two sections of the Ordinance, it states (in part) "authorized to sell and otherwise dispose of the City's electric utility and substantially all of its assets and thereby exit the electric utility business."

Mrs. Carroll agreed that this information is contained within other sections of the item that would be out to the public. However, she felt strongly that a significant percent of the voters would vote on this and would simply read simply the 75 words of the referendum and therefore they need to make that as clear as possible. She said as mentioned during the Utilities Commission meeting this morning, they do have excess words available. She felt that they should modify this to keep into consideration some of those items discussed by the Utilities Commission.

Mr. Scott Stradley, Chairman of the Utilities Commission, reported at this morning's Utilities Commission meeting the Commission made a recommendation that the City Council add the language "for the purpose of exiting the electric business" for clarity. He personally felt that it was important that the language people are voting on is clear. He agreed that many people do not read the notices. He said that the Commission discussed if they needed to add reference to FPL, as well as the word "dispose." He reported that two members of the City Council spoke to

the Commission about their recommendation to defer the referendum until the City has the final purchase agreement. There was a motion made to recommend to Council that they defer it and after discussion, the motion failed 4-2. The Commission then recommended that Council proceed with the referendum in March.

Mrs. Carroll reported that the verbiage as it stands is "Do you approve of selling and otherwise disposing of the City of Vero Beach electric utility and substantially all of its assets." She asked Mr. Stradley, what specific modifications did the Utilities Commission recommend other than what he had just stated.

Mrs. Turner said that the Commission had a good deal of discussion on the word "disposing." She said that one Commission member suggested the word "disposition" and she felt that would be an improvement. She said that they could state "approve of selling and the disposition of the City of Vero Beach..."

Mr. Coment said that he had a very good reason with using the word "selling" as opposed to "sale." He said that they tried to stick with action words.

Mrs. Carroll suggested the wording be "Do you approve of the selling and exiting of the electrical business of the City of Vero Beach electric utility."

Mr. Coment explained that Mr. Miller specifically wanted language about disposition of substantially all of the assets.

Mrs. Turner still would like to have further discussion on not having some reference to the purchase sales agreement. She felt that they needed to refer to whatever the contractual document that is going to substantially set the terms for the sale.

Mrs. Carroll also felt that a reference to the purchase sale agreement as a concept that should be included. She said they are selling to FPL so they should mention them. She suggested at the end of the City of Vero Beach electric utility and substantially all of its assets "to FPL upon terms and conditions substantially similar to those similar to those contained in the purchase sale agreement." She said that it was no secret they are selling to FPL and they should make sure that the public is aware that is what is going on.

Mrs. Turner said if they are going to have a valid referendum, they need to reference the terms of the contract.

Mr. Winger said that they should go with the Transactional Attorney and Mr. Coment's opinion. He would not change the wording.

Mr. Kramer said until they get something in writing from FMPA stating that all the hurdles are done, they are running around in circles.

Mr. Winger said that if they read the November 10th letter, they could be talking about October 2016. He felt that this referendum was disingenuous from the perspective that, in his opinion, that there is no possible way the public will have in front of them everything they would need for

by March 13th. He said that when he chose the date of March 13th last August, he thought that they would be farther along than they are. He said that whatever the wording of the referendum is, they should state that at a later date the City Council would set a date when the facts are known and the public could adequately judge.

Mrs. Turner said that when this referendum was brought forward in 1976 there were still a lot of approvals that had to be made. They have spent almost two years in negotiations with FPL, they have spent a good deal of funds, and they want to conclude this negotiation. She felt that they would have a purchase sales agreement prior to March 12th. She said let's get the public's vote and move forward.

Mrs. Carroll said that Mr. Winger stated that he thought they would be farther along with the sales contract at this point. The other four members of the City Council went into this agreement to enter into negotiations with FPL with the knowledge that this would be a lengthy procedure. That a sales contract was not imminently coming forward when they went into an agreement with them two years ago. Mr. Winger's comment that they are not far enough along to make this type of decision she felt was patently wrong. She asked Mr. O'Connor when they would have a purchase and sales agreement.

Mr. O'Connor hoped to have a purchase and sale agreement, in principal, in January. He said that they are working diligently on addendums to that. The purchase and sale agreement would have contingencies, such as the referendum, approval by the PSC, FERC, and FMPA provisions.

Mr. Winger said that for over one year he has said if they can't resolve the FMPA agreement then they don't have an agreement. He did not feel they were close in getting FMPA resolved.

Mrs. Turner said that the biggest hurdle that they have had with this whole transaction is the FMPA entitlements. They have resolved a way out of those entitlements with the cooperation of FPL and OUC. This is a huge hurdle and they have overcome that. They have been aware of the bond issues and they have been working on them.

Mrs. Carroll said that they have been aware of the bond issues since the original concept of selling to FPL. She said that they have put their trust in the Transactional Attorneys and she felt that they have done a great job.

Mr. Kramer said that they have three votes to go forward. He felt that it would be interesting when they receive the fourth letter of intent.

Mayor Fletcher asked Mr. Coment how he felt about the addition clause that Mrs. Carroll suggested.

Mrs. Carroll suggested that she read the statement.

Mr. Coment said what he has is "do you approve of selling and otherwise disposing…"

Mrs. Carroll suggested "exiting and selling the electric business …"

Mr. Coment asked do you want to make that the feature of the question.

Mrs. Carroll asked Mr. Coment if he said that he had a problem with the word "selling" as opposed to "exiting."

Mr. Coment answered no. He said that they started with the premise to make it as short and simple as possible. He said that they could use the language "do you approve of selling or otherwise disposing of the City of Vero Beach electric utility and substantially all of its assets for the purpose of exiting the electric utility business."

Mrs. Carroll suggested the wording "do you approve of exiting the electric business and the disposition of the City of Vero Beach electric utility and substantially of its assets to FPL upon the terms and conditions substantially similar to those contained in the purchase sale agreement."

Mrs. Turner said that they have more than FPL involved in exiting the electric utility. She suggested adding a second sentence.

Mr. Stradley said that they could reference both OUC and FPL.

Mr. O'Connor explained that the purchase sales agreement is between the City and FPL. They could refer to the purchase sale agreement between the City and FPL. The others are addendums to that.

Mrs. Carroll said in other words it would be "of all of its assets to FPL upon the terms and conditions similar to those contained in the purchase sale agreement." She explained that as mentioned today the actual documents should be similar to what they have worked out so far.

Mr. Mark Mucher, 617 Indian Lilac Road, agreed with keeping it simple. He would like everyone to know that they do plan to have the purchase and sales agreement available at the time people vote. He did not like the word "dispose" because it sounds like they were giving it away. He liked "exiting the utility business" and "disposition," as opposed to the word "dispose." One concern is that they might have dual referendums. He said that they have to think about clarity and finality. If they were to wait, any delay caused by the referendum would cost the City $1.5 million dollars a month in excess rates. Now with the rate increase it would probably be close to $2 million dollars. He did not think that March would cause a delay.

Mr. Glenn Heran, 1964 Falcon Circle S.W., agreed with keeping it simple. He did not like the word "disposal" because it sounds like they were giving or throwing the system away. He did not think the voters would read all the language in the Ordinance. He suggested the wording "do you approve of selling and otherwise exiting the City of Vero Beach electric utility business and selling substantially all of its assets for the purpose of selling to FPL under the terms and conditions substantially similar to the purchase and sale agreement."
Mr. Coment did not like that language. He said that the purpose is to exit the utility business. He liked the way it was before because he felt it was clearer. He said that Mr. Miller wants "disposition of substantially all of the assets." The reason for that language is because that is the terminology of the FMPA contracts.

Mr. Heran said that if they have to have "disposition" then they should not start out the question with it, but put it back further in the referendum, such as "do you approve of selling and otherwise exiting the City of Vero Beach electric utility business and selling and otherwise disposing of all of its assets for the purpose of selling to FPL…"

Mrs. Carroll thought that what Mr. Heran suggested was, "do you approve of selling and exiting the City of Vero Beach electric utility business and the disposition of substantially all of its assets to FPL under the terms and conditions substantially similar to those contained in the purchase and sale agreement."

Mr. Heran said that was correct except it is "in the disposition of all its assets for the purpose of selling to FPL under terms and conditions similar to the purchase and sale agreement."

Mr. Dan Stump, 615 Camelia Lane, thanked Mr. Kramer for his presentation that he gave to the Utilities Commission this morning. Mr. Stump said that he liked the wording of the referendum. The first thing that comes to his mind, and this is not in an insulting way, but constructive criticism, is if they have a referendum like this and ask that it be placed on the ballot, he felt that a good argument could be made that the Councilmembers are abdicating their responsibility. He was not personally making this argument, but it could be made. When elected as a City Councilmember, they do so after telling the voters to vote for them because they would vote on matters that they feel is in the best interest of the voters. That they were going to vote and not push it back to the voters in the form of a referendum. Mr. Stump felt that if they were going have a referendum that it would behoove the Councilmembers to make it as broad as possible. He felt that the original question does that (do you approve of selling and otherwise disposing of the City of Vero Beach electric utility and substantially of all of its assets). He did not think that they had to put "FPL" in there. If the referendum passes the City voters are giving Council all the authority they need. The voters are telling Council to go ahead and make the decision, that they trust them.

Mayor Fletcher agreed with the question that they have. He did not think that they needed "exiting the utilities" by virtue of the fact that they are selling. He felt that this was crisp and clean and everyone would understand it.

Mrs. Carroll felt that they need to put in who they are selling to. That they need to state that they are selling to FPL based on the purchase and sales agreement. They need to let people know that there is a document that they can go and reference.

Mr. Mucher said the concept of exiting the utility business was much more final than the term "sale."

Council briefly discussed the wording they would like to see in the referendum.

After discussion, Mr. O'Connor read the following wording, "do you approve of the sale and the disposition of the City of Vero Beach electric utility and substantially all of its assets for the purpose of exiting the electric utility business under terms substantially similar to the purchase and sale agreement between the City and FPL Company."

Mrs. Carroll asked that Council take a break so that they can have the wording typed and put in front of them.

At this time, Council took a 10-minute break and returned at 2:40 p.m.

Mayor Fletcher stated that during the break someone told him that the actual name of the purchase and sale agreement was "asset purchase and sale agreement." He asked that they make that change.

Mrs. Carroll asked that they take out the word "the" before "disposition," so it would read "do you approve of the sale and disposition."

Mrs. Carroll made a motion to hold the public hearing on January 8, 2013 for the referendum on the sale and disposition of the Vero Beach electric utility. Mrs. Turner seconded the motion and it passed 3-2 with Mr. Winger voting no, Mr. Kramer no, Mrs. Turner yes, Mrs. Carroll yes and Mayor Fletcher yes.

5. CITY MANAGER'S MATTERS

A) Fiscal Year 12-13 Electric Utility Rate Sufficiency

Mr. O'Connor explained that their recommendation is that they would not do this on an annual basis, especially since they are in the direction of selling the electric utility. Therefore, they would be doing this on a semi-annual basis. He felt this would give them a better picture as to where they would be financially at the closing of the sale. He said that they plan to bring this back to Council in six months. He reported that these rates would go into effect right away.

Ms. Cindy Lawson, Finance Director, referred to the Fiscal Year 12-13 Electric Utility Rate Sufficiency information provided to Council (attached to the original minutes). She explained that Attachment D – FY 10-11 and FY 11-12 Historical Data KwH Sales and Billed Revenue was the basis for what they forecast for the upcoming year.

Mayor Fletcher asked if this was brought before the Utilities Commission.

Ms. Lawson said that the Utilities Commission has not discussed this.

Ms. Lawson explained that Attachment B – FY 12-13 Electric Utility Sales and Revenue Forecast takes data and calculates estimated revenues by broad customer class; residential, commercial and industrial. She said that the real issue is going to be how accurate they have been in projecting sales. She explained that Attachment A – Summary of Expenses, Revenue and Net Revenues has information that was adopted in the fiscal 12/13 budget except for the projected purchase power costs. She said that they went with the low end of the projected OUC costs, which is another reason that they need to stay on top of this. The other thing that is different is the projected rate revenues, which were based on the two-year average sales and includes their suggestion of an increase of about 5.8% on a 1,000 KwH on a residential bill.

Ms. Lawson referred to the FY11-12 Summary of Expenses, Revenue and Revenue Surplus (Deficiency) and the Electric Utility – Year end Balances that she gave out prior to today's meeting (attached to the original minutes). She noted that they could hold up this information with the projected information to see where the areas of difference are. She said that if the model is correct they were looking at about 99 days of cash on hand and about 69 or 70 days of working capital.

Mayor Fletcher asked what is the minimal cash on hand.

Mr. O'Connor stated that 75 days was a reasonable time frame to have in there.

Mr. Tom Richards, Power Plant Director, briefly went over Attachment C with the Council. He felt that OUC was a little high in their estimate.

Mr. Winger asked why the forecast for St. Lucie is higher than it has been historically.

Mr. Richards explained that the first month is the "actual" and the rest of the information is a projection for the year divided by 12 months.

Mrs. Turner said that in looking at a memorandum of when Mr. Kramer had asked for the rate sheets, there is a significant variation in St. Lucie.

Mr. Winger said that St. Lucie I was down in the Spring and when they are down, the cost is going to go up. He felt that these numbers should go before the Utilities Commission and the Finance Commission.

Mrs. Turner asked are the numbers below FMPA budgeted amounts. Mr. Richards answered yes.

Mrs. Carroll asked Mr. Richards what he based the decrease of five-percent on. Mr. Richards answered that he sensed that they were generally budgeting higher than they need to be for the year.

Mrs. Carroll asked Mr. Richards if he felt comfortable that this documentation provided would be close to what is going to come up based on historical data. Mr. Richards said it is forecasts and they would be reviewing them monthly.

Mrs. Turner said that she left City Councilmembers a packet of information that has a break out of the power and where they get it from, the FMPA entitlements, etc. (attached to the original minutes). The second page was a memorandum from 1995 discussing the R & R. She said that it stated that their average at that time was $3.9 million dollars. She said that the R & R over the years has gone from a high in 2007-2008 of $11.1 million dollars and in 2009-2010 they went to a low of $947,000 dollars. She felt that $6 million dollars is probably where they need to be with the R & R. She said the other part of the package that she gave Council was regarding their declining capital spending. Although their system has continued to age, back in the five year capital plan of 2006-2007 they were projecting $9.7 million dollars of capital spending. She said that if they proceed with their five year capital projections, they would see that this has continued

to drop and their annual capital spending for 2011-2013 is projected to be $3.6 million dollars and they did bring that up to $7.3 million dollars. She said that her intention was that they have an aging system, they are continuing to spend less money in capital, and also their operating expenses. She said that they are deferring maintenance and deferring capital projects. She thanked staff for their efforts in bringing transparency to the rate adjustment. She felt that they did a great job in putting the numbers together.

Mr. Kramer said that the R&R over the past several years averaged out to be about $5.9 million dollars. Mr. Tom Nason (past City Manager) suggested in his letter $3.7 million dollars. Therefore, they are investing more than what Mr. Nason had originally intended. They have paid off about $20 million dollars of debt over the last several years. He said that they have been paying cash for some of this stuff and they could be borrowing it.

Mrs. Carroll believed that as City Council, they need to not only look at short term, but also long term. She agreed with what Mrs. Turner stated that for the last couple of years they may have looked at just the short term and chose to not go forward with the necessary refurbishment of the Plant. In looking long term, they need to realize that if for some reason the sale does not go through they are stuck with the Plant, the OUC contracts and the FMPA contracts. At that point, they cannot be stuck with the Plant if the maintenance has not been done. She felt that they needed to take the suggestions of staff and go forward with what their suggestions are.

Mr. Kramer asked staff if they were making their rate projection based on the high end.

Ms. Lawson said it was on the low end. She explained that if they look at Attachment A, all the numbers are the budgeted numbers except for the purchase power projection and the rate projection. If they look at their rate projections in the 2012 – 2013 budget, staff does not believe that they could achieve that much revenue in the absence of the rate increase.

Mayor Fletcher said that they might want to make a policy statement. He asked Council if they want this to go before the Utilities Commission and the Finance Commission before being brought to Council in the future.

Mrs. Carroll asked when was the date of the last rate increase. Mr. O'Connor answered January of 2012.

Mrs. Carroll asked when that occurred, did that come to a voting decision of the City Council or did that fall under City Manager's matters for discussion or the consent agenda. Mr. O'Connor said it was under the consent agenda. He said that historically speaking, the City Council has not voted on the rate adjustments as proposed for the utilities. They are made aware of the adjustments, but they do not vote on it.

Mrs. Carroll asked why is this being brought before the City Council. She asked is it simply for informational purposes and does not require a vote. Mr. O'Connor said that it does not require a vote. He explained that because they were moving in the direction of selling the utility, staff wanted Council to be fully aware of how they came up with the rate projections. He said that historically, the City of Vero Beach did rate adjustments on a quarterly basis. This last year their rate projections held true and they were able to hold them for a full year. He said regarding what

role the City Council plays, if Council says no staff would do something else. But their plan is to put this in effect right away.

Mayor Fletcher felt that before this comes before Council in the future, it should go before the Utilities Commission. Council agreed.

6. COUNCIL MATTERS

A) Discussion of Goals for the Year

Mrs. Carroll said before they begin, Council discussed each member of Council putting together a list of five goals and objectives. She said that they wanted to discuss what Council wanted to tackle throughout the community, in addition to the utility sale. She sent out a memorandum to all the Council listing her five topics. Mrs. Turner also sent hers to Council, but they have not received anything from the rest of the Council. Therefore, she did not know if it would be appropriate to start tackling the items of the two Councilmembers.

Mayor Fletcher said that he has not turned in his list. He suggested that they put this away until they have everyone's input.

Mrs. Carroll asked to hear from the rest of the Council.

Mr. Kramer said that they would continue to work on issues in the community as they come up. He could not state exactly what he would be working on throughout the year. He would be finishing up things that were started last year. He said that he could not put on paper what he would be working on this year.

Mayor Fletcher said that he would put his goals together and would get it to Council by the end of the week. He asked that the other members of Council do the same.

Mrs. Carroll said based on Mayor Fletcher's suggestion, everyone would try to get them to the City Clerk by the end of the month.

7. ADJOURNMENT

Today's meeting adjourned at 3:17 p.m.

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