

**CITY OF VERO BEACH, FLORIDA
OCTOBER 6, 2015 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

The invocation was given by Reverend Randy Russell of St. Marks Anglican Church, followed by the Pledge of Allegiance to the flag.

1. CALL TO ORDER

A. Roll Call

Mayor Richard Winger, present; Vice Mayor Jay Kramer, present; Councilmember Pilar Turner, present; Councilmember Amelia Graves, present; and Councilmember Randy Old, present **Also Present:** James O'Connor, City Manager; Wayne Coment, City Attorney and Tammy Vock, City Clerk

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mrs. Tammy Vock, City Clerk, requested that item 8-4) be added on to the agenda under City Manager's Matters "Request from Vero Heritage to serve alcohol at their event "Starry Night in the Park."

Mr. Kramer made a motion to adopt the agenda as amended. Ms. Graves seconded the motion and it passed unanimously.

B. Proclamations

1. Family History Month – October 2015

Mrs. Turner read the Proclamation.

2. National Arts and Humanities Month – October 2015

Mr. Kramer read and presented the proclamation.

C. Public Comment

1. Mr. Schef Wright, Attorney, to discuss the amendment to the OUC contract.

A) Blue Line Changes – Amended and Restated Agreement for the Purchase and Sale of Electric

B) Amended and Restated Agreement for the Purchase and Sale of Electric

Ms. Graves noted at the Utilities Commission meeting held yesterday they requested that Council defer action on the amended Orlando Utility Commission (OUC) agreement. She believes that Council should hear Mr. Wright's presentation, and made a motion to take no action on the agreement other than to hear Mr. Wright's presentation.

Mayor Winger agreed with Ms. Graves. He said that this City is one of the most transparent municipalities on the east coast and the Finance Commission needs to review this agreement.

Mrs. Turner commented that she did not receive a copy of the recommendations made by the Utilities Commission at their meeting that was held yesterday.

Mrs. Vock provided a copy of the motions made by the Utilities Commission to each Councilmember.

Mayor Winger asked Mrs. Vock if Council was to ask to have another joint meeting of the Finance and Utilities Commission would that be possible.

Mrs. Vock stated that she has called all the members from both of the Commissions and there is a quorum of members that could attend from both of the Commissions and hold a Joint Special Call meeting on Monday, October 12th at 9:00 a.m.

Mayor Winger asked that the joint meeting take place and he would request a Special Call City Council meeting be held on Tuesday, October 13th at 9:30 a.m. to discuss this matter. He thought that it was worthy to have a meeting dedicated to just this subject. He asked Mr. Wright if he had an opinion before he asked Council if there was a consensus to hold the meeting.

Mr. Schef Wright, Outside Attorney, agreed that another week will not hurt anything. He said OUC has agreed that they could start billing the new rates on October 15th. He said this delay may affect that and they may have to move the date to November 1st.

Ms. Graves amended her motion to include having a Special Call meeting on October 13th.

Mrs. Turner asked that Council be provided with all of the necessary information. She said at the Utilities Commission meeting yesterday a lot of questions were asked and when the Finance Commission meets jointly with the Utilities Commission there will be more questions. She did not know if all of the questions could be addressed by a week from today.

Council agreed to hold their Special Call meeting on October 19th at 9:30 a.m. instead of October 13th at 9:30 a.m.

Ms. Graves restated her motion that Council take no action today and have a Special Call meeting on October 19th at 9:30 a.m. Mayor Winger seconded the motion and it passed 4-1 with Mrs. Turner voting no because of the conditions of setting up a meeting when they don't know if they will have a response to all of the questions raised and the necessary information.

Ms. Graves said if they have to they can change the meeting date.

Mr. Wright went through his Power Point Presentation (please see attached). He said the amendment to the OUC contract with the changes was sent out two (2) weeks ago. He would recommend accepting a new PPA with "levelized" or "levelizing" capacity charges. It provides substantial cost savings versus the existing PPA. It will provide rate reductions and more stable rate trajectory between 2016 - 2023. Mr. Wright said that he did not have a dog in this fight, but would recommend going with the levelized capacity charges and rate reductions. However, this was a decision that Council will have to make. The advantages of entering into a new OUC PPA would be because it will be for a shorter term contract, there will be lower capacity/demand charges for base power, the minimum demand will be reduced to 85 MW instead of 95 MW, which is what it is now, the City will be allowed to reduce the peak demand for billing calculations by 10 MW and OUC retains the gas transportation contracts. He said other provisions in the new OUC PPA would be: bilateral force majeure provision, change in law provision, clarification of energy billing determinants, start lower base purchases in October 2015 even if full transmission for peaking purchase is not available, continued provision of Compliance Services to the City, capacity deficiency provisions if the City exceeds total purchase capacity, and clarifying and conforming provisions. Some of the reasons to accept the new OUC PPA would be the total NPV savings of \$119.7 million versus the existing PPA, with a total nominal savings of \$171.4 million dollars. There will be substantial cost reductions per retail MWH, smoother more sustainable future rates, and a projected residential rate in 2023 is 0.5% higher than 2016. Mr. Wright went over the projected savings from the new OUC PPA and the total savings versus the existing PPA. He then went over the projected savings from the new OUC PPA by time period (new PPA and early termination). He covered the projected savings from the new OUC PPA rate for 1,000 kWh residential services and pointed out on a graph the average retail cost projections for years 2016 – 2023. In the Power Point presentation, Mr. Wright included the OUC discussion points in response to the City of Vero Beach's request for modifications to the PPA dated August 13, 2015. He then summarized his presentation by saying that it would be staff's recommendation to accept the new OUC PPA with "levelized" or "levelizing" capacity charges. There will be a substantial savings of \$119.7 million dollars and a substantial rate reduction versus the existing PPA. Also there will be a more stable rate trajectory and the projected rates in 2016 will be \$119.58 and the projected rates in 2023 will be \$120.26.

Mr. Wright commented that Mr. Auwaerter brought up a good point at yesterday's Utilities Commission meeting as to whether the highest marginal costs even if that only applies to part of the amount of OUC would purchase to sell to us, or applies to

everything they sell to us. He said there is a separate provision that states they can charge actual costs, but felt this was worth clarifying. There was a request from the Utilities Commission to ask OUC to remove Section 12, which relates to the Power Plant site and he will ask OUC about that Section. There was a question about the allocation of any stranded costs recovery pursuant to the law provision. He said if there is a drastic change in law and the City's ability to perform is impaired was discussed. He would assume that OUC would help them out with this. The City would be obligated to defend off, obligated to seek their own fiduciary responsibilities and seek stranded cost recovery. The question is then if they were to recover some stranded costs how would that be allocated. He said it would depend on what it is, but felt that OUC would be entitled to it. There was a question about transmission, but that was dropped.

Mr. Jim O'Connor, City Manager, commented on the transmission question. He said the City recently received the report from Florida Power and Light (FPL), which indicates there is little or no exposure to the City as far as costs go. He said it is more of a protocol issue for the transmission to be able to get 54 MW to them. The next step would be for OUC to review the report, which they don't see any problems with. Then it will go to the Florida Reliability Coordinating Council. He also gave Council a copy of an email they received, which gives a preliminary time frame for when this would be heard and they are looking at either November 3rd or December 1st. Once this is done, they will be in a position to turn their Units off at the Power Plant.

Mrs. Turner commented that she looked at the contract as to what is OUC gaining from the contract and what is the City of Vero gaining from this contract. She was concerned that not only are they guaranteeing OUC a minimum of 85 MW, but now they are committing to buying power peaking charge, which means they are buying an additional 54 MW. She still has not been able to find anything on the pricing of this 54 MW as far as peaking goes and how it compares with the market pricing for that type of power.

Mr. Wright explained the pricing is not in the PPA.

Mrs. Turner agreed, but she had nothing to compare it with, such as buying their peaking power from another source. She asked what it would be.

Mr. Wright said you could not get the lower pricing on the base capacity and the shorter contract without buying peaking capacity from OUC. The other relative comparison is to go to the market scenario.

Mrs. Turner felt that they needed to look at that. She said even if they choose not to go to market these are huge financial considerations that they need to be comparing for the public. She said that was still an option.

Mr. Wright said that was covered in the presentation that he made today. It includes shutting down the Power Plant and buying all of their other capacity at market.

Mrs. Turner still wanted to see what premiums they were paying for the peaking power. She is trying to do a balance act as to what OUC is receiving. They are offering the City an 8% reduction on the rates, but what is the City giving up as a utility for this 8%. She said they have the 85 MW commitments. The City is giving them an additional 54 MW that they are paying a premium price for. They are committing to legally defending them if there is any change in the law, giving them a share of stranded costs if they lose their lawsuit with Indian River Shores, giving them the ability to lease the Power Plant, giving them a gas contract worth \$10 million dollars or more, and they are also getting a shorter term so they don't need to add capacity. She balances this against what the City is getting from the contract and she doesn't think they are getting that much from this amended contract. The changes made in the contract were made to OUC's benefit. The only real benefit was they were able to negotiate a more balanced majeure clause. She questioned who was looking out for the City of Vero Beach and where was their protection for a rate increase.

Mr. Wright reiterated that the advantages for the City of Vero Beach is lower pricing for the next eight (8) years, and getting out of the PPA in eight (8) years, and then getting into the market. He said it is Council's call.

Mayor Winger commented that this amended contract is what has been negotiated with OUC and Mr. Wright is going to address the four (4) points that were brought up by the Utilities Commission yesterday. Also, the go to market and the new PPA is projected to be around \$16 million dollars.

Mrs. Turner asked if that is to go to market for the same time period. She would like to see the go to market at 2023 versus the PPA. She asked Mr. Wright if he had that analysis.

Mr. Wright did not believe there would be any difference.

Mrs. Turner would like to see a full comparison for this time period with a go to market option. Mr. Wright said that he would do that.

Mrs. Turner felt that they needed to apply a cost to all of these concessions that they are agreeing to in this terminology, which includes legal defense, potential sharing of stranded costs, allowing OUC to repower/release the Power Plant, an updated value of the gas contract to OUC, and the impact of the shorter term that relieves OUC of having to repower. She knew that the OUC Board, when reviewing this contract was including the dollar amounts they are receiving from the City of Vero Beach.

Ms. Graves asked if Article 12 would require a referendum if this was something that OUC wanted to pursue.

Mr. Wright was told by the City Attorney that the answer is yes and that they cannot waive the Charter requirements for a referendum in the contract.

Mayor Winger asked when negotiating with OUC why the Plant was not dropped out of it.

Mr. Wright explained that they wanted to make as few changes as necessary to the contract. He said this section was discussed and OUC asked that it not be changed.

Mrs. Turner referred to Article 3, Wholesale Electric Service clause and noted that this was language that OUC wanted to add. She asked why this was added if OUC was looking at making the least amount of changes they could to the contract.

Mr. Wright said this would protect the City if there is a lawsuit over stranded costs.

Mrs. Turner commented that they are opening the door for the City to have stranded cost liability.

Mayor Winger told Mrs. Turner he was happy she was bringing these items up today, but she could meet with Mr. Wright and discuss these things with him one on one.

Mrs. Turner brought up Article 15.2 and noted all the changes that were made to that section, were for the protection for OUC.

Mr. Wright explained that Article 15.2 was a section put in the contract for protection for the City of Vero Beach in the event that the City becomes unable to perform because of other governmental actions. He said back in the fall the question was raised what happens if they lose the great big lawsuit to Indian River Shores and will no longer be able to serve all of their customers. He told Council at that time, he had a handshake agreement with the OUC General Counsel that they would work out the terms, which would address it in a mutually agreeable way. He reiterated that this only applies in the case where the City is on the adverse end of some government action.

Mayor Winger believed that there were only three (3) choices that they could make. They are to stay where they are at, go after the \$16 million dollars as shown in the Power Point presentation and go out to market, or they can accept this agreement with whatever modifications that Mr. Wright can get between now and the future. He asked Mr. Wright if there were other choices that he did not know about.

Mrs. Turner commented that the \$16 million dollars is understated. She said they would have to put down the additional costs that they are incurring by making these commitments to OUC.

Mr. Wright did not understand what additional costs they were incurring.

Mrs. Turner told him the 85 MW floor, the commitment to buy the City's peaking power from them as opposed to the market, the legal defense costs, gas contract, etc. She felt that these were other costs that the City was incurring. She mentioned they were being handcuffed for eight (8) years.

Mayor Winger said under the existing contract they are handcuffed for 14 years.

Mr. Wright said that Mayor Winger's three choices were correct. The City has the choice of staying with what they have, going to market, or taking the new PPA.

Mayor Winger asked why not go to market.

Mr. Wright said there is too much litigation risk and it is not worth it.

Mayor Winger commented that if the City was to accept this amended contract there would be 17 municipal utilities that have the same rates as them or higher. There would be 15 municipal utilities lower than the City of Vero Beach. As far as investor owned utilities there would be one (1) significantly the same as Vero Beach. He said Tampa Electric has just been acquired and it is lower than the City and of course FPL is significantly lower. The City has been trying to sell the utilities to FPL if they can and if they cannot then they need to bring the rates down to bring them in the middle of the pack. He asked Mr. Wright if this was a true statement.

Mr. Wright said that it was a true statement and their goal has always been to get their electric rates as cheap as they can.

Mr. Old felt that the process they went through yesterday in having their Utility Commission address their concerns was very productive.

Mr. Mark Mucher referred to Article 12, which is in the existing contract would allow OUC to repower the Power Plant, tear it down or build their own. He said Mr. O'Connor reaffirmed yesterday that the City was going to close the Power Plant down regardless whether they tear it down or not Mayor Winger has a plan to utilize the back half of the property for Park purposes and yet they are leaving permission for OUC, to come back after all of this has been done and make it a running Power Plant again. As far as he was concerned that was not acceptable. He said if there is value to OUC or they have plans then they should tell the City what those plans are. He said the fact they are going through this major contract revision and will probably be the last one for the next eight (8) years and that they don't want to make a lot of changes is not acceptable.

Mr. O'Connor reiterated that the Transmission Study was clear and one of the goals that Council has expressed is that they don't want the City in the generation business.

Mr. Wright stated that he will ask OUC about this. He said to recollection, OUC has never indicated that they wanted to build a Power Plant on this land.

Mr. Mucher suggested not signing the contract that has this article in it. He said if what Mr. Wright has just said is accurate then that clause does not need to be in the contract. The second question he brought up was aren't they paying OUC a significant

management fee to manage their Plant and wouldn't that go away when the Plant goes off line.

Mr. Kramer commented that it was brought up that OUC wants to lease the Power Plant. He asked Mr. Coment if the Council had the authority to lease the Plant.

Mr. Coment answered no, because the restrictions in the Charter are very specific on what the land can be leased for. So if OUC wanted to lease the Power Plant it would have to go to a referendum vote.

Mr. Wright referred to Appendix B, Article 4 where it states that OUC does provide Plant operation management services, and NERC compliance services, which the City pays separate for. He said the NERC costs will go away. He said OUC would continue to pay for transmission planning and load forecasting.

Mr. Mucher stated then he wasn't wrong in saying that the City doesn't write them a check for the management services, but those management services are included in the higher rates they pay, so now that they won't have to pay those services and their rates should be reduced somewhat. He then commented that the City was giving away a \$10 million dollar asset, which doesn't have any cash flow associated with it. He said Council should just remember if the \$10 million dollars they are giving away doesn't show up in the rates that it is a loss to the system. In terms of Mrs. Turner's comparisons of columns on who benefits from what it has to fit in there somewhere. He said more than half of the savings that have been promoted here are due to the shortening of the contract. He said after the contract is gone it just becomes pure speculation because what they are doing is guessing on rates years out. There are other rates that are unknown and the whole thing is a moving target.

Mr. Wright stated that the gas contracts have some positive value to OUC, because they will be able to buy at the lower rates and avoid having to pay higher costs for new capacity. The cost to Vero Beach is close to zero because the City can't sell the capacity for more than the tariff rate. He agrees with outlining who gets what and he is drafting an outline of what it will look like and is working on it. The only scenario in which the gas contracts have value to the City is if they build a Power Plant later on down the road and they have given up the FGT contracts. They would have to go to market and pay a higher cost for gas transportation to fuel the Power Plant.

Mrs. Turner commented that it was a great negotiation tool. She said if they were to go to another power supplier and tell them they are interested in buying power from them and they have this asset, it is something that they have to negotiate with.

Mr. Charles Wilson stated that some might say that this exercise is more about the political power than the cost power. He said they keep forgetting in all of these conversations about savings and options and that they killed the best option, which was the sale to FPL. He said that was done by this sitting Council. When they are talking about their poor options, it is Council who fostered these poor options and now they are

choosing the least of the poor options that they have. He agreed with Mr. Old that yesterday's Utilities Commission meeting was quite enlightening and that they did their research. He said this contract reviewed yesterday limits the public options from the meager options they have right now. It also eliminates any advantage of conserving energy. Because they are "take or pay," if they conserved enough energy to go below they will pay anyway.

Mr. Kramer disagreed with Mr. Wilson and said that the contract would allow them to manage their load so they would be able to implement environmental savings and the previous agreement did not allow them to do that. He asked Mr. Wilson to explain how Council killed the FPL deal.

Mr. Wilson stated that three (3) Councilmembers voted in March 2014 to not go along with the offer that had been made by FMPA and OUC. He said by denying that, thirty days later it gave them the opportunity to unravel and back away from the offer.

Mr. Kramer stated that was not true. He said they came back with a \$20 million dollar offer with not an end to all of the FMPA entitlement costs. He said OUC did not want to come in and take their place, they jumped out. He said it fell apart between FMPA and OUC and the Council did not have anything to do with it.

Mr. Wilson said the three (3) Councilmembers voted no and he said he guesses there are some people that are very grateful they were able to prevent the sale to FPL. The point is, is what they are doing now. Now, they are limiting options and giving OUC an insurance policy. He said this insurance policy would be insuring OUC from damages in case there was a revolt in Vero Beach.

Mr. Kramer told Mr. Wilson the revolt already happened. He said that was three (3) or four (4) years ago.

Mayor Winger asked Mr. Wilson not to use any names when he was speaking and for Mr. Wilson to proceed.

Mr. Wilson stated that if the Legislature changes the law Vero Beach still pays. If the Court favors Indian River Shores then Vero Beach still pays. Provisions allow OUC to build on the riverfront project. He said the term is "life of the Plant." He brought up that their attorney, Mr. Wright, was appointed by FMPA, and says this cannot be changed because it is too much trouble to ask OUC to do it.

Mayor Winger did not believe that FMPA had anything to do with Mr. Wright being hired as their attorney.

Mr. Wilson reminded the Mayor that he was taking Mr. George Christopher to the FMPA negotiation meetings.

Mayor Winger reminded Mr. Wilson using peoples' names was not appropriate. He was sure that Mr. Wright would be happy to answer his questions.

Mr. Kramer commented that they all want to know what the truth is. He said Mr. Wilson is throwing things out and then not letting them substantiate them.

Mr. Wilson told Mr. Kramer that he was a really nice fellow, but he would not know the truth if it bit him.

Mr. Kramer asked that Mr. Wright be able to respond.

Mayor Winger called for a Point of Order and said that personal comments were not allowed.

Mr. Wilson said that he would continue his comments if he didn't get interrupted again by someone protecting their political career. Mr. Kramer said that he did not have a political career to protect. Mr. Wilson reminded him that he was running for County Commission. Mr. Kramer said that he makes far more money in the private industry.

Mr. Wilson continued by saying there is a provision in the contract that allows OUC to adjust the highest rate in the State for peaking power. It also allows OUC with a handshake agreement with Mr. Wright to have interpretation rights. He said if they were going to negotiate another deal, what they need to do is negotiate a deal that represents Vero Beach. His question is whose side are they on. He said this is FMPA contract number two (2). He is seeing that there are conflicting goals. The first are a group of people who want to achieve independence. The second group of people want to achieve a permanent subsidy of taxes for the wealthiest beach residents through permanently high electric rates. He said a history of their utility is built on deceit. He knows that this Council is going to vote for the contract, but the fact is that the public needs to know that elections have consequences and in ten years the public will be wondering why this vote occurred.

Mr. Joseph Guffanti commented that somebody earlier in the meeting mentioned transparency happens in the City of Vero Beach. He said there was a meeting where an outline was passed out explaining the synopsis of the proposed contract. He called and asked the City Clerk for a copy of the amended contract, which she did not have and then he received a call from her the next day saying that she had just received it from the City Attorney. He said the Clerk did not receive a copy of the contract until he asked for it. He then complimented Mrs. Turner in doing due diligence for reviewing this contract. He noted that Mr. Kramer has spoke more at this meeting today then he has ever heard him speak at a meeting. Mr. Wright was doing a great job for the Council, but not for the City. He mentioned where Mr. Wright brought up negotiations by having a handshake. He has never heard of people having a handshake without a contract. He questioned what the urgency was in getting this contract signed. He said it is nothing but a money laundering operation. He knows of three (3) Councilmembers who are going to vote in favor of this contract, so he is probably wasting his time discussing it.

Mr. Kramer told Mr. Guffanti that his door is always open if he wants to talk.

Mr. Guffanti commented that FCC doesn't allow him to say on air what he would like to say.

Mr. Comment commented that at any point in time he is working on a dozen different contracts in his office and the Clerk is not provided with everything he is working on, which is why Mrs. Vock did not receive this contract until she asked for it.

Mr. Wright responded to some points made by Mr. Wilson and Mr. Guffanti. He said the comment made by Mr. Guffanti was just some criticism of him for going forward on the basis of a handshake with Mr. Browder (OUC Counsel). He was right that the handshake did need to become a contract. They had a contract in November with the understanding that in the end they would negotiate terms and there was an adverse legal action slated for Court action, which is now a part of the agreement. In regards to comments made by Mr. Wilson, the City hired him on April 16, 2014 and his main engagement was to try to bring the sale of the utilities in for a landing at that time. The first phone call he received congratulating him was from Mr. Wade Litchfield, General Counsel for FPL. They worked hard trying to get the deal done. He came up with a workable solution regarding the long term liability issue and what happened was at the end of May, FMPA's Bond Counsel and OUC's Bond Counsel got together and said they had conflicts with OUC stepping into the City's status as a purchaser under the FMPA PPA's and asked FMPA to change their bond covenants and they said no. FMPA asked OUC to change theirs and they said they could not do that. He added that he has heard it said that FMPA hired or selected him. He asked his colleagues at FMPA if that was true and they said no they never told Vero Beach to hire him. He said regarding the long term commitment of one-hundred years. He didn't think anyone knew back in 1984, when the St. Lucie II contracts were executed by FMPA and FPL that it was going to be a one-hundred year contract. He didn't think anyone had any idea it was going to be that long. They probably believed that St. Lucie II would run for the life of its license and then they would shut it down with what the terminology was at that time of five to ten years. What has happened more recently is that requirements for decommissioning Power Plants has changed through a process known as safe store, which he briefly explained. On the conversation issue, fixed demand costs are to a slight degree inherently anti-conservation as are all fixed costs. He said because utilities have to recover their fixed costs, when people use less electricity then rates have to go up. He said there is no difference between a contract that has fixed costs and a Power Plant that has fixed costs.

Mr. Kramer stated in this contract they do purchase peaking power from OUC and practice conservation. He asked with their peaking load can they reduce their cost.

Mr. Wright said only by reducing the peaking energy purchases. He said they have to have 54 MW of capacity that they have to pay in order to meet their reliability obligations. They will be saving some money in conservation by including the 10 MW

that OUC has agreed to knock off. He explained that their demand today is 95 MW and they (OUC) agreed to reduce it to 85 MW for 2015/2016.

Mr. Kramer said so they could start conservation practices after they sign this contract to prevent that kind of thing from happening.

Mr. Wright said they could do that now, but they have to remember what their incentive is.

Mr. Kramer recalled several years ago they looked at doing peak shaving in order to reduce costs and OUC had a formula as to what they would be paying for power. He assumed that formula has somewhat changed in that the City has a little bit more latitude in controlling their peak demand.

Mr. Wright explained that the formula has changed by the 10 MW that is being knocked off.

Mayor Winger asked Mr. Wright if he has had conversations with FPL on ways to get out of the FMPA contract.

Mr. Wright commented that he had passing conversations with them in August and neither side had any new ideas on how to get out of the FMPA contracts.

At this time Council took a break and the meeting reconvened at 11:25 a.m.

Mr. Lange Sykes suggested having a comprehensive study done and looking at outside help to guide them.

Mrs. Turner read into the record a letter Council received from Dr. William Mallon (please see attached).

3. CONSENT AGENDA

- A. Regular City Council Minutes – September 15, 2015**
- B. Special Call City Council Minutes – September 15, 2015**
- C. Special Call City Council Minutes – September 22, 2015**
- D. Membrane Replacement Project at Reverse Osmosis Plant (ROP) – Recommendation of Final Acceptance and Payment – City of Vero Beach Project No. WS14004 – Bid No. 070-14/PJW**
- E. License Agreement #2015-LA-0259 – Richard Boga – Dock & Boatlift constructed on City-Owned Submerged Lands – 11 Sailfish Road**
- F. Royal Palm Pointe Fountain Repairs and Improvements – Bid #230-15/JO**
- G. Engagement of John Frost, Esq. – B-B Redevelopment Team, L.L.C. vs. the City of Vero Beach, Circuit Court Case No. 312013CA001482**

- H. **License Agreement #2015-LA-0249 – John W. & Dianna Chianis – Dock & Boatlift Constructed on City-Owned Submerged Lands – 7 Sailfish Road**
- I. **License Agreement #2015-LA-0255 – Charles M. & Marisa Callahan – Dock & Boatlift Constructed on City-Owned Submerged Lands – 260 Seagull Avenue**
- J. **Sovereignty Submerged Lands Fee Waived Lease Renewal**

Ms. Graves pulled item 3-F) off of the consent agenda.

Ms. Graves made a motion to adopt the consent agenda as amended. Mayor Winger seconded the motion and it passed unanimously.

Ms. Graves noted that the cost to repair the fountain at Royal Palm Pointe came in under budget. She asked what the time frame is to get the work completed.

Mr. Rob Slezak, Recreation Director, stated that the fountain will be closed during the colder months to get the repair work done, but it will be back open by spring break.

Mr. O’Connor agreed that they did come in under budget, but there will be other items done at the Park such as some tile work replaced, so the budgeted amount will be spent.

Mr. Kramer made a motion to approve Bid #230-15/JO for the Royal Palm Pointe Fountain repairs and improvements. Ms. Graves seconded the motion and it passed unanimously.

4. PUBLIC HEARINGS

None

5. RESOLUTIONS

None

6. PUBLIC NOTICE ITEMS

Notice of Scheduled Public Hearing October 20, 2015

- A) **An Ordinance of the City of Vero Beach, Florida, amending Chapter 26, “Cemetery,” of the Code of the City of Vero Beach, Florida, relating to sale of burial rights and related services, reflecting changes in Cemetery Plat, adding new sections; providing for Conflict and Severability; Providing for Codification; Providing for an Effective Date. – Requested by the Public Works Director**

Mayor Winger read the Ordinance by title only and noted that the public hearing on this Ordinance will be heard on October 20, 2015.

B) Plat of Portions of Sections J & K – Crestlawn Cemetery

The plats for portions of Section J & K at Crestlawn Cemetery will be discussed at the October 20, 2015 City Council meeting.

7. CITY CLERK'S MATTERS

A) Reappointments to Commission/Boards

Airport Commission

Mr. Arthur Hodge's term on the Airport Commission expires on November 15, 2015 and he wishes to be reappointed to the Airport Commission.

Ms. Graves made a motion to reappoint Mr. Arthur Hodge to the Airport Commission. Mr. Kramer seconded the motion and it passed unanimously.

Code Enforcement Board

Ms. Suzanne Shell's term on the Code Enforcement Board expires on October 15, 2015 and she would like to be reappointed to the Code Enforcement Board.

Mr. Kramer made a motion to reappoint Ms. Suzanne Shell to the Code Enforcement Board. Ms. Graves seconded the motion and it passed unanimously.

Marine Commission

Mr. Brian Cunningham's term on the Marine Commission expires on October 15, 2015 and he wishes to be reappointed to the Marine Commission.

Mr. Kramer made a motion to reappoint Mr. Cunningham to the Marine Commission. Ms. Graves seconded the motion and it passed unanimously.

Recreation Commission

Mrs. Bobbi Burdick, Ms. Judy Jones, and Mrs. Sue Dinunno's terms on the Recreation Commission expire on November 15, 2015 and each member would like to be reappointed to the Recreation Commission.

Ms. Graves made a motion to reappoint Mrs. Bobbi Burdick, Ms. Judy Jones, and Mrs. Sue Dinunno to the Recreation Commission. Mr. Kramer seconded the motion and it passed unanimously.

8. CITY MANAGER'S MATTERS

1) Security Camera Donation

Mr. O'Connor discussed the security camera donation that is being offered to the Police Department. He noted that these are not red light cameras. These cameras will be placed where you can see traffic. He recommended that Council accept the security cameras.

Ms. Graves asked if the City maintains the security cameras and other businesses are tying in with using them, what control do these businesses have. Mr. O'Connor explained the Police Department maintains where the location will be, as well as the interconnects to the cameras. He said the first year the cameras are under warranty, but in the second year it could become a cost item. Ms. Graves was concerned about the security protocol and people being able to hack in and study the movements of businesses opening and closing, etc. She asked if this company has the kind of protection so that no one can hack into this system.

Mr. David Currey, Police Chief, believed the protection was there. He said as they move forward there will be some things that will have to be ironed out. He said many times after a crime occurs the first question an officer will ask is if there is a security camera because it helps them in apprehending the person who did the crime.

Ms. Graves felt that it was important for the public to know that someone could not hack into a system that the Police Department was putting into place to monitor their community.

Mr. Kramer knows that the County has traffic cameras above their lights. He asked if the City Police Department has access to those cameras.

Chief Curry said that they do. He said the Sheriff's Department has the ability to record with those cameras, but they do not. He said they only use them for monitoring and it only has to do with traffic control needs.

Mr. Kramer said so this will just enhance what is already in place by monitoring traffic.

Chief Curry said the key thing is being able to record.

Mrs. Turner asked how these recordings are maintained and who will have access to these recordings.

Chief Curry explained that the Police Department will have to follow the public records retention schedule and they will have their own policies and procedures in place. He said with their dispatch recordings they must be kept for 30-days.

Mrs. Turner commented that this year the maintenance costs are covered. She asked what will be the costs following this year.

Chief Currey did not have that information. He said the Police Department could either pay for a maintenance agreement moving forward after the first year, or just pay for a piece of equipment if it breaks.

Mrs. Turner asked how they are paying this company to handle the Police Department's recordings.

Chief Currey explained that would be handled through their Professional Standards section and handled the same way they do with dispatch tapes.

Mr. O'Connor stated that at the end of the year if they have to start doing maintenance on these cameras, they will do a cost analysis to look at the benefits of having the cameras. He said keep in mind that the City has the right to take the cameras down if they want to because they are the City's assets.

Mrs. Turner commented that the public is a little bit cautious with this. She said it is wonderful to have this generous donation from Mr. Shinn, but also realizes that Mr. Shinn has an interest in this company.

Chief Currey expressed that the Police Department accepts donations to their foundation all the time.

Mrs. Turner pointed out that Mr. Shinn has a financial interest in this company.

Chief Currey felt that these cameras were a tool to enhance their ability to serve the public and make it safer.

2) Stormwater Utility Study Professional Services Agreement

Mr. O'Connor reported that before them is the Stormwater Utility Study Professional Services agreement for their consideration. This agreement is with the company they have chosen to be the most qualified to provide the services rendered. It is \$103,000 for the services to analyze and evaluate the different stormwater utility alternatives.

Ms. Graves disclosed that she personally knows one of the members of this company who is Ms. Amelia Fontaine.

Mayor Winger explained that Council was not committing to a stormwater utility, but understanding the consequences of part of the planning process. He said later on it could be the subject of a referendum, but they don't know enough about having a stormwater utility until this study is done.

Mr. O'Connor said that the only thing Council was doing was hiring the contractor who would give the information on how the stormwater utility would look within the City of Vero Beach and how they would evaluate the different types of land uses.

Mrs. Turner commented that the budget to do this study is \$75,000 and the price this consultant came in with is \$103,000.

Mr. O'Connor said there would have to be a budget amendment if they do not do a stormwater utility. He said the overage could be rolled into the stormwater utility at the end of the day and if not a budget amendment would have to be done.

Mrs. Turner noted the memo outlines that there are four (4) grants that are pending. She asked the deadlines of when these matching funds are needed for these grants and the dollar amounts be provided.

Mr. Monte Falls, Public Works Director, explained that with one (1) of those grants a decision will have to be made in 2016 and with another grant one (1) of the decisions would have to be made in the first quarter of 2016 and with another grant the decision would have to be made in the middle of the year. He will provide the specific dates to Council.

Mayor Winger said that they might have to find other ways in accepting the grants.

Mayor Winger opened up the discussion to the public, with no one wishing to be heard.

Mayor Winger made a motion to proceed. Mr. Kramer seconded the motion and it passed 4-1 with Mrs. Turner voting no.

3) Work Order Agreement between the City of Vero Beach and URS Corporation Southern: Airport Terminal Modifications

Mr. O'Connor reported that this was a Work Order for modifications to be made at the Airport terminal in order to accommodate the new airline service. He said the costs are estimated to be around \$300,000.

Mr. Eric Menger, Airport Director, commented on what good support he has received from the community in welcoming an airline service to Vero Beach. He said in order for that to happen some modifications need to be made to the terminal. They will be modifying the existing terminal area to be used as it was originally designed to be used, which was as an airline terminal. He said one tenant will have to relocate. However, Legacy (the tenant) was already on a month-to-month lease and has been given a 30-day written notice as of September 28, 2015, in accordance with the terms of their agreement with the City. He will be bringing back the construction contract to Council at their meeting on November 3, 2015. He noted on page 5 of 8, in Section 5, it should say 120 hours instead of 120 days. He said the construction work is to take approximately three weeks and should be completed by the first week in December and the airline will begin flying from the Vero Beach terminal on December 10th. They are still working on all of the TSA requirements needed and a Press Conference announcing the new airlines will be held on Thursday morning at 8:15 a.m.

Mayor Winger asked Mr. Menger if he was concerned about getting noise complaints because these jets will be taking off early in the morning and late at night.

Mr. Menger did not think they would notice any changes. He said there will only be two flights taken off during the week and the jet is very quite.

Mayor Winger asked if there was anything they could do to have more of the planes use lead free fuel.

Mr. Menger explained that the City is not in the fuel sale business. He said it will probably happen over time, but it is out of the City's hands to take any sort of action.

Mr. O'Connor brought up a letter from Representative Debbie Mayfield stating that she contracted the Department of Environmental Protection requesting aviation fuel emissions and was told by them that the data they have shows the area is well below the State of Florida's residential cleanup target level of 400 ppm (please see attached letter).

4) Request from Vero Heritage to sell alcohol at their fundraiser

Ms. Suzy Feeney, Executive Director of the Heritage Center, requested permission from the City Council to sell alcohol at their new seasonal fundraising program entitled "Starry Night on the Green." They are looking to hold movies from November thru March outside the Heritage Center for a total of 10 nights, roughly the second and third Friday of the month from 6:30 p.m. to 10:00 p.m. She explained they would be using a blowup screen that sits on the patio area. She said the Heritage Center was doing their share of having new events occur downtown.

There was no public comment.

Mrs. Graves made a motion to approve the sale of alcohol at Starry Night on the Green. Mrs. Turner seconded the motion and it passed unanimously.

9. CITY ATTORNEY'S MATTERS

None

10. CITY COUNCIL MATTERS

A. Old Business

B. New Business

1) Discussion about extending credit for sewer service – Requested by Vice Mayor Jay Kramer

Mr. Kramer commented that he talked to a neighbor about the step system who cannot participate because of economic reasons. However, she does have access to the sewer system and it would be easier for her to hook up to the sewer system than it would be to go with the step system. He asked if they could extend the credit to people hooking up to the sewer system in order to get rid of septic systems.

Mr. O'Connor explained they would need to rewrite their Ordinance because they have no authorization to do this. He said the first item they must consider is that it has to be universal across the City and second item is how much of a credit does Council want to give. He thought the amount should be less than what their step system is. He would be glad to work on an Ordinance and bring it back to Council. He was looking at about a \$1,000 credit as opposed to a \$2,000 credit, which is given for the step system.

Mrs. Turner stated that connecting to a sewer system is significantly different than the step system. She agreed that the cost has to be evaluated. She asked staff to bring back an Ordinance for Council to review. She said everyone would like to see septic tanks off of the lagoon and connecting to a sewer system may be a viable option in some areas.

Mr. O'Connor commented that they have people right now who are paying a surcharge for not being connected to sewers, but have a sewer in front of their house. These people have chosen not to connect to the sewer system and are paying a fee, so these are some of things they will have to look at. He said staff will also take the proposed Ordinance to the Finance Commission and Utilities Commission for their input.

Mr. Kramer stated that the goal is to get septic systems to stop leaching into the lagoon.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Richard Winger's Matters

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

Mayor Winger reported that he attended the Industry Appreciation Lunch, the Youth Sailing fundraising event, the Legislative Delegation meeting, Downtown Friday, and hosted the Lt. Governor coming into town.

Mayor Winger reported on the recent Indian River County (IRC) Lagoon Coalition meeting that was held and Mr. Coment is in the process of writing the bylaws for the IRC Lagoon Coalition.

Mayor Winger attended the 25th Anniversary of the Disney Resort on October 30th, the event where Piper displayed some new planes, the Art Walk that occurred Friday night, the Alzheimer's walk that was held on October 3rd, the POW/MIA ceremony, and the Cupcake Challenge held at the Heritage Center on Sunday.

B. Vice Mayor Jay Kramer's Matters

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

Mr. Kramer reminded everyone that National Night Out is tonight and Chief Currey went over some of the events planned for the night.

C. Councilmember Pilar Turner's Matters

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

Mrs. Turner commented that on the radio station she heard Mayor Winger state that she was in favor of short term rentals. At the Special Call meeting that was held on September 29, 2015 (short term rental appeal) she said twice that she was opposed to short term rentals. There is a home in her neighborhood where there is a short term rental and she is opposed to it. She explained why she voted no to upholding the Planning and Zoning Board's decision and that was because of the interpretation of the Code. She said the way the Code is drafted is deficient. The City had an opportunity to enact something before June 2011, when they were told by the State Legislation that was the cutoff date and they did not do anything. This Council agreed to modify the Ordinance, but they don't know if the modifications made to the Ordinance are legal until it is decided by the Courts. She said although Mr. McGarry's interpretation of the Code may echo their personal preferences with restricting short term rentals to 30-days or less it is not what the Code says. She believes their laws must be clear and the hearing was held not to create laws, but to uphold the law as it stands so she has to follow the law, which is why she voted no. She asked Mayor Winger if that was clear to him.

Mayor Winger said it was clear, but does not satisfy him by any means. Council was asked to rule on the Planning and Zoning Board's ruling and the Planning Development Director's ruling and not asked to interpret or make law. He said this Ordinance has been on the books for many years and he did not agree with Mrs. Turner's interpretation.

Mrs. Turner reported that she attended the workshop held to discuss quiet zones with local government agencies and the real take away from the meeting was that they don't need to move to have quiet zones yet, which they could not do anyway because they still have not received their 90% drawings. She said it was interesting seeing the County of St. Lucie go through their procedures as they have already received their drawings. She said one thing that was made clear was All Aboard Florida does not have the statutory authority to demand them to sign a waiver liability for their quiet zones.

Mrs. Turner thanked the Cultural Council for the calendars they provided and she also thanked the Environmental Learning Center for continuing to do a terrific job in providing education to the public concerning the lagoon. She supported the Humane Society in attending their Wine, Women and Shoes event. She reminded the public that

the Lines in the Lagoon fishing tournament to help support the lagoon will be held on October 17th and the Gifford Park Picnic for the Veterans will also be held on October 17th.

D. Councilmember Amelia Graves' Matters

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

Ms. Graves reported that the Cupcake Challenge was a fantastic event. She said it is held to raise awareness for people who have Parkinson's. She explained what charity that all of the proceeds raised goes to.

Ms. Graves commented that she provided a tour of City Hall on Friday to 15, three to five year olds. She thanked some of the Police Officers for their help when the children went over to tour the Police Department.

E. Councilmember Randolph Old's Matters

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

Mr. Old brought up the idea of having performance appraisals done on the Charter Officers. He said an appraisal of their performance was not done this year and he feels that in some ways it is a moot point because raises were given across the board. However, he felt they should be more serious about it next year. He proposed in early November when they have the new Council in place that they have a specific day where they can sit down and figure out goals for the Charter Officers and have a round table discussion. He said this would enable the Council to appraise their performance during the year.

11. ADJOURNMENT

Today's meeting adjourned at 12:19 p.m.

/tv