

**CITY OF VERO BEACH, FLORIDA
SPECIAL CALL CITY COUNCIL MINUTES
DECEMBER 17, 2014 5:00 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

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

1. CALL TO ORDER

A) Roll Call

Mayor Winger opened the meeting and the Clerk performed the roll call.

B) Pledge of Allegiance

Mayor Winger led the Council and the audience in the Pledge of Allegiance to the flag.

2. PUBLIC COMMENTS

Mr. Charlie Wilson congratulated the Council members who recently won the Election held in November. He said the voters have spoke loud and clear that they want to continue on the path that everyone has been on since 2013. He was at tonight's meeting to make peace. He commented that with the last Election the cycle of making sure that the sale of Vero Electric Utility has been concluded. He believes that the candidates for the Indian River Neighborhood Association (IRNA), along with Florida Municipal Power Agency (FMPA), have now successfully concluded any opportunity whatsoever to have a sale to Florida Power and Light (FPL). He said from the done deal in 2013, to the dead deal in 2015, he now agrees with Mayor Winger and Mr. Kramer that the deal is dead. He questioned since the deal is dead, what happens next. He explained this will limit the City of Vero Beach in what they are able to do. He does not have to come to their meetings anymore and talk to Council about the electric issue, because it would not make any difference. The people who now will be making the decisions are the Courts, Legislature, and possibly the voters of the State of Florida. He has heard this Council say that they would like to sell the electric utility if they could, but now they can't and if the Council can't sell the electric utility then who can. He said they now no longer have to have this issue before them because technically it doesn't have anything to do with the Council. He is moving forward with the statewide referendum that would move all munies under the Public Service Commission (PSC). It will cost them about one-million dollars in order to collect enough signatures. He said it will not be an issue of Vero Beach, but an issue of the State of Florida. He witnessed the negotiation session today and the City is going to protect its interest and there are only two paths forward. The first one is litigation, which Indian River Shores (IRS) has taken care of and the other is Legislation, which either the voters or the Legislation will move forward. He said the good news is now they can start working together on some other things,

such as the Lagoon, Stormwater, etc. He expressed some wonderful events are being planned for next year and he hoped everyone would be able to work together on those things. He was closing the book on what they have been doing since 2009 (selling the utilities). He said there will be no sale and everyone will see where this goes from another source.

3. ITEM FOR DISCUSSION:

A) Mediation Update and Steps Forward

Mr. Jim O'Connor, City Manager, reported that Mr. Schef Wright, Attorney, represented the City of Vero Beach at the mediation hearing that took place today.

Mr. Schef Wright, Attorney, gave an update of the mediation session. He said the mediator that conducted the meeting this morning was Mr. Carlos Alvarez. He did an excellent job and offered several principles that the City should keep in mind as they move forward. The parties gave their opening statements and positions for the proceeding. Mr. Alvarez identified two existing problems. He said that the ratepayers want lower utility rates and everyone agreed with that and the other issue was some residents would like to see a Utility Authority. He noted that even though there are three disputing parties: Indian River Shores, Indian River County, and the City of Vero Beach, this is still one community and they need to look for a solution. He also said that nobody in this mediation process should expect to get everything that they want. The parties gave their opening statements regarding the status of the proceedings and their positions. Mr. Bruce May, Attorney representing Indian River Shores, offered a proposed settlement from the Town (please see attached). It basically offered a five month abatement of their lawsuit in return for the City agreeing they would expressly acknowledge that the Town may provide electric services to its citizens upon expiration of the Franchise Agreement either through direct provision of such electric service or by contracting on behalf of its residents with another electric utility provider in accordance with the Special Act creating the Town. The City would honor the Towns' right to conduct an evaluation, which may include, but not be limited to a Request for Proposal (RFP) process, of the most appropriate means for the Town to provide electric service to its citizens upon expiration of the Franchise Agreement. In the event the Town issues an RFP, the Town would recognize the City's right to submit a proposal in response to the RFP as a potential provider of electricity to the Town and its residents after the Franchise Agreement expires. After the City's mediation team had an opportunity to discuss the proposal they reported back that they could not support it. In the meantime, Mr. Alvarez came up with an idea of a six month cooling off period or could be referred to as a six-month standstill period. This would allow them to move forward to evaluate all of their options. Mr. Alvarez also came up with different solutions on an interim basis. The proposal submitted by the Town was one, but there were also some other options. They were: have an Independent Representative that is geographically represented as a Utility Authority, reduce the General Fund transfer, continue seeking amendments to the OUC Power Purchase Agreement, talk with FMPA further to find out if there is anything the City can do on that front, pursue other rate reductions such as having a rate study, explore getting out of the FMPA Power Purchase Agreements (PPA) when the Plant is retired, have an outside

determination of the reasonableness of rates, and continue pursuing selling the electric utilities to FPL. Mr. Wright explained that after further discussion among the mediation team they agreed they were fine with the standstill and agree with Mr. Alvarez that a mediated resolution is worth fighting for. There was discussion going back and forth and the Town stated at the mediation hearing that they could not live with a six-month cooling off period, but would agree to a two-month abeyance to March 2, 2015, during which time everyone would move forward and do whatever they feel needs to be done. He said the Town indicated that they may pursue the idea of getting proposals or just having discussions with potential entities who might want to buy the City's electric system within Indian River Shores. The City told the Town that they could talk to whoever they wanted to talk to, but the City would not agree that they had the right to implement anything. The Town conveyed they were on the receiving line of torturous interference with some of the City's existing contracts (FPL, FMPA, and OUC). The City told the Town that they would give them an agreement letter that they will agree not to assert any type of torturous interference claim for any conversations that take place. They will however not agree to the implementation of anything that might come out of that. The Town asked that a status report be given to them from the City a couple weeks in advance of March 2, 2015. The City will strive to get the Town this report on February 18, 2015. Mr. Wright recalled at the mediation hearing that Mr. May asked the County mediation team if they would also be willing to abate or put into abeyance their pending petition for Declaratory Statement at the Public Service Commission and Mr. Reingold said no.

Mayor Winger noted that what the Town presented at the mediation hearing was accurately stated by Mr. Wright. He said the City mediation team did agree that they would bring the proposal to the City Council tonight in case there was any disagreement.

Mr. Kramer commented so the decision is that they would put everything in abeyance for two months.

Mr. Wright said that the Town will agree to keep their lawsuit in abeyance for two months.

Mr. Wright commented in terms of the next steps, they need to keep doing what they are doing. They should continue their conversations with OUC concerning lowering rates with the options that OUC has provided them. They need to evaluate the proposals and Council needs to make an informed decision. They need to move forward with getting the rate study done and have the consultant doing that rate study tell the City if their rates are reasonable. He said they need to move forward in selecting a contractor to perform the Efficiency Optimization Study and continue talking about the FPL purchase. At the mediation hearing, everyone agreed that Mr. May would draft an agreement to abate their lawsuit for another couple of months and he would draft a no torturous interference letter.

Mr. Wright brought up in light of the County's statements near the end of the mediation, he has after consulting with the City Manager and City Attorney, considered filing their own petition for Declaratory Statement to the PSC asking them to resolve some issues. One of the issues is who can do what after the expiration of the Franchise Agreement. Mr. Wright said his

strong legal belief is that the PSC has the jurisdiction over service areas and they have exercised that jurisdiction with respect to the City's service area where they serve. Their consensus recommendation is to file this petition for Declaratory Statement on Friday and see what happens. He said this would get it on the PSC's agenda for March 3rd and they contemplate asking the County if they would be agreeable to postpone PSC's consideration of the County's Declaratory Statement to March 3rd also instead of being heard at the February PSC meeting.

Mr. O'Connor stated that the City needs to have this PSC decision. He said the County may or may not withdraw again when it comes up at the February PSC meeting, so in his opinion they should proceed on their own. This Declaratory Statement would help set the field as to where they are going in the future. Since the County has said that they would not withdraw their Declaratory Statement, this makes it more imperative to do this.

Mrs. Turner commented that one of the things that Mr. Alvarez did suggest as a solution was to complete the sale to FPL. She said in part of his suggestion to move forward with the sale to FPL Mr. Alvarez suggested allowing IRS and the County to be involved in the negotiations, if nothing else to show them that the City has done what they can to move this forward. She asked Mr. Wright if he had any plans to implement that suggestion.

Mr. Wright stated that he was comfortable with inviting the Town and the County to participate in all of their conversations with OUC, FMPA, and FPL. He said they would need to make sure that OUC, FMPA, and FPL agree to it and he would try to make that happen. He feels good about the prospect of them (Town and County) being present to hear what goes on.

Mrs. Turner asked Mr. Wright what actions he is going to take on behalf of the City to try to encourage that type of discussion.

Mr. Wright first brought up OUC. He said there is some analysis due before they can go back to OUC and discuss their proposals. He hopes to have this analysis done in early January and then meet with OUC. In the meantime he will consult with OUC's attorney about bringing representatives from the County and the Town to their meeting. Then he will contact the Town and the County to find out what dates they are available to attend the meeting. He will do the same thing with FMPA and contact them about having further discussions with them and then he will invite the County and the Town to that discussion meeting. He will also contact FPL to see if they would agree to have a meeting to talk and then he will contact the Town and the County.

Mrs. Turner said so at that point they would be openly requesting input from the County and the Town. Mr. Wright said yes they would.

Ms. Graves asked if they move forward with the PSC filings, would that address any of the jurisdiction issues, such as who has jurisdiction in deciding territorial agreements. Mr. Wright said that it would.

Mr. O'Connor stated that the City does plan to file this petition unless there are objections from the Council.

Mr. Kramer recalled that when the County filed this initially there was some strong reaction from the other utilities concerning this filing. He asked when the City moves this petition forward, did Mr. Wright think that he would get the support from the other utilities to stress to the PSC about getting this done. Mr. Wright answered yes.

Mr. Old asked what will happen at the PSC hearing on March 3rd.

Mr. Wright explained in the normal course of events the PSC would take up their petition for Declaratory Statement and vote on it. Then they issue a written order within 20 days.

Mr. Kramer made a motion to approve action to file the PSC statement on Friday. Mayor Winger seconded the motion.

Mayor Winger commented that he went up to Tallahassee for the PSC hearing in November and at the last minute the County withdrew their Declaratory Statement. He said that Council is elected by the citizens of Vero Beach and are responsible to the ratepayers to hold down expenses, which is why he felt this was a necessary step. He said they cannot be sure what the County will do and this way it will get things resolved sooner rather than later. He personally was happy that the Town agreed to the two-month abeyance, rather than six months because he wants to get this resolved. He said they need to do what they have to do to protect "the people."

The Clerk polled the Council on the motion and it passed 5-0 with Mr. Old Voting yes, Ms. Graves yes, Mrs. Turner yes, Mr. Kramer yes, and Mayor Winger yes.

Mr. Wright commented to avoid possible expectations, he believes that the PSC should rule on this Declaratory Statement, but he cannot guarantee it.

Mrs. Turner brought up Representative Debbie Mayfield's letter regarding the FMPA. She said there were some interesting comments in the letter. One of them was that in FMPA's 30-year existence they have never been audited. They (FMPA) are now being audited and the audit results should be released shortly. She knew that a preliminary report will be sent to all of the Board of Directors and she asked Mr. Old that once he receives a copy of the report that it be distributed to all of the Councilmembers. She said with this letter being published in other communities that these communities are seeing a broadening range of what is going on at FMPA.

Mr. Wayne Coment, City Attorney, brought up the letter mentioned earlier by Mr. Wright that he would be drafting and wanted to make sure that Council was in agreement with having the Mayor and City Manager sign the letter.

Mr. Kramer wanted to see a copy of the letter before it is signed.

Mayor Winger reminded everyone that Mr. Alvarez talked about this being one community and they need to get back to being that one community. He briefly went over his Committee Report. He reported on the Dog Park, and the Historical plaque dedication held at Osceola Park, the Oceanside Christmas Parade, the Main Street Gallery tour scheduled for January 2nd, the upcoming Recreation Department Christmas performances, and that he attended two Dare Graduation programs. He also recently participated in a baseball game that took place at Historic Dodgertown. He was happy to announce that the Blue Angels will be coming to Vero Beach on June 26, 2016.

Council wished everyone a Merry Christmas.

Mr. Old commented on the large crowd that attended the Oceanside Christmas Parade.

4. ADJOURNMENT

Tonight's meeting adjourned at 5:40 p.m.

/tv