

**SPECIAL CALL CITY COUNCIL MEETING  
TUESDAY, JULY 19, 2011 9:00 A.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**A G E N D A**

**1. CALL TO ORDER**

- A) Roll Call
- B) Pledge of Allegiance

**2. PUBLIC HEARINGS**

**A) CITY COUNCIL CURE MEETING FOR AIRPORT/FPL/GAI MEETING OF JUNE 14, 2011 AT VERO BEACH MUNICIPAL AIRPORT**

- 1) Overview of Procedure by Acting City Attorney
- 2) Matters for Discussion Regarding Electric Utility Facilities on Airport Property
  - a. Identification of electric facilities located on Airport property
  - b. Clarification of facilities or land subject to purchase or lease by FPL
  - c. Method of taking possession by FPL
  - d. Potential leases and easements, reversion or removal of assets
  - e. Division of value from joint use of T&D/maintenance facility
  - f. Valuation issues – FAA fair market value requirements for assets and leases
  - g. Environmental audits
  - h. Streetlights/lighting inside and outside Airport operations area
  - j. Other matters and issues
  - k. Documentation for use and discussion
    - 1. CC Resolution 2007-38 – Piper Drive Substation
    - 2. CC Resolution 2881 – 41<sup>st</sup> Street Substation
    - 3. CC Resolution 82-9 – T&D Facilities
    - 4. Map depicting substations, distribution, and T&D Facilities
    - 5. Form of Airport lease
    - 6. FAA letter regarding fair market value requirements
- 3) Public Hearing
- 4) Council Action Requested – None
- 5) Matters for Discussion regarding Water & Sewer Utilities facilities on Airport Property

- a. Identification of Water & Sewer Facilities located on Airport property
- b. Clarification of facilities or land subject to potential purchase or lease pursuant to Indian River County proposal
- c. Method of taking possession by Indian River County
- d. Potential leases and easements
- e. Valuation issues – FAA fair market value requirements for assets and leases
- f. Environmental cleanup wells, stripping tower, future responsibility
- g. Environmental audits
- h. Other matters and issues
- i. Documentation for use and discussion

- 1. FAA letter regarding fair market value requirements
- 2. CC Resolution 2011-18 – Aviation Boulevard Tank
- 3. CC Resolution 2011-19 – Well field
- 4. CC Resolution 2011-20 – R.O. Water Treatment Plant
- 5. 9/17/07 Lease drawing for Water Treatment Plant
- 6. 9/15/05 Lease drawing for Wells
- 7. 01/03/01 Lease drawing for Raw Water Collection and Well field, etc.
- 8. Groundwater protection zones, setbacks, control, and access areas required for transfer

6) Public Hearing

7) Council Action Requested - None

**B) ORDINANCES FOR REFERENDUM QUESTIONS FOR POTENTIAL SALE/LEASE OF MUNICIPAL POWER PLANT AND PROPERTY AND FOR POTENTIAL SALE/LEASE OF MUNICIPAL WASTEWATER TREATMENT PLANT AND PROPERTY**

**1) Discussion of Ordinances for Referendum questions**

2) Public Hearing

3) Council Action Requested – Direction to City Attorney regarding Ordinances

**C) REQUEST FOR QUALIFICATIONS (RFQ) FOR POTENTIAL PURCHASE OF VERO BEACH ELECTRIC POWER ENTITLEMENTS AND OBLIGATIONS**

**1) Discussion of RFQ process for determining potential qualified purchasers of City's electric power entitlements and assumption of associated obligations**

2) Public Hearing

3) Council Action Requested – Director to City Manager regarding RFQ process

**3. CITY ATTORNEY’S MATTERS**

A) Procedures for Compliance with Sunshine Law – Future Meetings and Workshops regarding Potential Sale Transactions for Electric Utility and Water and Sewer Utilities – Due Diligence and Negotiations

B) Public Records and “Data Room”

**4. ADJOURNMENT**

Council Meetings will be televised on Channel 13 and replayed.

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City’s Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

**SPECIAL CALL CITY COUNCIL MINUTES  
TUESDAY, JULY 19, 2011 9:00 A.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**1. CALL TO ORDER**

**A) Roll Call**

**PRESENT:** Mayor Jay Kramer, present; Vice Mayor Pilar Turner, present; Councilmember Craig Fletcher, present; Councilmember Brian Heady, present and Councilmember Tracy Carroll, present **Also Present:** Monte Falls, Interim City Manager; Wayne Coment, Acting City Attorney; Eric Menger, Airport Director; Joe Malfait, Airport Business Manager; Rob Bolton, Water and Sewer Director and Tammy Vock, City Clerk

**Also Present:** Gerry Hartman, GAI Consulting and Ryan Fair, FPL Representative

**B) Pledge of Allegiance**

The audience and the Council joined in the Pledge of Allegiance to the flag.

**2. PUBLIC HEARINGS**

Mr. Heady said that he did not see additions, deletions, and ...

Mayor Kramer said we can go on with public comments if you would like.

Mr. Heady said, but before we get to that I would just like to correct the agenda item A) to read, City Council Meeting to Discuss Airport / FPL / GAI and all of that. Leave out the third word. There is a very specific reason for that. I think, and Mrs. Carroll and Mrs. Turner are certainly free to listen to whatever legal advice they want to listen to, but I think if they participate in a meeting that is called a particular thing that it's an admission of guilt in that in order to have a cure we need to have a disease. If we're going to cure something then there was a violation in the first instance and I would argue that the meeting that was held was probably parallelisly close to a potential Sunshine violation, but I would argue that there was no violation. And I don't want Mrs. Carroll or Mrs. Turner, because they spoke at that meeting and then participated in this meeting, if it were to be identified as a "Cure," I don't want them to be in the position of an admission of guilt. So, I would just like to officially refer to this meeting as a Special Call and nothing else.

Mayor Kramer said okay. He asked is there any members of the audience that would like to speak? Okay, Mr. Daige if you would come on up.

Mr. Ken Daige said that he is a Vero Beach City resident, also a former Councilmember. On the agenda I appreciate coming up because the public input was at the end when you folks got through your discussion. Against taking out the "Cure" meeting, that's what this is all about. I spoke to Patricia Gleason that works with the Attorney General's office. Before you take the word "Cure," because this meeting was set up as heard through the City Attorney's office, give her a call. This is a "Cure" meeting. Don't take out the word "Cure." You'll open yourselves up for more legalities down the road. Let the meeting take place. Let it roll on out. Let's get this stuff on the table so we can see what's discussed. Thanks.

Mayor Kramer asked any other further comments from the public?

Mrs. Bea Gardner said good morning everybody. I tend to agreed with what Mr. Daige just said because I called Mrs. Vock's office probably about a week or so ago and I said would you please inform me when they have the "Cure" meeting and then the Clerk's office called me and told me today was the date of the "Cure" meeting. I believe the public is expecting whatever it is and I think it was made fairly plain in the paper that all that was necessary, Wayne Coment even mentioned it when he talked to Tallahassee, all that was necessary was that they wanted you to repeat the meeting so that the public is aware of what went on in the meeting and that would be the "Cure" so I believe it is a "Cure" meeting. Thank you very much.

Mrs. Deborah Daige said good morning, Debra Daige Osceola Park, Vero Beach, 1846 Vero Beach. I agree this is a "Cure" meeting. We spoke with Patricia Gleason and we did some research. I've sat in Boards and Commissions here for the City. I was on the Vision Implementation Team and we had to follow the rules that you have to follow. So, this is simply follow the procedure. It's not an admission of guilt unless someone admits something. It's just a "Cure" meeting. Thank you.

Mayor Kramer said without any further public comment I'm going to go ahead with 2-A) and Mr. Coment, I believe ...

Mr. Heady said before we get to that Mr. Mayor I'd like to make a motion that the agenda item A) be identified and I make this in the form of a motion, a City Council meeting for Airport / FPL / GAI meeting of June 14<sup>th</sup> at Vero Beach Municipal Airport, eliminate the third word in A). I'd like to make that in the form of a motion.

Mayor Kramer asked is there a second? If not, motion will die.

The motion died for lack of a second.

Mayor Kramer asked Mr. Coment, would you like to kick us off on 2A)?

Mr. Coment answered sure.

**A) CITY COUNCIL CURE MEETING FOR AIRPORT/FPL/GAI MEETING OF JUNE 14, 2011 AT VERO BEACH MUNICIPAL AIRPORT**

**1) Overview of Procedure by Acting City Attorney**

Mr. Coment said just to very briefly address Mr. Heady's concern, if Council wants to remove the word "Cure" from the title, I don't have any problem with that. It still is what it is. We're still going to repeat a staff meeting that was held at the Airport on June 14<sup>th</sup>.

Mayor Kramer said let's just refer to it as "the meeting" and not ... okay?

Mr. Coment said I just want to go over...

Mr. Heady said I'm in the process of getting out of my seat and leaving, so let me make sure that I understand then. This is going to be just referred to as a "Special Call meeting?"

Mayor Kramer said I have no problem referring to it as a Special Call meeting.

Mr. Fletcher said I'm going to refer to it as a "Cure" meeting. That's what it is.

Mr. Coment said it is what it is. It is a cure of any potential or perceived violations that may have happened on June 14<sup>th</sup>.

Mrs. Carroll asked Wayne, is the phrase "Cure meeting" part of a State Statute.

Mr. Coment answered no. That's a term that really the Courts came up with to say that these types of things, even if there was an actual violation, can be cured by taking affirmative action after the fact and discussing in the public the things that were discussed at any closed meeting.

Mrs. Carroll asked is the phrase "Cure meeting" part of the lexicon of the legal world in the State of Florida?

Mr. Coment answered yes. That's the term that's typically used throughout the State by the Courts and by Attorney's to reference when you have a meeting that you're going to basically redo.

At 9:09 a.m. Mr. Heady left today's meeting.

Mr. Coment said Mr. Mayor and Councilmembers, how we got here, June 14<sup>th</sup> we had a staff meeting at the Airport, which involved Airport staff, the City's Consultant, Mr. Gerry Hartman and a Representative from Florida Power and Light, Ryan Fair. The purpose of that meeting was for the gathering of information for Mr. Hartman and for Mr. Fair in their due diligence, Mr. Hartman for the City and Mr. Fair working for FPL. It involved strictly issues involving Airport property because there are electric utility facilities and equipment and locations at the Airport,

located on the Airport property, which is, of course, governed by the FAA regulations and deed restrictions and things like that. Also, after the electric issues what was discussed was the Water and Sewer facilities that are located at the Airport, again for information gathering mainly for Mr. Hartman and his due diligence in preparing his assessments and analysis for the City on water and sewer and reuse systems and we did have Mrs. Carroll attending on the electric issues because the Council has asked her to basically track those things and then Mrs. Turner showed up towards the end of the meeting just a little bit earlier than when we got into the Water and Sewer issues. The Mayor was also present. The Mayor never said a word that I remember. Mrs. Carroll, did have maybe a couple of questions for staff as we went through. I don't remember if Mrs. Turner had a question or not. Basically there was exchange of information. Information provided by Airport staff and I did offer some thoughts in and out at the meeting and will try to address those things again. Basically we received a complaint. I heard a complaint from, as you know, Mr. Winchester and, he did make a complaint also to the local State Attorney and once he had made his complaint, and unfortunately Mrs. Peggy Lyon, Assistant City Attorney, was not available at the time of the meeting and she's kind of the person that our office looks at for the up to date Sunshine Law issues. My concern, I really wasn't aware of the meeting myself in the first place because it was just really staff discussing the issues at the Airport and are very competent to do that. When I heard that perhaps the Mayor was going to be there too, I did rush out there and all I'm thinking was just make sure they don't discuss things together. So, in the interim after Mr. Winchester made a formal complaint I did talk with Patricia Gleason at the Attorney General's office, explained to her what had transpired and she said basically in light of, there is a fairly recent case from Seminole County where the School Board was together on a school bus, basically the public wasn't able to participate, even though there was Press with them, the Court there still found in this, Mrs. Lyon and I both still scratch our heads, but they went forward and said well sorry, they were fact finding and shouldn't be doing it out of the public eye, basically. So based on that Mrs. Gleason said well you just need to go ahead and do a "Cure" meeting and just redo the staff meeting with whatever participation. It actually gives, and don't be afraid to participate if anybody does have a question, even Mr. Fletcher not being there and to clarify to the public, Mr. Heady was not at the meeting that he ever saw. If you have questions, participate. This is now just an open public meeting of City Council on the same subject matter. We are just going to discuss the same matters again and if anything new comes up, that's fine too, if you need anything elaborated on. Basically, I received a call from Mr. Chris Taylor at the local State Attorney's office and he is the fellow who prosecutes Sunshine Law violations for that office. We traded phone calls and finally hooked up and I advised him that we were going to recommend the Mayor to call a Special Call meeting. We'll have a "Cure" meeting and he (Mr. Taylor) was very happy with that and pretty much satisfied. We discussed what had transpired and I think his comments in the paper were very fair, quite frankly. I think he was very fair with us. I don't feel that going forward with this meeting is any initiations of any admissions of any violations. We're just doing what needs to be done to make sure that in the future down the road, six months from now, eight months from now, a year from now, when you have a final deal, that someone doesn't look back and say hey, you violated the Sunshine Law back on this date and therefore we want the Court to throw out any deal that you have made. So, it's kind of insurance to .... the issues. With that being said I probably just ask staff and ....

Mrs. Carroll asked, excuse me Mayor and Mr. Coment, if you don't mind, may I make a couple comments before we get started.

Mr. Coment said one thing too, I did tell Chris, Mr. Taylor, at the Attorney's office, if you want to blame somebody, blame me because I wasn't up to date on that most recent Case Law and he (Mr. Taylor) understood that if there was any violation it certainly wasn't intentional on the part of the Council or anybody else. With that being said, your comments.

Mrs. Carroll said a couple comments quickly before we begin on exactly what occurred I'd like to read into the record the fact that I did not know about this meeting until 10:15 that morning when I received a phone call at my home from Mrs. Vock. She called to see if I knew about the meeting. When we had decided, we being the Council, had decided I believe last December at a City Council meeting that I would take the role as the point person on any discussions with FPL. And that Mrs. Turner would take the point of any discussions in regard to the County and the Water and Sewer issues. Is that correct? I received a phone call at 10:15 a.m. that there was a meeting at 10:30 a.m. I asked Mrs. Vock to relay to whoever was going to be there representing the City that I would be there late, but I would be there at the meeting as soon as I possibly could. When I walked into the meeting I saw Mayor Kramer already sitting in a chair, as well as Mr. Coment. Mayor Kramer, how did you know about the meeting and why were you there?

Mayor Kramer answered I don't know. I mean I remember ... I guess Mrs. Vock would have told me.

Mrs. Carroll asked and why were you there?

Mayor Kramer answered because I have an interest in the utility issues.

Mrs. Carroll said alright. Had you attended any meetings prior to this in regard to FPL and GAI together?

Mayor Kramer answered I don't know. I probably have. I know I did after that meeting and had minutes taken. Those are quite available for public record. I've had conversations with GAI. The only other meeting that I had had with FPL, I believe I had Ed Biershank (Press Journal Reporter) in the room with me. I don't believe I've ever had any exclusive access with FPL.

Mr. Coment said may I ask, Mayor, what you're talking about is, you weren't present with other Councilmembers in those other meetings?

Mayor Kramer answered no.

Mrs. Carroll said so the fact that I was requested by the City to be at that meeting, I firmly feel that it was my responsibility to attend the meeting, which I did as soon as I could get there. The fact that the Mayor sat in on the meeting as the non Council representative there, was his decision. When I walked into the meeting Mr. Coment was there and there was no comment that this was in any way, shape, or form a violation. We went on through the meeting. There was no legal advice that that was a problem. At the meeting somewhere around 11:20 a.m. Mr. Bolton (Rob Bolton, Water and Sewer Director) came in. He then walked back out of the meeting and was on the phone. I don't know who he was calling or what was taking place then, but I did say hello to him in the coffee room as I grabbed a cup of coffee. When the electrical issue had completed he came back in and I said before we get into the water and sewer I have one question to ask based on some information that he had provided to us the week prior with a possibility that the City could put a Water Plant on the, move the Water Treatment Plant over to the Airport side, and I said I just have one question that was brought to me by someone from the Airport, will there be any height limitations for placing the Water and Sewer Department onto the Airport site and he said no we've looked at that and then I left the meeting. So, there was no communication on my part between myself and Mayor Kramer, between myself and Mrs. Turner at the meeting. I just wanted to bring all that forward. And I still don't understand why the Mayor was at the meeting.

Mr. Coment asked staff to come up to the table kind of like your ... staff meeting.

## **2) Matters for Discussion Regarding Electric Utility Facilities on Airport Property**

At this time, Mr. Gerry Hartman of GAI Consulting, Mr. Ryan Fair of FPL, Mr. Eric Menger, Airport Director, and Mr. Joseph Malfait, Airport Business Manager, came to the staff table, with Mr. Coment joining them. They each introduced themselves to the Council.

- a. Identification of electric facilities located on Airport property**
- b. Clarification of facilities or land subject to purchase or lease by FPL**
- c. Method of taking possession by FPL**
- d. Potential leases and easements, reversion or removal of assets**
- e. Division of value from joint use of T&D/maintenance facility**
- f. Valuation issues – FAA fair market value requirements for assets and leases**
- g. Environmental audits**
- h. Streetlights/lighting inside and outside Airport operations area**
- j. Other matters and issues**
- k. Documentation for use and discussion**

- 1. CC Resolution 2007-38 – Piper Drive Substation**
- 2. CC Resolution 2881 – 41<sup>st</sup> Street Substation**
- 3. CC Resolution 82-9 – T&D Facilities**
- 4. Map depicting substations, distribution, and T&D Facilities**
- 5. Form of Airport lease**
- 6. FAA letter regarding fair market value requirements**

\*\* Please note that all matters under Agenda Item 2) were discussed together.

Mr. Hartman said about three weeks or so before we had the meeting Eric (Mr. Eric Menger) said after a City Council meeting and said there were various issues we need to go over relative to the Airport property and its assets and the requirements associated with an impact both the electric transaction, as well as an evaluation, as well as the Water and Sewer valuation and potential transaction. We emailed back and forth a little bit and finally got to a date that we all could be at and forwarded that to Mrs. Vock in the City. We did not contact City Council directly because we have not been asked to contact City Council directly. We work through City Administration. So, the meeting was set and we went ahead and started the meeting. I believe that Eric thanked everybody for coming because he (Mr. Menger) wanted to resolve various issues. He (Mr. Menger) provided the location, which was his conference room. There was no attempt to keep anyone out of the meeting and he (Mr. Menger) came fully prepared with various documents that we had talked about and requested, which included maps, agreements, and other documents. So in starting the meeting we first talked about the Airport and Mr. Menger I guess you talked about what the Airport does and those type of things and the ... on Airport property.

Mr. Menger said sure. Well, I can't remember the exact words of course from that meeting, but we did have, I thought, a pretty healthy discussion about the Airport. It was just something that we felt as the Airport staff, that we wanted to make sure that GAI was aware of in doing their research because it is a pretty big issue for us. The Airport, our obligation to the community is to make sure that the Airport retains self sufficiency, in essence. That we operate the Airport in accordance with Federal, State rules and regulations and that we do so in such a way that we make a profit. We end up with a net to the good every year so that we don't have to become a burden on the community and that's what I want to make sure that we put out there and to do that we have to operate the Airport like a business. It's an Enterprise Fund of the City. We operate it that way. We try to do that. The City has always done that whether I was the Manager or not, way back to 1929 and we try to continue to do that. We wanted to make sure that FPL was aware of that and that there would not be any kind of transaction where we could simply give FPL any land, any use of the land. We'd have to actually lease the property. We want to make sure that FPL is aware of that and that any lease of the facilities that the City now uses under the Utilities Department would be done under a Fair Market Valuation and there would be assessments made and they would be a simple business transaction just like there would be with any other entity that we do at the Airport. So that's what we went over.

Mr. Hartman said so that's the overview that Mr. Menger provided and then in going through the documents there were maps, which a large scale map is right there (pointing to a large aerial map of the Airport located in the Chambers), another map of the facilities were shown. We identified on the Airport property ...

Mr. Coment asked you were looking at these documents?

Mr. Hartman answered yes.

Mr. Coment said we need to go ahead and do that. Let's look at those documents again.

Mr. Menger said we might of pointed out on the map too, I don't know.

Mr. Hartman said I think we did. Mr. Menger, if you would ...

Mr. Coment said it's like it never happened. We're just doing this again.

Mr. Fletcher said the portable mike (microphone) is in the desk. He asked Eric did you mention to the members that the Airport funds are not available to the City through the General Fund at all? That it's a standalone issue.

Mrs. Turner answered yes, they did.

Mr. Menger said I try to bring that up at every opportunity I have. It's just that really, from an Enterprise Fund position, one that's regulated by the FAA, we have to make that clear. It's a little bit different than the other Enterprise Funds of the City and we made that clear, I think, at the meeting. What we did at the beginning of the meeting also, is just show (on the aerial) the overall Airport view. You all can't see this on your monitors, can you? I wish you could. If I turn it then the camera can't see it, but then you can see it. Mr. Menger then turned the aerial map of the Airport towards the Council.

Mr. Menger said that's just the local ...

Mrs. Vock asked Mr. Coment, do you have a map that can be put on the doc cam?

Mr. Menger said what Mr. Malfait is putting up on the doc cam is for tonight's City Council meeting, but you can use it for this. It's just an overall view of the Airport so that you can see as well as everybody else. He then pointed to areas on the aerial and stated that the red line and I know this shows up to everybody, on the Airport property map is simply the general boundaries of the Airport. It's about 1,700 acres and we're using round numbers and I will try to continue to do so. It's a good chunk of the City property and it needs to be because it's an airfield. It takes a lot of space. But, as far as the electric utilities go on the Airport, we pointed out the Substation up here to the North part of the Airport, which you can see. I think everybody can see that. And then at the Southern portion of the Airport there's another electric Substation. Both of those properties are under long term lease with the City. They're in the form of a Resolution. They're not in the form of a standard Airport lease and I think we also made that clear. I always want to emphasize that the way that the City leases property at the Airport to itself, in essence, is by City Resolution. There is no lease agreement the same as what we would do with our private entities. The City electric to FPL, there would not be a City Resolution. It would be a standard Airport lease that would be negotiated with FPL and that negotiation would be handled by the staff and then a recommendation to City Council. Those

two particular Resolutions we have copies of I think and we passed them out so that everybody had a copy and we will do that here. That is the primary locations. Now, in addition to those facilities there is also facilities over here at Airport West. That's what we call the this section of the Airport, this triangular area, Airport West and there are building facilities, maintenance facilities, that the electric utilities use these and also pays rent under City Resolution to the Airport. So the value of those properties are part of the negotiation and we want to make sure that we go over those. There is so many issues that we talked about, I don't want to jump ahead too much because I know you got an outline, but that's in general, those three areas are what we are talking about ... this discussion.

Mr. Hartman said if I could assist a little bit, we also talked about the easements of the transmission quarters that are used on the Airport property. We also talked about the services and we sort of generally talked about that and we showed quarters for transmission and where the major buildings were.

Mr. Menger said correct.

Mr. Hartman said that was two way, was identification of electric facilities located on the property and after that identification it became apparent that, we wanted to see a breakdown of the types of uses ... gets down to a real estate situation and you know I mentioned that there is a lease not only for the major assets that are delineated, but also for the transmission and then we were talking about in the lease for the electric transmission up to the transformer. From the transformer to the building it would be a inducement for service. You would have that access and easement provided, but that's a customer for construction typical to the meter and that would not be part of the documentation. So, we basically delineated that the land was not for purchase, rather for lease and the method of utilization was ...

Mr. Coment said why don't you let Joe (Mr. Malfait) elaborate on leases and how entities can take possession and what-have-you.

Mr. Malfait said what I would like to do is kind of go through the documents that I presented to you the other day (at the meeting) and one of the documents that I presented to you first was an old letter from the Orlando Airport's District office dated April 20, 1989. That letter pretty much lays out the responsibility for obtaining fair market value for any leases. That was the case then. That is the case now. The requirements based on the initial quit claim deed grant from the government for the property and since that time every one of the grant agreements that the City has entered into contains a grant assurance, which also requires the same thing. We must receive fair market value for lands that are used for anything other than the Airport. That was a copy of the letter that was just handed out. Now, Mr. Menger was going over the map for you. I didn't have a large scale map, aerial map that I could give anyone at the time. Since that time what I've done is printed up an aerial, which shows the area in Airport West. I made just a few copies of that.

Mr. Coment asked and Joe, that's that triangular portion at the West side of the Airport.

Mr. Malfait answered that's the triangular portion and then also, an aerial of the parcel off of Piper Drive, which is the big distribution. This is the one on substations, yes. That's the one on Piper Drive and then the substation off of 41<sup>st</sup> Street, this is a pretty good view blown up so that you can see what that is. Now, in conjunction with those aerials that we just passed out, I've got a copy of the existing Resolution Rental Agreement for the property being used by the Power Department. This is for the part out in Airport West.

Mr. Hartman said Mr. Malfait, we already have that.

Mrs. Carroll said I have that one.

Mr. Malfait said I also did the same thing for the substation #5 on Piper Drive.

Mrs. Carroll said I have that.

Mr. Malfait said substation #6 on 41<sup>st</sup> Street. In conjunction with our discussions about entering into leases with FPL should this transaction be completed and the purchase of the utility be completed, we would be entering into general commercial leases with FPL for these sites. We sent a copy of this document to FPL and GAI electronically. This is the standard lease document that we use for all of our negotiations.

Mrs. Carroll said that document was not presented at the original meeting. Was it? Because I don't remember seeing that at the meeting, unless it took place before I arrived.

Mr. Malfait said I don't remember. I think we talked about it.

Mrs. Carroll said we did not get it though.

Mr. Malfait continued stating that after the meeting I electronically sent it per the discussions at the meeting for both purposes.

Mr. Hartman said my understanding of the conversation at that time, Malfait had one, but he did not have multiple copies of it so in affect what he did immediately after the meeting, because I got it either that day or the next day electronically, he sent it electronically to all the parties very efficiently to all the parties.

Mr. Malfait said that's all the documents that I believe we handled that day for that particular purpose.

\*\*Please note that all documents previously mentioned were handed out to the members, to the City Council and are attached to the original minutes.

Mr. Coment said and Mr. Fair I know that you've had some questions about leases and things like that.

Mr. Fair said I did. I think the premises for my attendance at this meeting was more just to understand kind of a unique situation with the Airport in that typically you know, when Florida Power and Light looks to make an investment in a substation or building, you know, our typically preference is to be a feasible owner. But, that doesn't necessarily mean that we can't lease. I wanted to understand a little bit more of the process of that. So, I know that we had some discussion. Kind of got into to it earlier about, you know, the fact that all the leases currently with the City are via Resolution and that there is a possibility to have a commercial lease, a long term commercial lease. We talked a little bit about the term of that lease. I emphasized that if we were to engage in a lease with the Airport and the City, you know, we would be looking at somewhere in the neighborhood of a 25 to 30 year term because these assets are long term assets. So, we talked about that. I also mentioned in the meeting the ability to purchase and some of the avenues that we could go through at some point if we wanted to purchase the underlined land. If I remember you might of mentioned that there was an avenue, but it was pretty arduous and maybe have an opportunity to purchase the actual buildings that sit on the land, while we lease the land so I don't know if that was ...

Mr. Menger said right. We did discuss that and the question came up, is it possible to sell Airport property and the answer to that question simply is yes it is possible because it has happened. The City has sold property with the FAA's concurrence of Federal Aviation Administration concurrence to Piper and to the Brooklyn Dodgers and to Flight Safety over the years. However, that was many years ago and these days, in today's Federal situation the FAA typically frowns upon sale of Airport property. And that's simply because the FAA encourages the sponsor of the Airport, the owner of the Airport, to maintain a long term revenue stream and it's best done leasing the property and maintaining the ownership. So, although it is possible, one of the things they emphasize is it is unlikely that FAA would okay that. There are some situations though that it could be okayed and we didn't want to leave that out as a flat no. And then I think, you know, if we talk about the valuation of the property there is a certain value, if we look at the T&D map or look at the site of Airport West where we have buildings in place, there is a certain value in place that the current City utilities put funds into to develop those facilities. In a standard Airport lease, over the term of those, usually it's a long term 30-year lease, at the beginning of that lease the entire value of the building is owned by the lessee. As the term goes toward its completion, at the end of that lease the entire value is in the ownership of the City, the Airport. So it's a decreasing value over time, which is part of the value of the rent. That's the lease term that we typically use with commercial lease. The negotiation comes into place in the term of the lease and we discussed that a little bit too. Sometimes you can go longer than 30 years and sometimes it's better to go shorter than 30 years. A lot of it depends on the type of development. One of the things the Airport has always been interested in is making sure that we don't end up owning something in long term that we don't want, such as an underground fuel tank or an environmental type of issue or something that we can't re-lease. Underground cables and substations and things that we would want removed at the end of a long term lease. And so that would be part of the negotiation also and

in the terms of any lease that any, at the conclusion of any lease the reminisce of that lease would have to be removed or revert to the ownership of the City and it would be the City's desire, typically, to make that decision of whether we would want to keep that, those improvements or not.

Mr. Coment said and those provisions typically are within the Resolutions that the City uses to lease land to itself because the City is already the owner anyway. So it's only when you have a third party.

Mr. Menger said only when it's dissolution between the City Resolution and a commercial lease. Just a little bit different there.

Mr. Hartman said and relative to the appraisal process that decreasing value over time doesn't occur relative to the City because the City owns it. And so it is what it is and that we clarified also in a quick comment. And then, I think you covered item d). I believe there was a statement that there was a potential of going to a 50 year lease and that's what I had in my notes.

Mr. Fair said I think that was based on my question of, you know, at the end of the lease does the asset then revert back to the City and there was a reverter question on that and if that was the case I was looking to see how far we could extend the term.

Mr. Menger said right and that's always part of any lease negotiation. You can discuss price. You can discuss term and then we would put that all on the table.

Mr. Coment asked Mr. Menger, does the FAA have any, I know typically don't they sometimes have to approve these leases and do they look at the term, do they have kind of a limitation as to how long they like to see them?

Mr. Menger said the FAA actually likes 20-year leases and the State requires 30-year leases for aviation leases. But, not for non aviation commercial leases, such as FPL would be, there really is no limitation that the State Law places. So, we would just simply put it all on the table and try to negotiate the term and a rent price. The rent price would have to be based on fair market value. The term could be negotiated and there are airports in the State already that have longer 30-year leases so that would be potentially possible.

Mrs. Carroll said and at no time though, did we negotiate any type of lease at this meeting.

Mr. Menger answered no.

Mrs. Carroll said we were just simply making sure that everyone knew the same information so GIA (GAI) could evaluate on their evaluation of the system and FPL were on the same page.

Mr. Menger said correct. It was a fact finding meeting for information.

Mr. Hartman said and also facilitating the process because there is no surprises. The intent of the meeting was to make sure that everybody understood all of the issues and to make sure that there is no surprise there.

Mr. Menger said right.

Mr. Hartman continued stating in going through the process, some hiccup if you will, in going through the process.

Mr. Menger said right.

Mr. Hartman said and then we went from there to looking at the T&D facility and I believe I stated, I think this was after my inspection, that the T&D facility could be separated pretty easily with the change of the parcel line and then also with moving, I think the Sheriff's Department had a trailer out there and there is a few other items in there that were jointly stored there that could be moved in a couple of days.

Mr. Coment asked Mr. Malfait or Mr. Menger, do you want to elaborate on that facility, the same kind of things that we discussed about the use of it and how it's divided up.

Mr. Malfait said that particular facility, the building is a warehouse type of building in the back and more or less an office type of building in the front. Space is shared between the Electric and the Purchasing Department and I'm not sure if one of the other departments stores any stuff out there on the paved storage area or not, but we essentially deal with the Electric Department on this facility and the Electric Department then deals with the other departments that share space with them.

Mr. Coment said well they kind of sublease to them.

Mr. Malfait said I guess that's how they do that, yes.

Mr. Coment asked, do they, do they charge, is there a transfer from one department to the other as far as monetarily for those uses? Do you know?

Mr. Malfait answered I do not know that.

Mr. Coment asked is it done internally or?

Mr. Malfait answered I don't know that.

Mr. Menger said we just we just lease the land or Resolution the land.

Mr. Coment said and I think there was a discussion that we talked about the value going forward of that facility and how to divide up what might, under a typical lease, be typically owned by the Airport now. In other words, what's the arrangement going forward of what, if the facility was sold and the land leased ... The division of basically any purchase price between the Airport and maybe Electric.

Mr. Hartman said that would be at the end of ...

Mr. Menger said well I can talk about what I talked about at the meeting.

Mr. Coment said yea exactly.

Mr. Menger said fill me in if I leave anything out, but we'll just talk about it like it was a 30-year lease, because it's not. It's a Resolution rental and it's open ended. There is no, in the current City Resolution there is no reversion clause. It goes, it's open ended. However, with an FPL lease we would probably look at it from the prospective that it is a 30-year Resolution. We would take a look at when the Resolution was initially approved by the City Council and then we would figure 30-years from that point and come to an end date. Well, if we hadn't reached that end date yet the building would have a certain percentage of value. If we had gone 20-years into that 30-year, it would be a two-thirds value. The building was built by, other than the Airport and so it's not, it's two-thirds our building at that point. If you understand what I'm saying and it still has 10-years to go on the lease so that 10-years, that one-third value would be negotiable. We would have to try to then determine who would pay that remaining value to the Airport. And that's just an example because I'm not sure.

Mr. Coment said yea. I think we figured out that that is something that could be done internally by the City, as far as transfers between the funds, whatever, whoever is kind of responsible for what part.

Mr. Menger said right.

Mr. Coment said and ultimately the goal would be the Airport would basically eventually own the entire building, again at the end of the lease.

Mr. Menger said we could new lease. We could come up with some value that would be compensated for the remaining portion of the 30-year City lease that is in place and then start from ground zero. I would estimate that FPL would pay the Airport a value of that building and then we would own it for a certain percentage, you know, for the remainder of their new lease, whatever that term was and there would be no rental on the building or you could work it out such that the value of the building was not paid for, which is, I guess, if it could convert to the benefit of the Airport and then rent would be paid for the building and the land by FPL.

Mr. Malfait said what Eric's saying and what we talked about that day was that there could be any number of combinations of how this thing can be put together.

Mr. Menger said correct.

Mr. Malfait said so we didn't come up with any particular preferred method that day. All we did was lay out on the table that it's a negotiable point.

Mr. Coment said I think Mr. Fair you were, of course the Airport was interested in what exactly FPL would be interested in purchasing or leasing or whatever and maybe you can elaborate on the position at that point.

Mr. Fair said well my understanding of the Transmission and Distribution building is that it did have shared services and one of my questions was, could those be unbundled in the event that FPL in this transaction were to assume the T&D building as one of its assets. I think we made it clear in the meeting because I think, Mr. Hartman because you had asked me directly was the T&D building part of the transaction and I think I quoted that in accordance with the Letter of Intent that was agreed upon by the Council that all assets at this point in time were in play and we were evaluating whether or not the T&D building would, or we are evaluating the T&D building as part of the transaction. Now in the future, post transaction once the City of Vero Beach's electric utility is absorbed in the FPL system we would then obviously optimize our operations and if we needed it we would continue to use it. But we did feel that because we don't have a current operations center in Vero Beach that for us to service this area as, if we were to take over the service area, that would be a prime location for us. So we did have an interest in at least evaluating this going forward as part of the assets under consideration, but recognizing that there were some services that I wanted to understand a little more about how ... the structure was and what are the options, which you went over Mr. Malfait, and also how to en-bundle that and what pro rata would FPL incur for our use of the land.

Mr. Menger said and you know, and I know I brought up several times at the meeting and will again that the Airport's concern is that we don't end up holding the bag in any kind of overall City negotiation here because there is certain equipment and the facilities and assets on the Airport that we cannot use and if it's abandoned or not used or if FPL does not have any interest in it then there has to be something in the negotiations such that it's brought back to its original condition so that we can re-lease it for a revenue producing property and not have to spend the money ourselves to demolish or remove it and all that was brought up as well because as Joe mentioned all this has to go into a negotiation and it was just a fact finding meeting. I thought it went very well.

Mr. Fair said and I think that I made it clear that our, the most valued assets that we saw at the Airport were definitely the two Substations and the transmission easements. So, those were the ones, I had probably number one on my list as far as the assets that we really want to have a consideration because it takes an enormous amount of expense to relocate a transmission substation. So, we want to preserve, at most, the transmission substations because those really only have one use and that's, you know, for our benefit as the purchaser and I think we also, I asked them that typically if we were to engage in a lease with the City and the Airport

that we would, it would be on our burden to either relocate the substation and restore the land to its original use once we are done with it or, you know, restore the land and abandon the substation and restore the land to its original use. That's pretty typical with how we do business around the State anyway, with our leases. But, the substations were of the utmost importance to us. The Transmission and Distributions offices, you know, we, there is always a little bit more play in there because those offices could potentially be used for other City operations and I was, you know, what I wanted to learn a little bit more about.

Mrs. Carroll asked and Mr. Menger, at no time did we negotiate any type of lease price or evaluations of the value of the building?

Mr. Menger answered no ma'am. That would be just something that would happen in a negotiation.

Mr. Hartman said the next area, I think we hit the fair market value requirement on Airport property was ... In talking about environmental audits ...

Mr. Coment said well, I think, why don't we, can you elaborate more Mr. Malfait on the fair market value issue, the FAA, and how DOT comes into play and ...

Mr. Malfait said well generally the evaluation is determined by a MAI appraiser. They look at the market value of the property and then for lease purposes, generally the leases at the Airport are determined as a rate of return of 10% on the value. So, it's ...

Mr. Coment asked where does that number come from? Is that something that FAA looks at?

Mr. Malfait said generally the FAA prefers a 10% return on value.

Mr. Menger said their Advisory Circular says 10 to 12% and we usually use the lower end, especially now-a-days with the market conditions.

Mr. Malfait said so that's where that requirement comes from and that's been the policy at the Airport through all the documents I've seen since I've been there so.

Mr. Menger said I would add that although the FAA Advisory Circular says something it doesn't mean that, anything should be on the table for negotiation and then once it is completed and the City and the staff are happy and FPL is happy and everybody said that this is what we want to do, we then would proceed to FAA for review because they do recognize that things change in spite of the fact that they have Advisory Circulars published since the 70's and that we try to follow. They are always willing to take a look at specific cases.

Mr. Coment said then as far as environmental audits of what might be sold or leased or ...

Mr. Malfait said yea, generally what we do on our commercial leases is the Airport pays for an Environmental Phase I audit to take place. That's at the beginning of a lease hold.

Mr. Coment asked can you explain a little bit more about what the Phase I is?

Mr. Malfait said the Phase I Environmental audit is an examination of the records of what the property has been used for, of the actual inspection of the property to see whether or not there appear to be any possible contaminations on the surface. They look to see where there's been any buried fuel tanks in the past, ever, if there is any record of that. That's kind of a generalization of what it is. We do that because of the Federal laws having to do with liability for environmental contamination. The property owner is generally the one that's on the hook to clean up any environmental contamination. Now, we look at it at the beginning of a lease so that at the end of the lease we look at it again. The lessee at the end of the lease is obligated to present a new Phase I Environmental audit and then the two audits are examined together to see whether or not there's any contamination during the leasehold period and if the lessee is responsible for that cleanup. If they are they are on the hook to actually, possibly go into a Phase II Environmental audit, which determines the extent of environmental contamination and then after that a program to clean up the environmental contamination, which can take years and many dollars.

Mr. Fair said and just for the record and I believe I mentioned it at the meeting, but I'll also offer it here, as part of our due diligence for the transaction, or the potential transaction of the electric utility, we are conducting a Phase I Environmental Assessment of all the assets and all the properties owned by your electric utility to include the two substations and the T&D building, coincidentally those are happening this week. So, our consultants will be out at the sites at the Airport, the two substations and I believe also the T&D building to conduct that Phase I. So we are doing a Phase I on our own dollars as part of our own due diligence.

Mr. Coment said so, I think Mr. Malfait you had mentioned that or Eric, maybe you would be doing those audits yourselves. Are you proceeding with that also?

Mr. Malfait answered well if there is going to be a Phase I Environmental audit done by FPL they would most likely share a copy of that with us to show if it is contaminated.

Mr. Coment said I didn't know if you had ordered that yet or not.

Mr. Malfait answered no.

Mr. Menger said but we've saved a few bucks already.

Mr. Malfait said we generally don't order that until we're very assured that we have a lease coming that will at least pay for the expenses.

Mr. Hartman said the next issue that was brought up was relative to the miscellaneous lighting, street-lighting and was such a minor issue that it was de-minimous relative to the facilities. There was like \$200 a year or some number, a very low number that was paid and you brought the bills out.

Mr. Malfait said yea, I think it was a couple hundred dollars a month.

Mr. Hartman said a month I mean. I'm sorry.

Mr. Malfait said those lights are owned by the utility, not the Airport and we therefore pay the rates that anyone else would pay for streetlights I believe.

Mr. Hartman said so therefore, my question was relative to valuation that I was going to just include those assets in the overall streetlight assets valuation.

It was stated yes, it's not ours.

Mr. Coment said, but those, the streetlights we are talking about, those are the ones that are on the streets outside of the operational zone or?

Mr. Malfait answered yes.

Mr. Menger said in the core area of the Airport, Airport Drive.

Mr. Malfait said along the roads.

Mr. Coment said within, those are owned by the Airport or by the ...

Mr. Malfait said by the Airport.

Mr. Coment said and those would just then be, I think that we determined that that would still just be a function that you get billed to the electric.

Mr. Menger said right.

Mr. Malfait said yes.

Mr. Menger said be getting an invoice from a different entity.

Mr. Coment said right.

Mr. Hartman said I think that relative to other matters and ... issues, we were asking for the lease to be sent and that was done, that negotiations would proceed between FPL and the

Airport. We had gotten the information we needed for the evaluation. What other matters and issues?

Mr. Coment asked Mr. Fair, anything else that you have on your list that we've missed?

Mr. Fair said no, I think that the only other question that I remember bringing up was with regards to metering. I believe there was some question on where does the customer end ... there may be some interconnections that the Airport has that goes directly into either a substation or transformer box that we, and I think that I mentioned of what I remember from the meeting was that generally it's either inferred in our leases that we would have an access easement or some kind of access right to read meters, but we didn't necessarily maintain the customer portion of their interconnect. So if there was a special interconnection because of a certain piece of equipment on the Airport that had to be interconnected directly into a substation or to a transformer that was customer owned that we do not typically have that responsibility to maintain that. But, if there was ... issues on Airport property that we need to get usually we have like an access easement so, I think that is also related to the substations where we don't necessarily, all we really own, all we really own is the boundary, I'm sorry not own lease the boundary of the substation, but we still needed to have access to the substation so we wanted to ensure that in our leases that we had an access right to the substations. And I think that was ...

Mr. Coment said and I think also one of the matters would involve from the substations to transformers. We talked about, is that going to be leased or just an easement? I know from the substations to meters would just be a no charge ease-, basically an easement. Did we clarify from substations to the transformers?

Mr. Menger said I honestly don't remember.

Mr. Coment asked is that going to be leased or? I think we talked about that being part of the overall lease perhaps, having to do with the substations.

Mr. Fair said I'm not sure if there is any transformers outside of the substation other than normal distribution transformers, which would be maintained by the utility anyway. So, my question was more if there was an interconnect from the substation to a piece of equipment that was owned by the customer, which would be the Airport, we would not be obligated to maintain that because it is customer owned. I wanted to make sure that we had the access to the substation because we don't own the land and all we really were leasing is that box where the substation ...

Mr. Malfait said I think a good example of what you're talking about, and this is just my understanding here, which may or may not be correct. But, we have a set of large security light poles that are attached to some large control boxes. Now I think you would be responsible for the power line going to that box and then we're responsible for that box and the light system. Right?

Mr. Fair said right. I think that's what we were discussing.

Mr. Malfait said yes.

Mr. Coment asked anything else Mr. Malfait?

Mr. Malfait said I don't remember anything else other than that.

Mr. Coment asked Council any questions or comments or clarification?

Mrs. Turner said I would just like to say that I too received a call from Mrs. Vock that morning and I arrived at this meeting probably at 11:00 or 11:15 a.m. just to see electrical was concluding.

Mr. Coment said Mayor you may want to ask if the audience has some questions. Put it up to the public.

### **3) Public Hearing**

Mayor Kramer said well, certainly. I guess we're in between the electric side and the water and sewer side.

Mr. Coment said right.

Mayor Kramer asked is there anybody ...

Mr. Coment said I have ... because Mr. Fair doesn't have to sit around and listen to water and sewer issues.

Mayor Kramer asked is there any member of the public that would like to speak? Mr. Daige?

Mrs. Carroll said as he comes up I just want to reiterate for the third time there was absolutely no financial discussions that took place. We only discussed the issues so GAI's, in their formal evaluation of the electrical system would be on the same page as FPL so they both knew what they were evaluating so they could both do their own due diligence.

Mr. Daige said Ken Daige, Vero Beach City resident. Thank you. The FPL Representative that's at the table, may I know his position please?

Mr. Fair said my name is Ryan Fair. I am the Power Originator and the Lead Commercial Manager for the potential purchase and sale and I work for the Energy Marketing Training Group.

Mr. Daige asked do you have anyone else here from FPL with you?

Mr. Fair answered I do. I have Pat Bryan, is in the audience, is the Senior Attorney at Florida Power and Light.

Mr. Daige said thank you very much sir, just wanted to say a couple things. There's a lot of information from this meeting. I appreciate you having this meeting out in the open. It's very helpful to us that have been watching all of this from the outside and because you had said you would do the due diligence and this is part of the process. The Sunshine book, just so people know this and I'm sure Mr. Fletcher knows this, this is out of the 2011 Edition, line 33, because I was curious about this too, this "Cure" meeting of what took place out at the Airport and as I told you before, I was a former Councilmember and while I was on Council, well before I started my Council work, we had an intensive Sunshine briefing that this City puts on, which is very intense and actually is recognized throughout the State as one of the best that's out there. That's according to what Patricia Gleason told me. On page 16 it says "What is a Meeting Subject to the Sunshine Law? Number of board members required to be present – The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to s. 286.011, F.S. Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission." He said I recommend to all of you up there, try not to let this happen again because the way this was explained to me, the doors were closed. There was not a noticed meeting to the public and if the public doesn't have access you really shouldn't be in there when there is another member of the same City board there. Our Boards and Commissions are given the same Sunshine briefing and they're cautioned not to talk to one another, to have meetings, gatherings, etc. It's all about perception and as we're seeing here a lot took place at this meeting. A lot. Now, you have three persons for your water, sewer and electric. Past Councils did not do that. They allowed the staff to negotiate, do whatever needed to be done, have the proper concerns in place, then overviews were given to the Council for them to take action and they weren't involved in the so called negotiations, even if they were sitting in there. If you are going to pursue with your point people, I would recommend when you go into the meetings, tape them. There's a lot going on there and I don't think anybody has a photographic memory that they can remember word for word. Just today alone, that's a lot of information out there and one of the things I would be concerned about, and I think all of you are, is not to relay the wrong type of information to the public because this is a big matter as it rolls on out, the possible buyout of our utilities by FPL and the citizenry has the right to know because you did promise them that you would do due diligence and keep everything out in the open. There's another situation too in the Sunshine book, on page 23, the Florida Records Law, "Meetings to consider confidential material." You all had talked in the past about a data room that we really, as the general public, would not have access to. Now that I have talked to Patricia Gleason about a data room, anything set up, if there's something that's going to be put in that data room that's going to be confidential, a State Statute, will apply the test, the Statute would put a test to it to see if it is confidential because the State Statute states what is confidential, so if there's trade secrets or anything like that nature, that's

in the Statute. It will govern that. So, I'll be back up. I have a couple more comments, but that is my comment for now and thank you for allowing the public input. I really appreciate it.

Mayor Kramer said thank you Mr. Daige. Would it be okay if we took a break before we jump onto water and sewer.

Mr. Coment said before we do that, I would suggest if there is anybody else that has any comments or questions about the Airport and electric system issues, the subject matters, please come up now because we will be ending that discussion. It would be nice to get that out of the way, if you don't mind. After this we will be talking about Water and Sewer facilities and what-have-you at the Airport. I just wanted to say all of those comments so that the FPL people could leave if they so choose.

Mrs. Daige said I am also glad for the public information on this because of the fact that in doing the Referendums the public is going to need to know things like something that I was not aware of and I wondered about because I know that Vero's an important part of the grid system in the electric system throughout the State of Florida. I heard the idea of a 20, 30, maybe 50-years lease with substations and such. So, that also leaves me to wonder about the Power Plant itself because I know that FPL wants to lease that and there's been talk about dismantling, but if there's talk about needing substations and stuff for 20, 30, 50-years I'm wondering if FPL has also come up with a time period for how long they're going to require the Power Plant itself to be up and running because I know there's been talk about two years and then the employees are pretty much on their own. You know, they're going to have to either decide if they want to work with FPL if there's a job opening or you know, find another job. That's basically it. If they intend to keep that Plant operating because we do feel a need or are they going to be building another Plant or upgrading the system. I think those are things that the public would like to know.

Mr. Fair said well I, what I would say to that is that with respect to the Power Plant, we are under the, we are operating under the assumption that the Power Plant is part of the transaction, potential transaction. We are not in a position right now to determine how long the Power Plant would be operational if the transaction took place. You know, we have done some preliminary analysis about how the Plant would integrate into our overall system. We're still conducting that analysis. It really is not part of the lease discussion per say. I think that that would be negotiable in the future about how, as we get further along in our due diligence and we understand a little bit more about how the Power Plant operates, how it integrates into our system, and how that is going to integrate into our overall FPL system ... Obviously we have other Power Plants that conserve. That's a pretty in depth analysis and we haven't really gone, gotten to the point where we are comfortable in saying how long the Power Plant will be operational, how long we intend to keep it operational, but we did spell out into the Letter of Intent was if at some point in time we decided to dismantle the Power Plant and no longer use it that we would do so and it would be incumbent on us to dismantle the Power Plant to the ground and then basically the lease would terminate at that point and revert back to the City for their own use. In order for that to happen, we have to evaluate our overall system and

incorporate Vero Beach's system into FPL's system and if any upgrades needed to take place before we can dismantle that Plant. So, it's a little bit more of a complicated issue than just being able to give you a year or a time frame, which is why the lease provision makes sense for us, as far as the Power Plant goes. I hope that answers your questions.

Mrs. Daige said it does and what I'm hearing if I understand correctly is the transmission and distribution is a different issue. I understand that. So, the Power Plant itself ...

Mayor Kramer said Mrs. Daige, I really don't want to go outside of the scope of the conversation that we had in there. Some really good questions that really need to be asked, but ...

Mrs. Daige said the Referendum is on the agenda today so that's part of why I'm bringing it up because when you construct a Referendum the City will need to know how long FPL intends to lease the land because I understand that if they don't intend to keep it running they'll be dismantling it. I understand that and I understand that if they decide it's an important part of their system if they purchase our system that it's possible they'll end up leaving it there.

Mayor Kramer said they're going to be here tonight (at the City Council meeting) and I believe FPL will be there tonight. Will you guys be available to take a few questions like this?

Mayor Kramer was told yes.

Mayor Kramer said I just want to make sure that the scope of this meeting is about what transpired at the Airport.

Mr. Coment said it doesn't hurt to go further, but if you want to wait on those kind of questions you certainly can.

Mrs. Daige said I'd like to research that then because of the fact that it deals with the Referendum and it's on the agenda today and it all ties together no matter how you look at it.

Mayor Kramer said absolutely. Thank you.

Mrs. Carroll said and just on, to touch on what she asked about negotiations. Negotiations have not begun between the City of Vero Beach and FPL for the purchase of the Power Plant, for the price, all of that has not taken place yet. These meetings are simply to determine who owns what, what will be transferred, where the demarcation line is between ours and theirs, so both parties, GAI in their due diligence consulting work that we're paying them for, and FPL in order to eventually formulate a formal offer, can be on the same page. Price, valuations, negotiations, those have not began yet. The City does not even have an attorney yet to negotiate on our behalf. GAI and their Attorney who they have subcontracted to, Grey Robinson, have told us that they are not, at this point, been hired to negotiate on behalf of the

City. So the City right now has Wayne Coment and he has not begun negotiations with FPL. Is that correct?

Mr. Coment said that's correct.

Mrs. Carroll said thank you.

Ms. Gardner said the reason I came to the microphone right now, because I know you're getting ready to take a break, is because it states clearly ...

Mayor Kramer said if you would, please keep in mind there's a reason we have to take a break.

Ms. Gardner said I understand. I'll make it real quick because I have to take a break to. But, the reason is it says on this agenda under b) Ordinances for Referendum questions and I think that that was a fair question for Mrs. Daige to ask at this meeting, not hold it off for tonight, because that's what the agenda says. So, if that's going to be brought up after the break I think that would be an interesting topic of conversation. Thank you.

Mr. Daige said if you want to stop I'll wait on my question if you guys want to take a break because I understand. But, I still have the questions on the electric issue. So, I'll wait.

Mayor Kramer asked can you guys wait a little bit (referring to FPL Representatives)? Are you gentlemen okay with taking questions on that? I realize you're prepared for the Airport section.

Mr. Bryan said it's at the Council's desire.

Mayor Kramer said okay, let's just take a 10-minute break and then we'll reconvene and continue on.

At 10:18 a.m. the Council took a 12-minute break and reconvened at 10:30 a.m.

Mayor Kramer said we do have public comment we want to finish up with. Mr. Daige, if you'd like to continue.

Mr. Daige said thank you Mr. Mayor again for the record, Ken Daige, Vero Beach City. Mrs. Carroll you brought up a couple of pertinent points a few moments ago about the price of our system and the valuation and all. I think it's extremely important that you allow the due diligence process to keep moving ahead with the Consultant Firm that you have. You talked about pricing and nothings been negotiated, there hasn't been any price negotiated and folks need to hear that from you all because they do have questions. When you go to the FPL site, there is a question on there, have you heard that the City's system is worth much more than what we offered and how do you come up with the offer. They're asking FPL that and FPL in their response said that they did a high level analysis of the distribution, transmission,

generation assets of the City of Vero Beach's electric system. And then it goes on to say because any assets we acquire through this transaction will go into FPL's ... This purchase would affect customers throughout FPL's service territory, not just the citizens of Vero Beach. We have determined that a purchase price of \$100 million would fairly compensate the City for its electric system. Allow the City to pay off its current debt associated with the electric system and allow the customers in Vero Beach to enjoy the same electric rate FPL customers currently receive, while not negatively affecting FPL's existing customers throughout their service territory. Well, our side of the house, the citizens of Vero Beach, we want to know the worth of that system. Just sitting here today and listening to this, there's a great ... value out at the Airport with our transmission assets. Also, we want to know in the long term, is \$100 million enough. What happens if our assets come in a whole lot higher. It's just like what you said there hasn't been a determined price .... So we need to know what figure is that. Is it more than \$100 million? Is it less than \$100 million? FPL is telling the folks out here that they have on their site, they've done their higher analysis. They've done a lot of their homework. I know they have more to do, but the price to me sounds like the price is the price. They sent you a Letter of Intent and they said up to \$100 million. You know, it could maybe be a little less. It could be \$100 million.

Mrs. Carroll said it could be a little more. That's why we're doing the low level. They did the high level. Now we're working on it, they're working on it, so we haven't began negotiations.

Mr. Daige said and I'm glad you said that and that's again the importance of due diligence. People need to see that. From what I'm hearing here today, especially from you Mrs. Carroll, is you want this to roll on out. You want the process to be completed so we can see what it's worth and I appreciate that. My next question to you Mrs. Carroll since we're on the electric...

Mayor Kramer asked would you address the Council as a whole on this instead of singling people out? I'd appreciate it.

Mr. Daige said well I said Mrs. Carroll.

Mayor Kramer said I would like you to address the Council as a whole. I remember last year when you were on Council it was the same thing. I just want to make sure that you address the whole instead of the individuals.

Mr. Daige asked what happens if I have a question.

Mr. Fletcher said it is in the Charter that you address the Council as a body not an individual.

Mr. Daige asked how would I do this, to ask a question, Mrs. Carroll was at a meeting, my question was I was going to ask her ...

Mayor Kramer said ... a particular individual as a particular individual.

Mrs. Carroll said sir, if you'd like to ask me a question you can ask me a question at any time personally, but at the meeting you need to follow the Charter.

Mr. Daige said right, but I mean at the meeting that ...

Mayor Kramer said if she's okay with it that's fine.

Mr. Daige said okay, anyway, you don't have to answer this if you don't want to. At the meeting, to my knowledge, Mrs. Carroll was there and she was designated the point person. I was curious of what questions Mrs. Carroll had at the meeting at the Airport.

Mrs. Carroll said I cannot remember a specific question. I don't have a photographic memory of exactly what took place. I may have asked at some point to just reiterate or to verify what was taking place. I did not walk into the meeting prepared. As I told you I was told 15-minutes before the meeting started that it was taking place and I asked Mrs. Vock what the meeting was going to be about. I was not notified about the meeting so I did not walk into the meeting prepared with a list of questions.

Mr. Daige said thank you for your ... answer.

Mr. Coment said and if I may interject, for Mr. Daige's information, what I remember specifically was that when we were talking about the discussion of the split of the value perhaps of the T&D facility, Mrs. Carroll had asked perhaps about clarification of how the values would be split up between departments going forward. And in fact I just asked her earlier if all her questions today have been answered and that's all we're required to do is basically have a full and fair hearing about the subject matter. We aren't expected to remember every single question or comment that was made. It's just a full discussion of the subject matter and that's what we're doing today.

Mr. Daige said thank you all for your answers and thank you Council for indulging me to allow me to ask my questions. I appreciate it.

Mayor Kramer asked if there were any more individuals would like ask questions.

Mr. Peter Gorry, of the Finance Commission, said I just want to share in my professional career I negotiated mergers, acquisitions and divestitures for AT&T and had numerous commercial, not governmental, but commercial negotiations. In those negotiations we did not have the Senior Management of AT&T. We had professionals negotiate. We had lawyers there, but we did not have Senior Management or the Board of Directors so that any problem we could hammer out any deals and move them forward swiftly without having open hearings. My only suggestion on my experience would be to let the staff do their work and then bring that to the Council as opposed to have the Council ... That's just my personal experience. Thank you.

Mrs. Carroll said and I agree with that sir that the City does need to have professional negotiations as we move forward with this, but as we reiterated a number of times, negotiations have not began.

Ms. Gardner said at the beginning of this meeting there was discussion by one of your Councilpersons that this not be called a "Cure" meeting and we more or less ascertained the fact that this is a "Cure" meeting and I thank you for letting this go forward. Not that there was anything drastically wrong with this meeting. You can see what it was. It was the Airport informing everybody about whether they'd like to have a lease with the Airport and what it would entail. It's very interesting to the public and I'm very interested in what's going on. But, I am going to take a different point of view right now and the public can take or leave what I have to say. We elect you people to do the business of the City, no matter what it is. This is part of doing business of the City to go ahead and press on with this meeting so that, in fact there's no laws broken and we can see that no laws were broken. This is just a general meeting that was going on. There was no negotiating or anything. But, in order to expect you to do the business of the meeting I find it disgusting that one Councilperson because he didn't get his way at the beginning of the meeting, walked out. End of story. We elect you all to do the business of this meeting, or this City and I just want it noted for the record that I did not appreciate the fact that Councilman Heady chooses not to sit in that seat today. Thank you.

Mayor Kramer said thank you.

Mrs. Daige said I do understand that no negotiations have started and if I used the word negotiation I apologize, I don't recall. But I do know that I am extremely for due diligence and I know that in order to do that staff and the Consultants need to be able to speak freely and move freely and whenever Council people sit in on a meeting, you are able to formulate decisions within your own mind that once you do sit down as a full Council, you'd be able to, you might even have been able to formulate decisions others on the Council that weren't at the meeting wouldn't have had access to because there are dynamics at a meeting that you would have seen that they may not have seen. So, even with that said because of the perception it's just a better idea to not have Council people because you will be held accountable for ... at that meeting. Citizens have the right to come up to you and ask you what happened at that meeting and you are pretty much obligated to say so. So, you're putting yourselves in an awkward position. You hired consultants to do a job. You've got staff that knows their job and in order for this to move freely, for ideas to flow freely you need that interaction and let's face it, sometimes staff can be intimidated in front of Council because they have to do, they work for you. Council has pretty much made it known that you're in favor of the sale and the fact remains that that puts staff in an awkward position. They're in the position of proving that this is a good deal. Now we as the citizens, we need to know is that a good deal. We will not know until due diligence and that's the point. I know negotiations haven't started. I'm not accusing you of that. This is simply a meeting to let people know what's going on. There was no reason for a closed door meeting if negotiations haven't started. So, this is information the public needs to know and I appreciate this meeting and we did talk to Patricia Gleason and she did say if you have questions of the Council people who were there, you have the right to ask. So how

you want that to be structured I guess technically maybe you should have set that up at the beginning of the meeting. So, it kind of puts everybody at odds and I can tell the Council is on a defensive mode. I mean, I'm an Interior Designer and I'm supposed to know how people feel and it's awkward. This doesn't need to be, that's the whole point. This shouldn't have happened. Let staff do their job. Let the consultants do their job. Thank you.

Mayor Kramer said thank you. If there's no more public comment, are we ready to move on to Water and Sewer?

Mr. Coment said just as long as Council has no questions, you're satisfied with the information you've been provided. You don't have any questions about it? Clarification? Then good, we're good.

Mayor Kramer said well I would like to thank the gentlemen from FPL for showing up and helping us get these issues back on, everything back on track. We're going to shift gears now for Water and Sewer.

**4) Council Action Requested – None**

Mr. Coment said yes sir, there's no Council action needed. Just staff meeting. We'll go on to Water and Sewer.

**5) Matters for Discussion regarding Water & Sewer Utilities facilities on Airport Property**

At this time, Mr. Rob Bolton joined Mr. Coment, Mr. Menger, Mr. Malfait and Mr. Hartman at the staff table.

- a. **Identification of Water & Sewer Facilities located on Airport property**
- b. **Clarification of facilities or land subject to potential purchase or lease pursuant to Indian River County proposal**
- c. **Method of taking possession by Indian River County**
- d. **Potential leases and easements**
- e. **Valuation issues – FAA fair market value requirements for assets and leases**
- f. **Environmental cleanup wells, stripping tower, future responsibility**
- g. **Environmental audits**
- h. **Other matters and issues**
- i. **Documentation for use and discussion**
  - 1. **FAA letter regarding fair market value requirements**
  - 2. **CC Resolution 2011-18 – Aviation Boulevard Tank**
  - 3. **CC Resolution 2011-19 – Well field**
  - 4. **CC Resolution 2011-20 – R.O. Water Treatment Plant**
  - 5. **9/17/07 Lease drawing for Water Treatment Plant**

6. **9/15/05 Lease drawing for Wells**
7. **01/03/01 Lease drawing for Raw Water Collection and Well field, etc.**
8. **Groundwater protection zones, setbacks, control, and access areas required for transfer**

\*\* Please note that all matters under item 5) were discussed together.

Mr. Coment said okay, the tail end of our meeting on June 14<sup>th</sup> Mr. Bolton came in and that was basically just because Mr. Hartman needed to get information for his due diligence and assessments of the water and sewer system ... as it applies to the Airport property. And Mr. Hartman did you also start there with the description of the different locations on the Airport facilities that are there?

Mr. Hartman said I think Mr. Menger provided an overview and I think we'll start the same way. I'm ... follow the same format.

Mr. Menger said I know that we had some layouts of the, I think Mr. Bolton has got it there, just water and sewer, the well system, which we can't show too well on the aerial. He asked if we could put it on the overhead maybe we could ... Mr. Malfait had brought the foldout, but you got ...

Mr. Rob Bolton, Water and Sewer Director, said yes, we had a foldout, but we have a smaller map now and like you all discussed earlier, this wasn't something that was not handed out, but we can hand it out now for the record.

Mr. Bolton placed on the doc cam a map of the water and sewer system at the Airport.

Mr. Menger said ... overhead actually because ... at the meeting we had a conference table. We put a big layout of the Water and Sewer system and how it overlays with the Airport. He said that kind of gives a good idea, you can still see, you have to interrelate the overhead to the aerial, but generally you can see ... (pointing to the aerial) the yellow dots are wells that are located at the Airport and, you know, on the East side of the Airport over by US1 and the railroad is the Water Treatment Facility, which a portion is under a Resolution lease from Airport to the Water and Sewer Department. And then the wells, they're all throughout the Airport and shown on the overhead are also tied into the Resolution that we just recently updated, as a matter of fact in front of this Council and Mr. Malfait and Mr. Bolton and his staff put a lot of work into and brought it up to date because occasionally wells go off line or come on line and so we brought that up to date with a Resolution that puts all those wells under a rental to the Airport. I'm sorry, from the Airport to the Water and Sewer Department. I don't believe there are any facilities out at Airport West, right Mr. Bolton? Do you or is there ...

Mr. Bolton answered just wells and we pay a portion of the rent, but it's not our Resolution lease, but we pay a portion through ...

Mr. Menger said other departments. So, the Airport it's just these facilities and the well system. So we went over that and then we ...

Mr. Bolton said I think you went into more in depth, there was a question about the lease area of the existing RO Plant ... the City owned property to the South of Beacon.

Mr. Menger said we talked about the recent update to the lease ...

Mr. Bolton said no, there was a question that came up about, the comment about everything South of Beacon is owned by the Water and Sewer Enterprise Fund and the property to the North side and you got up and gave kind of an outline of what area was owned by the City Enterprise Fund and what was owned by the Airport.

Mr. Menger pointed to the aerial stating we have some better diagrams actually than this, but I don't even know if we had that at the meeting. But, there is a portion of what Mr. Bolton is talking about, a portion of the Southern section here that is not, that has no Airport deed restrictions it. That was released by the Federal Aviation Administration years ago and so therefore does not pay rent to the Airport and in essence is owned by the City without any deed restrictions to the Airport. I think that's what Mr. Bolton was referring to. So when we did the recent rate Resolution or Resolution for this property, there is a section of that property that is outside of that lease and the remainder of it is under lease to the Airport.

Mrs. Carroll said at this point of the meeting I believe I asked a question based on the information that had been provided to us the week prior on the Water, Sewer and Mr. Bolton's analysis that at some point the Water Treatment Plant might be able to be moved off the river and I asked where on this that would be located and I believe Mr. Bolton pointed out on the big map where that was.

Mr. Bolton said that is correct. He pointed to the aerial and stated what I pointed out was this area here would be utilized for the relocation of the Wastewater Treatment Plant to the Water Treatment site.

Mrs. Carroll said and I asked, because I had been asked, presented this question from a member of the public who was involved in the Airport and their question to me to ask to you was whether any height restrictions, the FAA would impose height restrictions as planes take off they need so many feet above them so they don't hit anything, whether that Water Treatment Plant would impact any of the runways for departure or coming in.

Mr. Bolton said and I think I mentioned at that time the BRL Line and you asked me the question what is a BRL Line, which is the Building Restriction Line that runs through the property along that fence line here and also runs to this airstrip along here and that we would be building a facility that would be below that building restriction line.

Mrs. Carroll said and then I think I asked if that runway to the top, I think that's runway, up there was being used.

Mr. Menger said yes.

Mrs. Carroll said and I was told yes and that that would still fall under and at that point that was the only question I had and I left the meeting.

Mr. Menger said I know that we had a lot of discussion similar to what we had had with the FPL folks is that, you know, going over the same documents and the same FAA restrictions that apply as well to the City Water and Sewer Department as they would with Florida Power and Light or anyone else. And we, again the Airport was, in this situation was a little bit different. We're looking at a possible regionalization of the Water and Sewer with the County, which is another government agency, not with a private entity. And so there would be similar concerns with us from the Airport prospective just to make sure that it was done in a fair manner and there would be no facilities left that were abandoned or unused and not removed and would be no cost to the Airport. Those kind of things were discussed as well. I think that was probably the clarification, item b) there.

Mr. Hartman said well, I think also ... with the big map that was put down, when you see the yellow capture zones access and restrictions, I brought up that access and restrictions on the capture zones would apply to any future owner, as well as the, there's a cleanup program that the wells and well ... stripping towers affectively accomplish. And we were talking about that the present those documents that only cover if I can use the word "postage stamp" type of leases verses a recapture zone lease and that ...

Mr. Coment asked can you explain, can you explain the difference Mr. Hartman?

Mr. Hartman on that map the yellow is a capture zone where access would be ... as well as ... that no pollution would be, you know, would be allowed. It's an environmental protection setback.

Mr. Coment asked what's the like the diameter or ...

Mr. Bolton said I think that one's about 500 feet. The smaller circle in the center is the current lease area, which is a ... hazard of 100 feet, but the protection zone according to DEP is 500. That's in case of any contamination of a well.

Mr. Hartman said to prevent any future contamination so therefore, effectively the rights and privileges of the Airport restricted within those zones. In other words where all those dots are shown the Airport doesn't have free rein if you will to construct, operate, or do other activities that could potentially have, that would have any pollutants or any materials that would migrate down to the ... and be captured by the well because those are the areas of water resources that the wells capture. In addition, it's important because the zone is necessary to be established

for the cleanup program and so that those zones are maintained do to the environmental grievance in place and the ongoing cleanup of the ground that is on the Airport site. So these wells have several functions ...

Mr. Coment said it probably be helpful if Mr. Bolton could elaborate on what this cleanup evolved from and the process that's been going on.

Mr. Bolton said yes I can actually do it from the big map up here I guess. There's actually three cleanups that are occurring at the Airport. One is all the way to the North, which is the original landfill that was a City/County landfill and then there's this area in here that was considered the stump dump at one time where there were chemicals that were dumped and then also there's a site down here for Piper where Piper had a leaking tank. And years ago the County took care of the City/County landfill because they could never determined where anything came from. It was operated as a landfill. It wasn't necessary only City people that came to it. It was later taken over by the County so they felt that the County taxes would take care of that one. Since this existed on City property the City took over the cleanup of this well field I mean this area and then Piper took care of the Piper situation. And as part of this cleanup there's certain costs associated with the cleanup that we receive funds back from the Airport.

Mayor Kramer asked just out of curiosity, who's paying for the cleanup on all of this?

Mr. Bolton answered County taxpayers, all of the taxpayers, City, County, everybody is paying for this one. This cleanup is not fully funded, but partially funded by the Airport and Piper pays for that one.

Mr. Malfait said if I might step in for a second, I'd kind of like to put the document on the table because people keep talking about various things, we might as well have the documents out here at this point. At the meeting we looked at various maps like we've already talked about and one of them was the map showing the different elements of the parcel. One was the part that we just talked about a little bit ago that was already released by the City, or by the FAA for the City's use in the Water Treatment Plant and the property to the North of Beacon Road, which was part of the lease or Resolution from the Airport to the Water and Sewer Fund that was expanded recently.

Mr. Coment asked this first one is the Water Plants themselves? (referring to the map being placed on the doc cam)

Mr. Malfait answered that's correct. The lower portion South of the road is the original site for the Water Treatment Plant that was established years ago and that parcel was released from the FAA restrictions at that time. The property on and North of Beacon Road, that horizontal area that you can see, is where the Plant was eventually expanded and recently the site was expanded further to handle the Deep Injection Well and another storage tank and three buildings. Those elements do show up on that, that's part of the development drawing that we all worked with. We distributed that or it's been distributed before and we also distributed this

at the meeting, just an element that we could discuss the situation at. Now the next map, if you want to ...

Mr. Coment asked the numbered wells?

Mr. Malfait answered yes, the numbered wells. This is a map of all of the wells at the Airport all over the property including within the newly leased areas. We used this as an attachment during our discussion recently of the new Resolution, which added some of the wells that were physically already in the ground and part of the system and also took off some of the wells that over time had been abandoned because they were no longer useful. This was just another exhibit that we talked about and distributed at the time. The last map that we talked about shows the configuration of all of the various well water lines that brought water from the various well water wells to different Plants. Some were like eight inches, ten, twelve, fourteen inches or larger that go all over the Airport, as you can see. Now one of the other maps that we talked about at the meeting, this is actually the map I have in my hand, but it's represented by the map that Mr. Bolton had given out just earlier. I didn't have a way of copying this at the time and this is the map that's much more easily handled.

Mr. Menger said with the yellow.

Mayor Kramer asked can you put it up on the doc cam and kind of point at it at the screen or something like that?

Mr. Malfait said yes, this is the one that was up just earlier.

Mayor Kramer said I thought you were talking about the other ...

Mr. Menger said ... a smaller version.

Mr. Malfait said this is just a larger version of this.

Mayor Kramer said okay.

Mr. Menger asked do you want that up again Mayor, the yellow diagram?

Mr. Malfait said the other things that we talked about was the letter that I handed out earlier when we were talking about the electric utilities. The letter that FAA sent to us back in 1989 when we talked about the Water Plant. That same letter, the concept applies today as well as it did then. Requiring that any property that is used other than for Airport purposes are to be leased out at fair market value to the Airport fund. And in furtherance of that we have recently updated those three Resolutions and I don't know if you want copies of these or not, but I have one for the Plant area, all of the water wells and the pipelines that we had just talked about, and we also enacted a Resolution recently having to do with the large old storage tank, water storage tank ... Somehow I got more copies of the other two made, but ... Anyway, this last,

sorry about that. This last Resolution had to do with that large storage tank on Aviation Boulevard near 27<sup>th</sup> Avenue on the South side of the road. It's been there since around 1943. The Water Department has used that as part of the system for many many years. They now have no more use for it. They have essentially abandoned it and that is one of those things that is being left behind by the water system that someone is going to have to demolish and clean up in order to allow the Airport to again, lease that property. So that's all of the documents that we dealt with that day with regards to the water system I believe.

\*\*Please note that all documents previously mentioned and shown on the doc cam were handed out to the members, to the City Council and are attached to the original minutes.

Mr. Coment said yes, I think we did talk about, Mr. Hartman did, you had questions about how possession of different assets would be taken by the, it would be similar to, with FPL with the commercial leases with the Airport.

Mr. Hartman said that's correct. I ...

Mr. Coment said not knowing, because the County wasn't part of the meeting so we don't know if their position is to buy, which, Mr. Bolton maybe ...

Mr. Bolton said yes, we had some comments, I know there was some questions about that and I believe I made the comment at the presentation on the 29<sup>th</sup> they weren't going to buy the Lime Softening Plant or the ... associated with ... a meeting on the 29<sup>th</sup> they had ... I believe we made the comment at this one that they weren't interested in that.

Mr. Hartman said and that ... was, you know, in view of valuing the complete system on valuation, the assets to be acquired by Indian River County has not been delineated for us at this juncture. We haven't got complete delineation from FPL in contrast on the electric side so we said at the meeting that we would just go ahead and value the entire system because there would either be an acquisition of a piece or, in having ... or acquiring it all. In relative to the value, as in market value, this would be fair market value and I talked about in this meeting that there was different types of appraisal valuations. You know, you can have fair market value and you can have, you know ... liquidation value. Other things I basically said that, you know, this is unlike the FPUA Interlocal Agreement between the Joint Construction Agreement on the transmission facilities with segments one through six, which are at original cost valuation and gap accounted for. So, this would be distinguished as fair market value and a large percentage of the assets were fair market value requirements, which is a type of valuation that is required. I think what you were saying ... was that the leases and easements would, we were thinking that it could be done as an overall blanket. A couple of documents, I think Vice Mayor, you were mentioning that it could be done simply like that, with your comments and you were looking at ways to accomplish and facilitate the transaction from a real estate standpoint, documentation and to cover access and appropriate utilization of the assets.

Mr. Coment said obviously there would have to be certain easements and then also there is particular areas that would have to be basically in the possession of the County, as far as their operation of the system. Again, they're going from, what Mr. Hartman is, not knowing exactly what the County had proposed as far as individual assets, just Mr. Hartman's job was to look at the entire system and evaluate everything including in taking into consideration the values of the different components that make up the system.

Mr. Hartman said that's correct Mr. Coment and also we said there was some items for us to discuss with the County at another meeting because they were not there, which involved, there's a absolute requirement of, you know, the cleanup program. There was, what assets are actually getting acquired. There were issues that could not be resolved in this meeting because it was fairly complex. You can see with all these maps ... It was fairly complex. Exactly what the definition of the problem, I guess it would be, that we needed another meeting with the County to get to. And those were the three major outstanding issues that we came up with at that time. And then I don't think that f) is ... We started talking about, Mr. Bolton, the future responsibility for the environmental cleanup and you were handling that I believe.

Mr. Bolton said yes, we, I think that's where the comment came up about we were unclear as to what exactly the County was willing to purchase and I made the statement about what they said at that meeting that the Councils' had. And then I think it led into some comments and discussion that we needed to start the process in writing and get the County to let us know exactly what they were going to purchase so that the Airport would know moving forward what ...

Mr. Coment said and Mr. Menger and Mr. Malfait, rightly so, are concerned with whose getting stuck with liability for these cleanup wells and cleanup ... You know, so I don't know if you want to elaborate on that.

Mr. Menger said that's really our whole concern, similar with any large entity that's interested in using what we call Airport property. And that's simply City property with FAA deed restrictions on it. And so our job, as staff, is to make sure that our superiors are fully aware of those restrictions that are on the property so that going forward we don't give away property for one-dollar a year, we don't abandon properties and just assume that the Airport would take care of it. We have to make sure that all these items are taken into consideration in any kind of transfer of ownership. And we've had a long, very long relationship within departments here in the City maintaining a good quality water for the City, but at the same time having an Airport and running an Airport and doing those together has been sort of a synergistic effort and if we go forward and take out, you know, take that out and move in with a different entity, we just want to make sure that Councils aware that there are a lot of details that are going to have to be worked out and that's what we talked about and we did talk about getting together with the County, getting with Eric Olson and I think we set up a meeting, we tried to set up a meeting.

Mr. Hartman said we did have a meeting. You could not be there because of personal matters.

Mr. Menger said right, right.

Mr. Coment said in particular, as far as maintaining the stripping tower and the cleanup wells and, I know there was concern of whose going to end up with that responsibility and expense of operation. You have to do something with the water ...

Mr. Menger said right and the bottom line ...

Mr. Coment said and I know you elaborated more on that maybe, what you have, you have to do something with that water.

Mr. Bolton said right, there's going to be a disposal of that water at some point.

Mr. Coment said because the cleanup has to continue whether you are drawing from those wells or not.

Mr. Bolton said correct.

Mr. Coment said or need to draw out water.

Mr. Bolton said right, and then, not to step into the next meeting, I mean that was the discussion that we had at this meeting.

Mr. Menger said I think ultimately any negotiated regionalization agreement, from the Airport's perspective, is going to need a, it's going to be fully transparent and make sure that the Federal Aviation Administration has a review of it. Once that's done then we would be able to recommend something.

Mr. Coment asked about other environmental issues or audits. Did we discuss those Mr. Hartman?

Mr. Hartman said it was similar to the previous one that the Airport would, once it got further along because too premature right now, we'd look into environmental audits they would do for the properties being leased or within their contracts.

Mr. Malfait said certainly of the Plant sites, the larger areas. Because if there's any contamination there now we would want to know who was responsible for that contamination and if the subsequent lessee were the ones that would be responsible for any contamination, we would need to know that in the future so that was the purpose of Phase I or Phase II environmental audits at the beginning and at the end of a lease.

Mr. Coment said and likewise, I mean the County might want to do their own anyway, so that's, I guess, suppose it's still premature as Mr. Hartman said to, at this point for the Airport to take that on.

Mr. Malfait said certainly.

Mr. Coment said thank you very much. We've gone over different documents that were exchanged, Mr. Hartman was able to obtain. Anything of other matters that you can think of rising out of Water and Sewer facilities on the Airport?

Mr. Bolton said no, I think, from my notes, I think you hit it all.

Mr. Coment asked so does Council have any questions or your questions not answered or comments?

Mrs. Turner said ... thank you.

Mr. Fletcher said I'm good.

Mr. Coment said I'd just see if the public has any other comments about Water and Sewer facility issues at the Airport.

Mayor Kramer said okay, Mr. Daige?

## **6) Public Hearing**

Mr. Daige said thank you Mr. Mayor, for the record again, Ken Daige, Vero Beach City, former Councilmember. I have a question for Mrs. Turner and I understand from when I had asked a question before to a Councilmember, I do have the okay to ask a question, is that correct?

Mayor Kramer answered yes, I guess it was recommended by Pat Gleason.

Mr. Daige said right, I just want to make sure that it's okay with you, Mr. Mayor.

Mayor Kramer said that's fine.

Mr. Daige said okay, thank you. Mrs. Carroll, what questions did you ask of the Water and Sewer? I'm sorry, Mrs. Turner. Forgive me.

Mrs. Turner said I believe the only question I asked was concerning the County's interest in our RO of the Lime Softening Facility.

Mr. Daige said all right, thank you. It's my understanding, Mr. Mayor, from sitting here most of this meeting, actually all of the meeting, you were present the entire time?

Mayor Kramer said that is correct.

Mr. Daige said thank you. This is out of the Sunshine Book, 2011 Edition, Volume 33, page 22 number D, "What Types of Discussions are Covered by the Sunshine Law? And it has #1, Informal discussions, workshops" - He read, "The Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission." He said I was curious about that when I spoke with Patricia Gleason on that matter and I said well we don't really know what took place there. We don't know if Councilmembers talked to one another. And she explained to me, she said well no you don't have any proof of that, no one does because the meeting wasn't recorded. He said and that's the perception. That's why It's recommended when you take a position as an elected official, don't even give that perception out because people question it and you guys have to remember this is of great importance to us out in the community, the electric possible sale to FPL, the takeover of the County of our water and sewer issues. We want everything out on the table. We really do. We have to see everything. Council has promised to do due diligence and you would actually keep everything on the table. The citizens have the right to expect transparency from all their elected officials. I do remember when all of you ran your campaigns you said you would be very transparent because a lot of your views, you had cited previous Councils were not very transparent and you would do everything you possibly could to be more transparent and having a meeting out at the Airport does put doubt in people's mind. So citizens have the right to expect their elected officials to educate them. You need to let them know what's going to happen. How's this going to play out. You've heard about on the electric situation, everyone knows you're working on a Referendum. You know, possibly on the electric and possibly on the water and sewer and people are going to ask you, how long are the leases going to be. They need a time frame. They need all that on the table. So that's the reason really for transparency. Thanks for having the meeting. Thanks for having the "Cure" meeting. A lot has been put on the table. I appreciate it.

Mayor Kramer said thank you. If you want to speak just, if you could, just kind of line up behind the podium so I can get a ...

Mr. Coment said and again, this is an opportunity to ask questions about the meeting and the subject matter that we are discussing so that there, the public has a clear understanding of what transpired and the subjects that were discussed. We will be discussing later on, Sunshine Law issues, anybody that's going to stick around.

Mrs. Daige said thank you Mr. Coment, Debra Daige again. I'm going to admit confusion because I watched the June 21<sup>st</sup> City Council meeting and watched the interaction of when Mr. Winchester came up and asked you questions and what I actually did was I took the time to re-watch the meeting to get a better understanding, to see if I missed something. And, what I'm going to do, because I'm not a, you know, a transcriber. I forgot the legal term, but I basically tried to write down as closely as I could what I heard so that there won't be any misconception or confusion. I'll skip to, because most of what I was wondering about was handled at this "Cure" meeting, which is what you're suppose to look for when there is a "Cure" meeting to see if issues and items have been taken care of. So the ones that were taken care of I don't need to

bring up, but there was something that wasn't brought up and that I am wondering about and ... It basically started after Mr. Coment said that the Council is not in actual negotiations yet and if you want to make note it was around the 44-minute, almost 45-minute mark when this happened on the live video stream. And basically Mr. Heady started talking and I was surprised that he didn't stay at the meeting because he did speak at the June 21<sup>st</sup> meeting about this meeting and I don't know why he didn't stay. So, I'm going to submit this, I wrote notes on it so I'll submit a clean copy to Mrs. Vock later.

Mr. Heady reentered the meeting at this time (11:20 a.m.).

Mrs. Daige continued stating and I see he's here. At any rate, Mr. Heady said that we had a Councilmember at the meeting. Mrs. Carroll the next day delivered to the City Clerk notes of what happened at the meeting and in addition after Mrs. Carroll left, I went in and spoke to the members that were there and the staff was there. She said and that is the confusion I have because Mrs. Turner if I understand correctly, you were at the meeting, Mayor Kramer, you were, so was Mrs. Carroll, you asked questions of water and sewer and then you were leaving, if I understand this correctly. So that means Mrs. Turner, Mayor Kramer still there and that means at that time, if I'm understanding this correctly from Mr. Heady, he walks in because he said as he walked, as she walked out ...

Mrs. Carroll said that was two different meetings.

Mrs. Daige said well he didn't clarify and that's my point so I don't know when, and apparently you've had more than one meeting and that's the point too, but there have been other meetings about, you know ...

Mrs. Turner said not that Council was involved with it all.

Mrs. Daige said none of you have attended ...

Mrs. Turner answered no.

Mrs. Daige said okay so nobody has attended ...

Mrs. Carroll said I attended one large meeting where we had 15 people or so. Sorry about that (microphone was off). I attended the initial meeting with the team of FPL and City staff. I can't even remember all the people there and I made notes of that meeting and I ...

Mrs. Daige said ... but we haven't gotten any so I don't know.

Mrs. Carroll said it was public document. You can get that from Mrs. Vock. And that meeting was, I believe in May? For the public I'm asking the members of FPL in the room because I don't remember the date off the top of my head.

Mrs. Daige said okay.

Mrs. Carroll said that was the meeting that Mr. Heady was referencing in his comment ...

Mrs. Daige said alright, well that's why, because ... we want, and believe me I watched it twice because the way he was interacting with Mr. Winchester made it sound like he was at that meeting. So, that's my point and ...

Mrs. Carroll said if Mr. Heady came in after I left that meeting in May, I'm not aware of that. I never had any communication with him ...

Mrs. Daige said okay.

Mrs. Carroll continued stating ... he showed up, if he was mistaken ... I know nothing about that.

Mrs. Daige said so that's my point because this is a number one live feed, number two it's on a DVD. The public really needs to not be confused and the fact remains that Mr. Heady made the statement that as Mrs. Carroll was walking out of the meeting you walked in and you asked GAI and members who were there and members of the staff who were there questions. So, there was another meeting that you attended and I'd like to know what meeting that was and what questions you asked.

Mr. Heady said during the beginning section of this meeting I did not participate because I was not at the meeting and it was identified early on as being a "Cure" and a reenactment of the, what happened at the Airport and you couldn't reenact what happened with me at this meeting because I wasn't at the first meeting so I stepped out and did watch the proceedings. I stepped back in now because we are at the end of that and there's things additionally on this meeting on the agenda that I can participate in. I can't help the fact that you were confused. Clearly the Councilmembers just told you that they weren't confused and I wasn't at the meeting that was the subject of A) on this agenda. I have been at a lot of staff meetings over the course of time and I have no obligation to make minutes of those attendances or identify, clarify, any questions that I may ask of staff on a regular basis. If I were to do what you suggest and that is make a list of all my questions over time with every single person I met with then I probably would need three secretaries and I don't think the taxpayers would appreciate that kind of addition to staff.

Mrs. Daige said excuse me Mr. Heady ...

Mr. Heady said I was speaking mamm.

Mrs. Daige said actually ...

Mr. Heady continued stating and the meeting that was possibly, that you're confused about was a staff meeting and I did walk in and Mrs. Carroll was not there, but Mrs. Carroll in being

very diligent did prepare minutes and notes that reflect what happened while she was in the meeting. I applaud her for doing that, but I, quite frankly have no intentions of making minutes or notes of every meeting and every conversation that I have with regard to City business.

Mrs. Daige said you did not answer my question Mr. Heady. I did not ask you to speak for Mrs. Carroll. I'm surprised she let you speak for her. I'm sure she can defend herself. I asked you if you had attended any meetings because you made the statement at that meeting that you walked in as Mrs. Carroll walked out and you said you asked GAI, members of people that were there, I don't know what the members meant, and members of staff questions. I asked you what those questions were. And yes sir, when a citizen asks you what was said at a meeting that you attended, they do have the right to ask you that.

Mr. Heady said I'm not going to get into an argument with you ma'am, but you have every right to ask anything you want.

Mrs. Daige said thank you Mayor Kramer.

Mr. Peter Gorry, Finance Commission member, identified himself to Council. He said just something very quickly, since due diligence is part of the process in the meeting that you had. In two aspects the due diligence on water/sewer has more complexity than does electric. One, because of the situation at the Airport and two, the personnel issues because the amount of personnel that is not going to be obtained. So it is more complex and so the due diligence required is going to take much more intensity and we have a Consultant that is doing that and I just urge with the staff and the consultancy and the Council consider the complexities. I'm going to elaborate more tonight on the issues that I'm bringing up (referring to tonight's City Council meeting). Thank you.

Mayor Kramer said thank you. Is there any more public comment? If not, I'd like to thank the gentlemen at the table for participating at our meeting today. And Mr. Coment, I guess you're still up.

Mr. Fletcher said and we have 30-minutes Mr. Coment.

Mr. Coment said I'll talk fast.

Mrs. Carroll said Mr. Coment, I wonder why we are not at this point discussing the procedures for compliance in that this is fresh in our mind. Some of the questions I have in regarding to compliance with the Sunshine Law will directly, are a direct result of the situation that has occurred requiring this meeting. I would ask that we move that portion up now and then break for lunch and come back with items B) and C).

Mrs. Turner said I concur. If that's alright with ...

Mr. Coment said that was totally up to the Council.

Mayor Kramer said I don't see a problem with it.

**7) Council Action Requested - None**

None.

**B) ORDINANCES FOR REFERENDUM QUESTIONS FOR POTENTIAL SALE/LEASE OF MUNICIPAL POWER PLANT AND PROPERTY AND FOR POTENTIAL SALE/LEASE OF MUNICIPAL WASTEWATER TREATMENT PLANT AND PROPERTY**

**1) Discussion of Ordinances for Referendum questions**

Mayor Kramer said I'm going to start with Public Comment if anyone wants to say anything before we get started on these last two items. If not, Mr. Coment, I'll let you go ahead and get started.

Mr. Coment said actually the last two items are just being brought back in abundance of caution under the suggestion of the Attorney General's office because these were the only two actions that we found where the Council actually took official action, even though they weren't directly related to the issues that we discussed about the Airport properties and utilities and what was out there. Again, just so the appearance is clear, we were asked to bring them back and discuss them again and ask the Council for direction again on these items. The first one, and I did give you a memo again, pretty much tracks the original one where the potential transaction, one with Florida Power and Light and we have one potentially with the County. They both involve property over there by the 17<sup>th</sup> Street Bridge that if there is going to be a sale or lease the property to another entity our Charter does call for a vote of the Electors to approve any such transaction. Basically we are asking for your direction. We can still make it for the November Election if that's our goal to have Referendum questions on that ballot. What we would do is bring back for first reading the proposed ballot language on August 19<sup>th</sup>, I believe. 16<sup>th</sup>? Anyway, you're next scheduled meeting. So that would be back for first reading and we could still have public hearing, I believe September 6<sup>th</sup> and thereby make the deadline for the November ballot if you're so inclined.

Mrs. Carroll asked Mr. Coment, have you prepared any type of draft on either of these issues yet?

Mr. Coment answered no because I've just had so much other time involved with other things that we just kind of held off.

Mrs. Turner said I'd like to see us go forward in drafting the Referendum for the electrical. On the water and sewer I'd like to have some discussion. It's my understanding that if the County did purchase our system that they would not purchase the Water Treatment Plant. That they

would merely have the City lease it, operate it under a lease type basis and, until they were able to build or connect to their system so that there would not be any transfer of property per say, under the County's scheme.

Mr. Coment said well, the, I've inquired as I mentioned in my memo, that how does the County propose to take possession and I had even suggested to them would you consider the City still operating it and basically pay us for the service or however it was worked out and never really got a response to that other than, well it's just a consolidation. Well, there's still some way that they have to take possession if that's their intent and not knowing, I mean, just saying it's going to be consolidation just doesn't answer the question. If their taking over there's got to be some vehicle to do that by.

Mrs. Turner said certainly. There has to be, some agreement. But, in the absence of any clarification on that issue to date I would say, I'm certainly not saying this to remove it from the public forum or a public Referendum on the issue. But, if we don't have enough information and most likely will not by then, by September, so I would concentrate our efforts, on FPL. I do have one other question, maybe coming up on the property for the Go-Line bus, would that require a Referendum.

Mr. Falls said the Go-Line bus, I think all you would have to do, it's not one of those listed by the Charter. We would have to do an action by Council. We'd bring you a lease or the Council would have to declare it surplus property if you chose to transfer, it ... simple. But, it would be a lease that the Council would have to approve.

Mrs. Turner said thank you very much Mr. Falls.

Mr. Coment said our goal in bringing both those issues forward is because obviously if you did want them on the November ballot we need to do it now.

Mrs. Turner said certainly.

Mrs. Carroll said I concur. I would like to see a Referendum on the electrical issue. There were probably 750 to 800 people last year, last summer, that signed a Referendum to place this on the ballot. That was not placed on the ballot successfully and those same, I believe 800 individuals are still out there. (Mrs. Carroll was signaled that her microphone was not on and therefore she restated her previous comments.) She said I concur with Councilwoman Turner that we need to place an item on the ballot in November. There were probably 800 members of our community who signed petitions last summer to place this on the ballot and I feel it's very important that we get the vote of the citizens to make sure that this is something they would like to go forward with. However, that being said, we cannot and will not have the numbers yet. We will not have an offer by August/September time frame. We will not have any numbers in terms of what the sale is. So, the wording of the information on the ballot will need to be somewhat vague and I would like to see something come forward from Mr. Coment's office that can then go through the various Councilpersons to get some feedback on

that. In terms of the water/sewer, I feel we need to hold off on that. We do have a deadline coming up to find out if South County and if the residents of the Shores are going to continue with the water and sewer operations provided by the City. That's always been her imperative and even looking at something going forward with the County for the purchase of the water/sewer completely predicated on what will happen to the water/sewer utility, as it stands now if the Shores leave and if the South County leaves because if they both leave this system cannot survive going forward without the, as Mr. Bolton has presented, the possible \$8 million dollar transfer from the Shores over to our system. Without that and without the Shores or the County being willing to pay that, the financial situation of our water utility is simply completely broke and that is not an opportunity or situation or situation that I want to put the City in. That being said, since we don't know at this point and we're not going to know by August whether or not that is going to take place so we need to hold off on any type of ballot Referendum on that issue.

Mayor Kramer said I would have to disagree. I have heard other things that if South County and the Shores did leave that we would still be financially viable. Certainly maybe that's something that we need to get some more numbers at and look at it a little bit more closely. As far as a Referendum, I think we're getting pretty hard pressed to be able to make a November time frame. Certainly we've got a great opportunity into the February time frame. I believe there is another opportunity for a Referendum in February?

Mr. Coment said well, Indian River Shores has an Election then, but ...

Mrs. Vock said there is a Presidential Primary.

Mr. Coment said oh, okay and, I mean, the Council could call a Special Election as any other time, so ...

Mrs. Vock said that they could.

Mrs. Carroll said and that would cost us significantly though, to do that.

Mr. Coment said it's a cost in addition to what we normally would spend in November.

Mrs. Carroll said however to place something on the February ballot would be much less expensive since that Election is already taking place and the Polls would already be ...

Mrs. Vock said you're looking at about 50 cents per voter as opposed to \$2.00 per voter.

Mrs. Turner said yes. Significant. Thank you.

Mr. Heady said Mr. Mayor with regard to the electric, Councilmember Carroll may have a crystal ball. I can't tell you whether or not FPL is going to deliver to us numbers prior to, prior to whatever date. They might walk in here tonight with them. I don't have a crystal ball and

FPL and I don't have secret negotiations or conversations. So, anyway, but, I think that it's important and it's on tonight's agenda under New Business. I think it's important that we have a Referendum on the sale of the electric utility. It doesn't need to have numbers in it. What we need as a Council is we need a direction from the voters that, should we, the Council, find it in the best interest of the City and the ratepayers to sell, lease, or otherwise divest ourselves of the electric utility that we can do that so long as we maintain title to the property, to the land over there. I don't think that's all that difficult and that empowers the City Council if FPL or some other entity were to march in here in September and say, here's a deal, and we voted in favor of the deal, then the November Election would eliminate a potential law suit that we might face for agreeing to such a deal. I think that the Referendum is important. With respect to water/sewer I think the Mayor is correct, we don't have all the numbers in front of us and we need those numbers to make a determination. In fact, if anything I guess we have conflicting numbers in front of us. But, again if we placed an item in front of the voters in November that empowers the City Council in the best interest of the ratepayers and the citizens and the taxpayers of the City, that it's in the best interest to combine with the County or in any other way divest ourselves of the water/sewer that we're empowered to do that so long as we retain ownership of that riverfront property and that's in the Charter. So ... not at all that difficult. I don't think the questions are all that difficult. I don't think that it's all that difficult to frame the questions in such a way that it gives us the authority and it eliminates some lawsuit after the fact.

Mr. Herb Whittall, 19 Park Avenue, in the City said having just walked through my subdivision giving out a 50-year book, about one-third of the people aren't here and in November, I'm all for a Referendum, but I think February would be better because you're going to have most of the citizens here where as in November you still probably have one-third of them away so if you really want the feeling of all the citizens you ought to have it November and not in February, I mean in February, not in November.

Mrs. Turner said Mr. Whittall just one comment. You are aware that 50% of our voters vote absentee.

Mr. Whittall said yes. They may vote absentee, but they don't know what's going on because they aren't here, they don't get the information and even if they vote absentee they won't really know what they're voting for. That's the problem. If they do it in November they'll have much more, they'd be much more informed.

Mr. Heady said February. It's scary to think that the voters are voting and they don't have a clue what they're voting for.

Mr. Whittall said well there's a lot of that too. I think February would be better than November for Referendum, that's all.

Mr. Heady said I give the voters more credit than that.

Mr. Daige said on your Referendum questions for the electric utility, I would hope the language that comes from the Council or through the Attorney's office to you all and for your final approval that you have pertinent facts in there about what's going to take place and people will be interested in the time frame and to my knowledge, anything that goes on the ballot has to be pretty clear to the voters. It can't be kind of fuzzy or vague. It's got to be, state the purpose of why you're voting for it, it's got to be clear. It's got to be a clear understanding to the voters. So that would be my hope going forward with this Referendum, if that's your pleasure, just to make it clear and we do need to know the time frames of, is the Plant going to be dismantled in five years, maybe not that, but how long is it actually going to be leased to an entity, whether it's FPL or another entity if they come along in September and I'm in agreement with you all on water and sewer not enough information has come forward yet with the facts, figures, you know, on what's going to take place out there. And your focus, I think it's good that your focus is on this FPL issue because a lot of people want you to finish the due diligence so we know what our system is worth moving forward. I think people need to know that also before this goes on the ballot. As it's winding down, people want to know the cost, you know, and what, again, I said this a number of times standing here before you all, what's the ... repercussions on our City if the Enterprise Fund is wiped out, we have, this City has needs and as you are going through the Budget Hearings you see that there's costs to the services. How are they going to be paid for, are we going continue to raise our taxes? So, please bear that in mind. One other point for Council, I would recommend to you all if you are sitting in on meetings where there's a lot of data that's being put out by either the FPL reps or the water and sewer folks, record them. Take the City Clerk or someone that she recommends from her office to sit there, do the recordings and that do the minutes. That way you can take the information back to your fellow Councilmembers through the Clerk and get that information to them. Because the Clerk's office, they're skilled in doing that. But, also would free you up and keep your mind on the task at hand and I think that would be beneficial to all. Then it's not brought into question, well did you hear everything, what didn't you hear. If you go back into history when I was on Council, the majority of my meetings were taped and minutes were taken and I always went to the Clerk's office and asked for someone to be there. Most of the time the top City Clerk, which is Mrs. Vock, she sat in on the meetings and she did her job because they're trained to do that. So if that helps, you know, take that suggestion if you will.

Mrs. Carroll said Mr. Daige, may I touch on a couple of the issues that you brought up? You mentioned that the Referendum should have dollar amounts, the length of the time the property would be owned, what happens to the property after so many years ... We do have a restraint. How many words long can the Referendum be Mrs. Vock?

Mr. Coment answered 75 words.

Mrs. Carroll said you have 75 words.

Mr. Coment said all the ramifications don't have to be in there.

Mrs. Carroll said right.

Mr. Coment said basically you'd have to state, this is what we're asking yes or no and this is the purpose for asking it.

Mrs. Carroll said and it has to be a very clear way ...

Mr. Daige said I understand.

Mrs. Carroll said we understand that but we, it would be impossible to put all that information, even if we knew it, by September 17<sup>th</sup>. Because by September 17<sup>th</sup>, I'm sorry by November 17<sup>th</sup> when our next meeting is when we will have the First Reading of this, I'm very doubtful that FPL would be providing us with all of this information yet. We still need the do due diligence. We still need GIA (GAI) to finish their information for these to guys to get on the same street to come together with their information for us. So, we'd like to do that. That would be the best case, but in order to get it in here by August, I highly doubt we'll be able to put all of that information on there. You also mentioned legal, or mentioned recording of the meetings. In the meetings with FPL, remember that FPL is a private corporation and they have their own rules and they do not need to follow the Sunshine Law for their own rules. So, that discussion could, we can take, carry on the conversation with FPL, but if they feel that they don't want to participate in taped meetings, of course that is their right as a private company.

Mr. Daige said and that is my point to you all, the point people and when you go to the meeting and let's say for the sake of argument, either at the water and sewer or in an FPL meeting, they say excuse me, we don't want it taped, then if someone asks and let's say you folks are willing to do that because you want to give a good record to the rest of your Councilmembers. You can make notes of that and then the public knows at this time for various reasons the folks did not want it taped. Now, in my case when folks wanted to meet with me, you know, on development issues and change in our Ordinances and you know, whatever, I would always tell them we're going to tape it. Some folks refused, they didn't want to have it taped so I said okay, you know, and I just, they didn't want to do the meeting so it didn't take place. Others were very happy to have it recorded because I explained to them that I wanted the rest of the Council to see what you folks have to say and I have the Clerk here to do the minutes and the recording if anybody has any questions on what was said. So, again, you are correct if they don't want it recorded, well, you can't record it.

Mrs. Carroll said and other issues that might come up, there may be discussion taking place with FPL in terms of our extrication from various contracts that we have and by taping it or producing word by word minutes of what's taking place, we're kind of putting all our cards on the table and then the other side may learn what our strategy, for instance, could be. There would be situations like that.

Mr. Daige said and I understand that and back to our Referendum question, I know there's only 75 words that you can put on, and I'm glad you brought that up and there's a lot of points out there that the general public is going to want to know about and as this is rolling out for a

Referendum you can let folks know these are things we still have to discover and let's just talk about the time frame. There may be no way that you can say okay, we don't know how long it's going to be leased, but you can let the general public know in the near future, or maybe the late future, then we'll let you know how many years it's going to be. But, that's not going to be on the ballot.

Mrs. Carroll said right. We can utilize the ...

Mr. Daige said this is information that will get it out there, keep it clear to folks, keep it out on the table, be transparent like everybody keeps asking us to do, then they know.

Mrs. Carroll said ... Mr. Heady has brought forward with some other things in the past is putting things on our website. I'm sure that this would have to be in the newspaper. It will be on the sample ballots and Mr. Whittall brought this up to make sure that everybody understands, you know, what it is out there. We'll, I'm sure, take every opportunity we can to let the general public know ...

Mr. Daige said and a February vote may work for a lot of people in this community. Then there's more information that can be put out. That's a suggestion that Mr. Herb Whittall made. Thanks.

Mr. Heady said Mr. Daige, please don't take offense, but you repeatedly come up and give us some instruction and I appreciate your point of view and tell us this is the way we should conduct ourselves. But, the voters in the community understood the way you do business and the way all of us up here do business and every one of us got more votes, so I understand your point of view, but I also understand the voters' desires.

Mr. Daige said you made some fine points about the voters desires and you're kind of twisting a little bit of the turns there and if you want to get into the Election process, there was a lot of information given out ...

Mayor Kramer said Mr. Daige, let's not get into the Election process.

Mr. Daige said well he started it. He started it. I was willing to walk away and he ... I understand, but he started it.

Mayor Kramer said Mr. Whittall.

Mr. Whittall said having done a lot of work in the utility industry, it may even February or even a year from now, Florida Power and Light won't have the faintest idea of when they can tear down that Power Plant.

Mrs. Carroll said right.

Mr. Whittall continued stating because the real problem is the grid system and trying to get the grid system fixed in Florida is very very difficult because nobody wants any high tension wires anywhere near them so time frames ... It may end up in court, one thing or another, and it may be a long time before they can tear that thing down because they need it right now. We need it. We run it because we don't want brown outs and they'll have to do the same.

Mayor Kramer said well I don't want to lose focus that we're not talking about the Referendum question, we need to redo our vote here real quick, but thank you. Mrs. Daige did you have something that you wanted to say? He said we want to make sure that we we're kind of staying on the agenda here for Referendum.

Mrs. Daige said right, and back to that, the fact still remains that it's essentially important to get all information, as much as possible, to the voter. They're the ones going to be doing the vote. Once an Elected Official is elected, they do not represent those who actually voted. They represent the whole City and that's why the Council is doing due diligence and part of that due diligence process is, I think as you let it play out, the information will be out there to the public as long as you put it out to the public. They'll have it before the vote on the Referendum. With that being said, if you have enough information out there to the public then there's not going to be any question as to what you're asking of the public on the Referendum. So if you do your job and get the information out to the public then there will be no question. There will be no reason to find fault if we feel we're getting information and we feel that we're not being, you know, that nothings being held back. And the only concern I have would be, is with the belief structure of this Council that you're elected to sell to FPL, that I would hope that staff, because staff has been under fire, and I would hope that staff is able to give you the information that weighs in on both sides. You've mentioned the fact that it would come to negotiations. You can't give your hand if FPL isn't going to necessarily give their hand. I understand protecting some of the information. That goes without saying. I do know the State has Statutes you have to weigh that against. So, if you do your job and it's above board and the perception is there that you are doing your job then I don't think the public is going to question. It's when the perception is there that not all of the information is being put out to the public. So with that regard, I think if you structure the Referendum, and we can't assume that everybody knows what's going on because not everyone is paying attention. Not everybody watches the meetings. Hardly anyone votes. That's just the way it is, but it is an issue important to the whole City so you have to make sure that the information gets out to as many people as possible.

Mayor Kramer said thank you. Mr. Coment are we looking for action on these items?

Mr. Coment said if you want to split up electric and water and sewer Referendum issues you certainly can do that.

Mrs. Turner said yes.

Mr. Coment continued stating make a motion on electric and vote and a motion on water and sewer, whatever that motion may be.

Mrs. Carroll said I believe that we asked the City Attorney to draft a Referendum question for potential sale of the Municipal Power Plant property as per the City Charter for the November ballot and to provide that to the Council for their markup.

Mrs. Turner said I second the motion.

Mr. Heady asked did you mean that you said you're asking to draft an Ordinance for the sale of the property. Did you really mean that.

Mrs. Carroll said I'm reading exactly what was on the ...

Mr. Heady said okay, regardless of what was ... do you really want that or do you ...

Mrs. Carroll said I do not want a potential sale of the property.

Mr. Heady said okay. You want to know whether or not the City Council is empowered to sell the utility, not the property.

Mrs. Turner said by Charter you have to have that, right?

Mrs. Carroll said the only thing required by Charter is the voters to vote on if the property on which the Municipal Power Plant sits on, is sold or leased.

Mr. Coment said right and where the sale or potential sale of the electric system came in would be the purpose for asking that question.

Mrs. Carroll said correct.

Mr. Coment said so it will be part of the Ordinance, basically.

Mrs. Carroll said correct.

Mrs. Turner said yes.

Mrs. Carroll said and that's what I'd like to say.

Mr. Coment said okay.

Mayor Kramer asked could you just restate that if you would? My apologies, I just want to make sure it's all done correctly.

Mrs. Carroll said oh my goodness. I propose that the City Attorney craft a Referendum question to provide to the City Council for their markup for the potential lease of the Municipal Power Plant property located on City property on the riverfront as per the City Charter with the goal of if a FPL offer is provided of significant financial benefit to the City that this could take place.

Mr. Heady said that was 78 words, you're three over.

Mrs. Turner said if ... November Election, I second that motion.

Mayor Kramer said under discussion I think I would like to see this wait until February until we've got something a little bit more concrete on this. I've seen paperwork that seems like a lot of this stuff is going to get drawn out a little bit further. I personally would like to see this done in February if we got more numbers.

Mr. Coment said and all you'd doing, Mayor, of course is bringing it back for first reading, August 16<sup>th</sup>. So, it'll be up to Council when you set the hearing on that and ultimately the Election date too.

Mayor Kramer said well there could be issues that pop up that ... affect the wording. There is a lot of unknowns out there.

Mr. Coment said possibility.

Mr. Fletcher said we can use, we can go ahead and format the question. We can use it whenever we want to whether it's December or February. It's good to go ahead and get started on the question.

Mr. Coment said even if it comes back for first reading doesn't mean that you can't modify it at that point and bring it back for another first reading. You just may miss the November ballot is all, unless you have a Special Call meeting or something.

Mrs. Carroll said and also if this is passed it provides us more of an impetus to go forward with negotiations. As I mentioned a number of times this morning, negotiations haven't started. I believe from FPL that they are planning on, based on their past time frame, they were planning on bringing forward some idea of a contract sometime this Fall. That was what they told us earlier this year. If that does take place then we do have the opening for negotiations taking place throughout the Fall and Winter and November, putting this on the February ballot may be delaying the issue.

Mrs. Turner said concur. Call the question for a vote.

Mayor Kramer said all right, Mrs. Vock I'm going to let you call the roll.

The City Clerk called the vote and it passed 4-1 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes and Mayor Kramer no.

Mayor Kramer asked do you want to make a motion on the water? The water and sewer issue?

Mr. Heady said I'll make a motion that we put on the November ballot a question as to empower the City Council to enter into an agreement if the City Council deems it in the best interest of the ratepayers and the taxpayers of the City, that we're empowered to enter into an agreement with whatever entity. I don't want to just list the County for the transfer of that utility and again, that does not include transfer of title to the property.

Mr. Coment said and that would be geared to the Charter question of sale or lease of the Wastewater Plant property.

Mr. Heady said what I'm looking for in both the electric and the water is a clear mandate from the voters whether or not they want us to agree to the sale of, or merger of these utilities and I want the Charter question to be clear, or the Referendum question to be clear that it doesn't include the sale of the real estate. The voters, I think, have pretty well expressed their desire that they don't want those two riverfront properties to leave the ownership of the residents of the City and I have no interest nor desire to include ownership of that property in a sale or a merger of either one of the utilities. But, I would like a clear response from the voters that empowers this Council to sign an agreement in the electric with FPL or some other entity that pops up. I don't see that as happening, but I don't want to exclude the question to include only FPL and the same way with the water. I'm just looking for the voters to say, yea, hey, you know if you can get us good rates, better rates and a bunch of money have at it, just don't sell the property.

Mayor Kramer said that's a pretty big motion.

Mr. Heady said that was more than 75 words too, I'm sorry.

Mr. Fletcher said Mayor, I'm a bit unclear on what the motion actually was because he talked about the electric utility and he talked about the water.

Mayor Kramer said well I don't want to ask him to repeat it.

Mr. Fletcher said well we need clarification.

Mr. Coment said I think the point would be, and I don't want to speak for Mr. Heady, but the question would be similar to what the one is for the Power Plant. It's the lease of the Waste Water Plant land for the purpose of consolidation or whatever you're going to call it. It's a sale to the County of the system.

Mayor Kramer said okay. He did make language for a motion. He asked Mr. Heady if he wanted to withdraw that motion and make something a little more simpler.

Mr. Heady said well I think the second half was an explanation. I think what I really said was just what Mr. Coment just said. I want a Referendum. I want Mr. Coment to come up with language for a ballot Referendum that empowers the City Council to enter into a sale of the water/sewer. It's the same as for the electric. And Mr. Coment understands what I'm getting at and let him, if this passes, let him come back with the language and I certainly would be happy to work with Mr. Coment in the meantime to bring the language back.

Mayor Kramer said the problem is this can lead to some legal wrangling. I need to have a clarification as to what exactly that motion is.

Mr. Coment said you don't need to tell me the exact language you want on the ballot question. That's what I will do to draft it based on ideas that you've told us. We have to answer the ballot question and say in there the purpose for the question.

Mayor Kramer said okay is this for November though?

Mr. Coment said and that's what we'll do if Council wants us to bring it back.

Mayor Kramer said Tammy I'd like you to read the motion, if you can.

Mrs. Vock asked which one? The second one was basically Mr. Heady has asked Mr. Coment to come up with a Referendum for the language to empower the City Council to enter into a sale for the water and sewer. On that motion it did not mention the November ballot, but I'm assuming from the first motion that will be on the November ballot.

Mr. Heady said correct.

Mrs. Turner seconded the motion for discussion.

Mayor Kramer asked for discussion.

Mr. Fletcher said yes, under discussion Mayor, receiving the authority from the public to do the sale do we need to include, as I understand it, the authority to lease that land to the County. That's the part that was missing that I have trouble with.

Mr. Coment said right. That's what the Charter calls for, the provisions specifically talk about sale, lease, other alienation of the property by the City can be done.

Mr. Fletcher said there are two subjects.

Mr. Coment said yes.

Mr. Fletcher said one is the authority to sell. The other is the lease along with that, which coupled with the ... is?

Mr. Coment said the question, you would ask the question do you approve of X because without the ... is "Y."

Mr. Fletcher said the lease would include "Y."

Mr. Coment said it includes the ultimate reason for asking the question.

Mr. Fletcher said okay. That's better.

Mrs. Carroll said in order for me to make a decision on this, I need the questions answered that I've asked numerous times. What is the situation with the South County and the Shores and are we planning on having them go forward with us or not as of the deadlines that are coming up in November and what are the financial ramifications to our water/sewer utility if they both choose not to play with us anymore?

Mrs. Turner said if I may Councilmember Carroll, as far as the South Beach customers they have already given notice to the County that they wish to go with the County, that they will not be renewing their, extending their franchise agreement with the City. Indian River shores, we, the City has not responded to them yet. So, they are still, they have the County's offer, but they have not received anything from the City.

Mayor Kramer said that's not true. We had an offer to them and then it got sent back. This Council hasn't approved it yet.

Mrs. Turner said that's correct. It has never been brought back to this Council. It's in the City's hands.

Mayor Kramer said if you can put it on the agenda tonight, do it.

Mrs. Turner said if we had some financials and something to base it on, that would be fine. But we haven't had anything.

Mayor Kramer said we trust our staff on their financials.

Mrs. Carroll asked Monte, what's the situation with that?

Mr. Falls said well as you know the County has already given us notice that they don't intend to renew the franchise in the South Beach area and we are working with our Consultant and our Water and Sewer Department to get a value for that system so that we have something to start

negotiations with and you and I have talked about, we don't know what anyone will pay, we need to know what the value is.

Mrs. Carroll said right.

Mr. Falls said once that price is negotiated and we've talked about this issue before too. I think I've talked to the whole Council about it. There is also the Territorial Agreement issue, that we have the right to serve those areas. So, whether they want to pay X number for the pipes and Y number for the Territorial Agreement. That's a negotiated item that we can't tell you what the ramifications are until we get those. Now, we have run the one scenario before Mr. Bolton went away on vacation for a couple weeks, with the price of the \$18 million that we've all talked about. Mr. Bolton is back and he is going to be working on some other performas that show different values including zero to see what it would look like if they received nothing, but we haven't gotten it yet. We haven't finished the appraisal to get all those numbers. So, the Council was having some discussion we don't have all the information on the water/sewer on some of these issues and you're right. We don't have a Letter of Intent from the County to purchase it either.

Mrs. Carroll said right.

Mr. Falls said so, it's a process that we're going through and we'll get there. It's just, forgive me, it's not like I'm trying to sell my truck, you know, where I'd look in the Blue Book and see what it's worth and put an ad in the paper. There's a lot of moving parts about it.

Mrs. Carroll said right.

Mr. Falls said and we're trying to get those numbers and we've got professionals to help us with that and staff, since we got the billing date, you've been getting those performas from Mr. Bolton since he got them because he wanted to give you accurate data. So, bear with us. Hopefully I can indulge the Council before we break today, since Mr. Hartman is here, so he doesn't have to wait until the end of the agenda tonight, is to give a brief update on where he is on both the water/sewer issue and the electric issue.

Mrs. Carroll said without a clear Letter of Intent and without these numbers and without the agreement with either South County or the Shores, Maybe it was premature to put a Referendum on ballot for November on these issues.

Mayor Kramer asked is there any further discussion? Tammy, I'm going to let you call the roll on this one as well.

The City Clerk called the vote and it failed 3-2 with Mrs. Carroll voting no, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner no and Mayor Kramer no.

## **2) Public Hearing**

None

**3) Council Action Requested – Direction to City Attorney regarding Ordinances**

None

**C) REQUEST FOR QUALIFICATIONS (RFQ) FOR POTENTIAL PURCHASE OF VERO BEACH ELECTRIC POWER ENTITLEMENTS AND OBLIGATIONS**

**1) Discussion of RFQ process for determining potential qualified purchasers of City's electric power entitlements and assumption of associated obligations**

Mayor Kramer said we're going to go on with the Request for Qualifications (RFQ).

Mr. Coment said this was really Mr. Falls' matter originally. This had to do with the RFQ to determine if there was any qualified members that would be interested in taking over the City of Vero Beach's entitlements to the FMPA, as well as the obligations.

Mr. Falls said and I think we dealt with this at our June 21<sup>st</sup> meeting. If you would indulge me for a moment and I'll ...

Mrs. Turner asked can you give me a summary on what the cost was for that?

Mr. Falls said \$25,000.

Mrs. Turner said that's right, I remember. Thank you.

Mrs. Carroll asked has the RFQ began?

Mr. Falls said no maam.

Mrs. Carroll said I thought we ... done that.

Mr. Falls said well you did.

Mrs. Turner said everything was suspended.

Mr. Coment said we did. We brought it back, again because of that June 14<sup>th</sup> meeting and this was one of the two actions that Council had taken so we're bringing it back again basically to have Council revote on it in an abundance of caution.

Mrs. Carroll said so we've lost a couple weeks on this issue.

Mr. Falls said the motion passed at the June 21<sup>st</sup> meeting 4-1 and I was instructed to hold off on signing the document, which I got from Mr. Hartman as promised, after the meeting by Friday with the breakdown on the cost, the Friday after the meeting, but I was instructed to hold off until after we could have this meeting this morning based on the Sunshine Law and not move forward until that.

Mrs. Carroll said so I stand corrected. It was not a couple weeks we lost, it was a month we lost.

Mayor Kramer asked do we need any discussion on this or a motion to go ahead ...

Mr. Coment said discussion and then if there's any public input too.

## **2) Public Hearing**

Mayor Kramer asked is there any member of the public that would like to speak briefly on this? I apologize for saying briefly, but we would like to have a nice intermission before our evening meeting. If not, is there any of the Council that would like to make a motion or have further discussion?

## **3) Council Action Requested – Director to City Manager regarding RFQ process**

Mrs. Carroll said I'd like to make a motion that we do an RFQ for the potential purchase of the Vero Beach electrical power entitlements and obligations to members of FMPA. Mrs. Turner seconded the motion.

Mayor Kramer said Mrs. Vock, I'll let you do this as well (take a roll call vote).

The City Clerk called the vote on the motion and it passed 5-0 with Mrs. Carroll voting yes, Mr. Heady yes, Mr. Fletcher yes, Mrs. Turner yes and Mayor Kramer yes.

Mrs. Turner said and I voted no before but because we've lost a month and this is such a critical item that we need to get done. I'm voting yes.

Mayor Kramer said a motion was made.

Mr. Falls said if you would like to hear a status update from Mr. Hartman, he is not scheduled until tonight, but he's here if you would like to ask him any questions. In your box you'll find, if you didn't pick them up at lunch, a status update on where we are to date on all the work orders. If not, we can have him visit that next time he is here.

Mayor Kramer said it's up the Council.

Mrs. Carroll asked Mr. Hartman, do you have anything spectacular to share with us?

Mr. Hartman said I can update you where we are. I think it's pretty good.

Mr. Fletcher said I'm here for three to five minutes.

Mrs. Carroll said 75 words or less.

Mr. Heady said you can take as long as you need.

Mr. Hartman said on the electric system we have finished up our comparable sales research and we have a lot of information there. We've documented all the assets. We have the initial findings memorandum prepared, which will be to you shortly. Our, Power Service Inc. has inventoried all the assets. That's going to be in their report. We're going to have that report in a couple of weeks. Once we have that report, we're going to forward that report to Mr. Bolton for his review, as well as ours, we're taking that into our, our project would be an appendix so that's moving along well. Our real estate FPL appraisers have been out there before July 11<sup>th</sup>. They've been documenting on their inspections for the real estate relative to the Power Plant. That is being fully inspected now and there is some more work to be done on that. We're into the cost approach and we have the performance evaluation model built. So, that's where we are at that time, at this time. We also have overcome some of the intangible issues associated with easements, transmission systems, and documented letters back to firms and other entities associated with that. So, that's electric.

Mrs. Turner said before we leave electric, I still would like to see a list of deliverables and some dates of when we would be receiving these documents.

Mr. Hartman said it is on page four, the draft report is August 29<sup>th</sup>. The Finance Committee will have it presented to them on August 30<sup>th</sup>. Our final report is on September the 20<sup>th</sup>.

Mrs. Turner asked within that draft report, once again I'm asking what deliverables would be included?

Mr. Hartman said that's the full appraisal. This is the electric. The electric appraisal. It's an appraisal report.

Mrs. Turner said strictly an appraisal report.

Mr. Hartman said that's correct. A full appraisal report.

Mrs. Carroll said I would, a question about that ...

Mr. Hartman said all the due diligence aspects.

Mrs. Carroll said that would be reproduced, I mean, be produced only one day before the Utility and Finance Committee meet on that. That's not good. They need to have more time than that to adequately read over it and ask questions and process it.

Mr. Hartman said I understand that. That's ... We're working with one of our sub-consultants relative to that. Our desire was to have that on the 25<sup>th</sup>, but our sub-consultant ran into some problems and asked for a couple more days.

Mrs. Carroll asked Mrs. Vock, if you would please contact both the Utility and the Finance Commissions to ask them if they feel that it's necessary to back the meeting up a few days based on, I mean I know the last time they got a report and had a meeting on it the next day they were up in arms about it.

Mrs. Vock said I can do that.

Mr. Hartman said relative to the Optimization, Water Optimization, that draft report is August 22<sup>nd</sup>, we would have it out. Again, the meeting was set for August 30<sup>th</sup> and then the final report September 19<sup>th</sup> pursuant to our schedule. The Optimization for engineering and base aspects are pretty well done. Our next meeting on financial also, besides our conference calls on it, will be with Craig Dunlap, your financial advisor, we'd be going through that on the Optimizations and so we're moving right along with that. That includes dropping the Shores and the South County, the various iterations associated with that. Adjusting the proforma with that, with your financial advisor's review.

Mrs. Turner said we asked, before we ever got started with water and sewer, for goals and objectives and I was told at a meeting that we would receive the goals, the preliminary goals and objectives. I have not received anything on this Optimization. Could you please supply that?

Mr. Hartman said okay. In the record there is the goals and objectives.

Mrs. Turner said there was a rough draft when we made this award, I made some revisions to that during the meeting and we said that would be discussed at the first meeting and I have never seen anything since.

Mr. Hartman said okay.

Mrs. Turner said thank you.

Mr. Hartman said I'll get you another one. Associated with the water and wastewater and reclaimed water, irrigation quality water appraisal, again ...

Mrs. Carroll said I'm sorry Mr. Hartman, real quickly, the Optimization project, we're to have the draft by August 22<sup>nd</sup>?

Mr. Hartman said that's correct.

Mrs. Carroll said that may be enough time for Utilities and Finance to go over that. However, I'm not sure whether Finance needs to look at the Optimization. They might. Do you think they do? Okay. They might be able to just meet on August 30<sup>th</sup> on this particular issue and not the other one.

Mrs. Turner have the electric at a separate meeting.

Mrs. Carroll said and find out with them. Sorry about that.

Mr. Hartman said thank you. Relative to the water utilities appraisal, I'm trying to get this done (giving his update) in five-minutes. That's the only reason ...

Mrs. Turner said and I appreciate that.

Mr. Hartman said the draft report would be on August 25<sup>th</sup> again, the meeting we have planned to cover this is August 30<sup>th</sup> and the final report on 19<sup>th</sup>. On the water appraisal, again our loan appraiser has been out in the field going through the appraisal process. There are, as on the electric, I didn't mention. There's two basis on the electric appraisal. One is relative to the tie-in with FPUA, Ft. Pierce Utility Authority. That's on original cost basis, because that's per contract. The rest is on fair value. On water, the requirements on the fair market value is the basis of appraisal. So, that's what we're doing there. The model is done and we're into the appraisal process for the water and wastewater system. We had quite a few sales in our sales comparison documents and so we're along the way on the comparable sales aspects. The income approach and the cost approach we're still working on.

Mrs. Carroll asked are you still using Royal Palm as one of the comps.

Mr. Hartman said it is fairly old.

Mrs. Carroll said right.

Mr. Hartman said and we are, the only reason it was brought up was there was a comment about it and yes, my first comment on it I said that if you put the charge in there, the rates would flip flop. But, all they have done is come up to be very close to each other. But, Royal Palm is ...

Mrs. Carroll said but you used that on your own resume of types of projects that you have worked on that.

Mr. Hartman said there is no doubt about it. I was the appraiser for Royal Palm and we assisted the Village of Royal Palm Beach in negotiations with Palm Beach County in acquisition of their system.

Mrs. Carroll said right. There's been a significant amount of press about that entire deal locally over the last few weeks and it is quite an old comp so I would ask that perhaps that may not be the best choice of a comp to use.

Mr. Hartman said there are many transactions that have occurred since that time.

Mrs. Carroll said there we go.

Mr. Hartman said and I have worked on hundreds of them so it's a situation where many transactions are available.

Mayor Kramer said thank you.

Mr. Hartman said thank you.

Mr. Gorry said just a very quick comment. The Finance Committee never discussed Royal Palm. We have the minutes. You can review them. We had a presentation by Mr. Winger. But, that presentation at our meeting did not cover Royal Palm. That was researched after we had our meeting. The first time I heard about Royal Palm was the presentation that he updated over the weekend to present to Council. This is what the Finance Committee, and you can read the minutes, said. For Mr. Winger, the Finance Committee concerns with that there be a complete ... of due diligence. That the results of the consultant studies be examined and studied and I appreciate saying that we and the Utilities should have some time to be able to examine them. Thirdly there are questions that both the Utilities and the Finance Commissions have asked for from the County and the County has not responded. I received a fair market value, again disinclined with the consultant reports in that we believe that on the face of the work we've done so far that the offer of \$26 million dollars appears inadequate and it is the interest of the Finance Commission to protect the tax base to protect our ratepayers and perhaps even reduce our, what the ... rates are. Thank you.

Mrs. Carroll said sir, you mentioned that you had asked some questions of the County. Were those questions forwarded to Mr. Falls to go over to Joe Baird and back down to utilities?

Mr. Gorry said I'm sorry. I was referring to Mr. Falls' letter. A number of those questions were raised by Mrs. Burton at our Finance Committee meeting that in turn were turned over as part of her utility work to incorporate it into what Monte had put in his letter.

Mrs. Carroll said okay, I just want to make sure that the public knows that the questions from the Commissions were followed the correct cycle through Mr. Falls over to the County and then whoever there is going to answer those. Correct?

Mr. Gorry said sorry I wasn't as clear on that.

Mrs. Carroll said okay.

Mr. Falls said for everybody's information, late last week I did receive a document from the County. I haven't had a chance to transmit it to everybody. I'm trying to see if I can get a digital format so I don't have to run a document to add to your box.

Mrs. Carroll requested that copies of that document be sent to the Utilities and Finance Commissions no later than 5:00 p.m. on Friday.

### **3. CITY ATTORNEY'S MATTERS**

#### **A) Procedures for Compliance with Sunshine Law – Future Meetings and Workshops regarding Potential Sale Transactions for Electric Utility and Water and Sewer Utilities – Due Diligence and Negotiations**

\*Please note that this item was heard before items B) and C).

Mrs. Turner said if I may say a few words.

Mayor Kramer said please.

Mrs. Turner said I also spoke with Mrs. Gleason in the State Attorney's office and I know there's been a lot said about having any Councilperson at a meeting when in fact, at the last meeting I proposed a motion that we only have one Councilmember at these meetings. However, I do feel we do need to clarify that by delegating any Councilmember as a point person we did not delegate them any decision making authority. I feel that clarification is quite important for our interpretation of the Sunshine Law. When the Council came forward to appoint point people it was strictly to have communication, a funnel for information. This is an unprecedented situation that we have placed our staff in. We are looking at eliminating essentially half of our City staff and to ask them to go to these meetings and then report back to the Council, we've put them in a very difficult position because their status quo is at risk and I think by naming a point person from the Council it was just to help facilitate this communication of information. I want to make it very clear that myself, nor do I believe Councilwoman Carroll, were ever delegated any decision authority making.

Mr. Heady said thank you Mrs. Turner for your clarification. You're exactly correct. That's exactly what the Council did and it's been spun out of control. But, thank you for the clarification.

Mrs. Carroll said and there have been articles in the newspaper and on line accusing members of this Council sitting in on meetings and somehow participating in backdoor negotiations,

accusing us of misrepresenting the residents of our community. I, for one, I'm the only one I can speak for myself, but I was voted into office to represent the residents of the City of Vero Beach. Sixty percent of the voters placed me on this dais with the number one issue of looking at the sale to FPL, if an offer came through that was a benefit to the City, to the City residents, to the City CAFR's and to not necessarily represent the County residents who were on FPL, but the City residents and that is what I was placed up here on the mandate by the voters to do and that's what I continue to work forward. When the Council chose to appoint me as the point person, it was simply to have a Council representative to sit in on meetings. I look to the Attorney in legal issues and if the City Attorney would have had any problem with myself and Mayor Kramer when I walked into that room, if the City Attorney would have told me that this is a Sunshine Violation, I would have then asked the Mayor to please leave as I have been designated by this Council to stay in that room. The Mayor saw no problem with it. He sat in the room. He did not make any communications. I did not have any communications with him either before, during or after the meeting about any of the discussions that took place. And when Mrs. Turner walked in at the appropriate time for what she was told was the start of the meeting. She did not have any negotiations with myself or with Mayor Kramer and I feel, and I would like it to stay on record, I voiced it a little while ago, that from my point of view I was following what the legal definition by Mr. Coment that if he would have saw an issue he should of told us there was issue at that point.

Mrs. Turner said just to add one more comment. In my discussions with Mrs. Gleason I also asked her about Councilmembers meeting one-on-one with FPL and she said that this is a very intense area of public concern and divestitures of our utilities, certainly suggested that I did not meet with them to have a cup of coffee and to say hi, but if I have a compelling reason, and I put forward to you, to our citizens of Vero Beach, in December this Council put forth a policy to sell to FPL. We appointed point people, a point person on our Council in order to follow this. We received a Letter of Intent from FPL in April. However, since April we have received no information from staff as to what is going on. None. We are receiving bills from our Consultant as to how many hours they have spent, but other than a few emails that I received early on from John Lee when he was getting requests from FPL, there has been no information from staff. So when people say, sit back and wait for your staff, let them do their jobs, we're not hearing anything. I feel that is the most compelling reason I, as a Councilperson to do my due diligence, to meet with FPL to find out the status to see what we can do to move this forward.

Mayor Kramer asked Mr. Fletcher, would you like to jump on the soapbox while we're here?

Mr. Fletcher answered absolutely not. I'll pass on that kind invitation.

Mayor Kramer said okay.

Mr. Coment said as far as our meeting on June 14<sup>th</sup>, as I said earlier, I actually called the State Attorney and I told him if you want to blame someone, blame me because I wasn't up to date on these fact finding issues with Councilmembers. So, I certainly take the blame for allowing that to go forward. Moving forward from here, and the reason, the whole reason, not just

because of our meeting we had on June 14<sup>th</sup>, but as I'm sure Mrs. Turner heard from Pat Gleason, these kind of issues are of great public importance, great interest to the public and therefore, her recommendation to us was ... was it beyond the strict requirements of the Sunshine Law? Yes, absolutely. But her recommendation, she takes into consideration and Mrs. Lyon and I both do too, it's the appearance impropriety. Do you want criticisms, do you want to draw allegations of Sunshine Law Violations? You can do as you each decide on your own to proceed with the considerations of how is this going to look? Certainly private meetings are not a problem legally. It's just if you want to be open about the entire process. The problem is, as I did provide you a memorandum. I don't know if you had a chance to look at it. I'm not going to go detail by detail over that. If you have any questions about it fine. It's a case of, the whole process is suppose to be open getting from the start to the finish to a final transaction. And if it's not open that's where you do open yourself up, the Council and the City are opened up to these allegations and challenges to the final transaction, which can then end up having you in Court for a year or two. You could go to appellate Court and would take another year. We don't know what challenges might be out there, so our only advice we suggest to you is to just use common sense and try to be as open as you can. We're obviously, we don't, you know, don't want any other meetings that are behind closed doors with more than one Councilmember, whether it's with staff, FPL, the County or anybody. But, it's just that perception in the public that we also have to watch out for that garners these allegations that there's something going on behind the scenes that maybe is illegal and where obviously we then, the way people challenge those is in Court and the Court is really not a luxury that we have, or particularly that I have either to spend time dealing with a lawsuit when you could be doing other things to perpetuate whatever deal that you do work out with whether it be with the County or FPL. So, that's the gist of what we're advising. There is an email that I had sent strictly to, trying to prepare these people for this meeting and there was a mention of we'd be talking about what we would recommend to Council and that got all blown out of proportion and I mean, I'm even on the County Commission's agenda today because of that email and that email wasn't directed to them, it wasn't directed to Council, it wasn't directed to anybody but the people that were supposed to be coming to this meeting. I always try to direct emails to Mr. Bryan also is the Attorney for FPL since I am contacting one of their people. And it was really just to give a very very shot synopsis without legal backup or anything about what, after all these discussions with Pat Gleason and with Chris Taylor at the State Attorney's office. The most cautious approach you could possibly take. And ultimately it's up to each Councilmember to decide the risk benefit factor of how is this going to look compared to, yes it's legal, but what's the perception going to be and I urge any, all the rest of you if you haven't spoken with Pat Gleason, she loves this stuff. She's the lady that knows it inside and out and she will err on the side of being cautious and that will always be her recommendation because she doesn't want to see us in Court or being challenged or having some final resolution of a project being challenged by citizens because of something that maybe happened or didn't happen at some meeting. But, keep in mind it is the entire process, the Courts will look at all the deliberation all on through. All the decisions that are made all along the way and it is important to know, as Mrs. Carroll has brought up several times, we aren't in any negotiations yet and that is helpful at this point. Going forward if you get into negotiations one of the things Mrs. Gleason urged us to look at closely was that Sarasota Case, Sarasota County where they basically negotiated

with the Oriels. That's not to say that Councilmembers can't be involved in with staff or a consultants or whatever, but it's important to stick to that strictly don't get involved in negotiations is her advice. It's then it starts, because if the ultimate decision maker is seen as making decisions ahead of time, that's where the problem comes in and all I can do is pass on that advice and urge you to consider each time you want to have a meeting that's not otherwise an advertised open meeting where the public can actually watch what's going on and listen. That's obviously the best insurance is just done as a public meeting and we understand certainly, Mrs. Lyon and I and Mrs. Gleason that these type transactions there will be some meetings that aren't going to be endusive to public participation so, going forward, Peggy can you add anything? Do you want to add anything?

Mrs. Peggy Lyon, Assistant City Attorney, said this meeting ... incident, but in my mind anything that brings the Sunshine Law and the public's rights to the forefront for this community is a good thing and I hope the School Board is listening and I hope the County is listening and I hope any other pubic Boards are listening. There are real life consequences when mistakes are made and let's move forward in the spirit of cooperation and looking at the glass half full.

Mr. Heady said and I'd just like to repeat what Councilmember Turner has said. This Council has not delegated any member to negotiate anything with anybody.

Mr. Coment said and I think that's good to have on the record that there's, it's strictly being able to report back to the Council what's going on with staff and the consultants and the other side.

Mrs. Carroll said Mr. Coment, we had a discussion in your office immediately after that email came to my attention and it was quite a lengthy and hearty discussion. One of the points in that email, I believe state, or perhaps it came out in our discussion, was that a Council delegate for discussions would be a committee of one and would therefore be violating the Sunshine Law. Can you bring that to some type of closure for me because I did not quite understand that and I tried to tell people in the public that and it is very confusing.

Mr. Coment said basically, as you know Commissions and Boards appointed by the Council or by any governing body are going to be subject to the Sunshine Law too, even if they're just bringing back recommendations. There's this "fact finding" or "information gathering" exception that the Courts have recognized for appointees for the ultimate decision maker, which obviously this Council would be the ultimate decision maker. When a person, whether it's a, in this case a Councilmember, or some individual, it could be Gerry Hartman. You could appoint him to go out and do a specific task for you. The problem is then if their making decisions for you, if it includes any part of the deliberative process in rejecting this accepting that, making decisions along the way, that's what the Courts talk about. It's that whole deliberative process that needs to be open to the public and is required under the Sunshine Law to be public. That's your jobs to do the deliberation and the decision making on all the different aspects that go into the deal and ... talk about there was the Courts have found that an individual can serve in that capacity. It doesn't have to be a committee or a group. And a

couple examples we put in there (memo), a member of elected board or not, there's an example, the, a board member had been delegated the authority to, again like I said, reject options from further consideration by the entire board. The board member is then performing a decision making function and that must be conducted in the Sunshine. Another situation, there wasn't a violation of the Sunshine Law when a City Councilmember was merely meeting in private with a contractor for information gathering purposes on their own. But, if that Councilmember had been authorized either formally or informally to exercise any decision making authority on behalf of the Board, such as approving or objecting contract provisions, then that Councilmember would be acting on behalf of the Board and therefore would be subject to the Sunshine Law requirements because it comes out of the deliberative process. And again, those negotiation type things is where we have to be pretty careful not to have an elected official delegated to do that type of thing.

Mrs. Carroll said so the committee of one would take place if negotiating power was given to that specific individual.

Mr. Coment said yes.

Mrs. Carroll asked has that been given to any individual on this Council?

Mr. Coment answered no, not that I know of.

Mrs. Carroll said therefore, your legal opinion is that myself in sitting in on meetings with FPL is perfectly okay if I am the only one in the room and for fact finding to bring information back to the Council?

Mr. Coment answered yes.

Mrs. Carroll said and if I happen to have lunch with someone from FPL where I'm asking some questions. Is that perfectly all right?

Mr. Coment said that is not a problem. The only caveat is remember, we have a recent case and it's starting to be cited by other authorities about fact finding duties that fact finding exception doesn't apply to the ultimate decision making body. That the Court there did not say individual members. They were talking about the entire School Board in that case. That was the school bus case. But, don't be surprised, the Courts remember have said they will construe the Sunshine Law very broadly and maybe it will never happen, but they could tomorrow or next week or next year, say you know what, that fact finding should apply to any elected official. Right now it doesn't so you're okay. Do you agree Mrs. Lyon, at this point?

Mrs. Carroll asked has any member of the City Council of the City of Vero Beach ever been convicted of a Sunshine Violation?

Mr. Fletcher answered yes.

Mrs. Carroll asked and who would that be?

Mr. Coment said I personally don't know.

Mr. Fletcher said when I first got into office there were, not a sitting member... The only case that, in fact the first case of the Sunshine Law Violation was the City of Vero Beach verses Frank Zorc and it took him four years, it went to Circuit Court and he was ... successful on that and we had to have a "Cure" meeting, a real "Cure" meeting here that went through the whole process again. That was 89 or 90, excuse me 98 or something like that. But yes, a member was found in violation, but ... not a sitting member at the time.

Mr. Coment said in that Sarasota case with the Oriels, even though the Court there ultimately found what they did was fine, other than some potential problem with some emails that had gotten basically inadvertently circulated between their Commissioners, they even did a "Cure" meeting when they got sued just in abundance of caution and that's what you do. It's the only assurance you have to try to fix any perceived problems and that's what we have done.

Mrs. Lyon said can I just add one more thing and I think this was in about 2002 – 2003, but we had a situation where a couple of Councilmembers were seen at a baseball game at Dodgertown together and there was a lot of controversy around that. They were accused of talking about government business and they said they didn't. At that point we actually invited Pat Gleason to come down here and talk to the sitting Council. And for four or five years after that I actually used her presentation when I did my Government in the Sunshine speeches every year, but it's long. It's about an hour and half long, but it is available if you want to look at. It's very interesting. She did a great job and Mr. Coment and I asked her would you consider coming to our community and doing another presentation because she did a fabulous job at it. She said that due to budget cuts at the State level that takes her out of the office for a couple of days and it would be money out of their pocket and she doesn't usually come unless there's a big group involved. What I was thinking if we could get this group and the County and the City perhaps we could invite her to come down and speak to us. She's really good at these matters and she has a commanding way about her. So, it's just a thought.

Mrs. Turner said I will thank you Mrs. Lyon for giving me Mrs. Gleason's phone number. I would urge any member on the Council if you have any questions or you want to discuss anything, she is exceptionally well versed, very open, very practical, and I think would like to hear from the Councilmembers as well.

Mrs. Lyon said that's true. Thank you.

Mr. Heady said if you do schedule that meeting with all the Boards of course it would be a noticed meeting.

Mrs. Lyon answered absolutely.

Mayor Kramer said thank you Mrs. Lyon. Mr. Coment?

Mr. Coment said that's all I have unless there are more questions that just the thought to remain with you is it's your choice to weigh the risks verses the benefit of any potential meetings and go forward and keep that in mind. Our goal is to just avoid challenges to the Council or to any actions of the Council that eventually takes.

Mayor Kramer said thanks. Do you want to make any comments on the public records and data room?

**B) Public Records and "Data Room"**

Mr. Coment said the only thing I was going to mention there and Mr. Pat Bryan from FPL, he and I have been kind of talking about this. The data room really and Mr. Bryan please correct me if I misspeak, but my understanding, FPL has set up this data room basically to kind of receive documents. I think maybe right now there might be City documents in there and it's for ease of reference but I think mainly FPL staff, their different departments to look at different documents and really, as I tried to explain it to a citizen about this is really kind of like a filing cabinet. It's just an electronic filing cabinet, the cloud so to speak and it's not being operated by or for the City, but any of the City documents that go in there, the public documents that go in there we have already. But, if there is a particular document in there that someone asks for specifically from there, I think we were going to provide access for the City Clerk to be able to access that, as well as, Mr. Hartman might have access, I'm not sure. Yes, Mr. Hartman has access as our Consultant. But, as Mr. Bryan pointed out these documents are already existing documents anyway. Instead of being in the Clerk's filing cabinet or Electric's filing cabinet, they also happen to be copied on this electronic filing cabinet, so to speak. So it is accessible if someone requests something from there it certainly can be provided.

Mrs. Carroll said and this first came about from our initial meeting with the 14 or 15 people that were members of the legal staff, members of FPL, members of the City, a number of people in the room and this became an option to share information. For instance if GAI discovered there was 972 electrical poles and where they were all located and a GIS map of them, they would put that up there so then FPL would know the same location and share the same information without duplicating all of their resources. If GAI discovered there were 472 transformer boxes in the City and the location of all of them based on communications with the City staff, then that would be there and they could access the same information. It was not suppose to have any secret documents up there in the cloud waiting for people to access. It was just simply sharing information between the two entities. Information the City already had, make sure the City has the same information FPL has and that GAI has the same access to the information and the data.

Mr. Coment said and, as Mr. Bryan knows, there are certain Statutory provisions that allow them to designate certain documents or information that might be confidential to their

operations they can do that and we would then, obviously abide by their request anything they designate as confidential.

Mrs. Carroll said and the information I was told that may be confidential would be FPL has said they would take on the employees. Well the employees' names, social security numbers, and their salaries and the date of their hires that might be private and confidential. Their salaries don't need to be shared with the rest of the world and that information may be secret in the document and only be able to be accessed via a code or some type of mechanism.

Mr. Coment said well the point, the main point I want to say, this is not even the City's file system. This is an outside entity. They're not doing it for the City. They're not acting as our agent. It's strictly information we've been providing to them that they have stored in this way to access it.

Mr. Patrick Bryan, Attorney for FPL, said yes, the comments that have been made here this morning I think are all accurate. I think it's important to note that to date the records that have been placed in the data room, which is really electronic storage system, have all been City documents. We're not removing public records from the City's offices and files and placing them in this data room. We've been taking electronic copies of the same and placing them there. It is really a tool for the parties for due diligence purposes to organize and then have the ability to easily retrieve documents for their review to further the transaction or the due diligence efforts. In a sense it's almost, just taking hard copies and placing them in an FPL office. Sort of the same thing. However, it is possible that documents that are created specifically for the transaction could be created and placed in the data room. If that occurs those documents will also be provided to City staff and will be public records in their normal place of business. But, we have made it clear that we have no problem what so ever with having the City Clerk have access to the data room needed for public records requests. If one is made access is granted.

Mayor Kramer said thank you.

Mr. Coment said and I think it's important to note that anything that's there, like I said, is in another hard copy or electronically already stored with the City elsewhere too. I mean, I, it's just like Mr. Bryan said. It's a convenience. It's a tool for access for them to do due diligence.

Mayor Kramer said moving right along here, what time do we want to reconvene for the rest of the agenda?

Mrs. Carroll said 1:15 p.m.

Mayor Kramer said 1:15 p.m. Is everyone okay with that? We'll go ahead and take a break and come back at 1:15 p.m.

Council took a break at 12:00 p.m. and reconvened at 1:15 p.m.

Mrs. Carroll said before we move onto the next item, I just have one more issue about the discussion on the Sunshine Law based on a telephone conversation I had at lunch. And I had asked the question and I believe it was answered simultaneously by the City Clerk and by the City Manager. I'm not quite sure who answered it, but my question was, was any City Council person involved in any Sunshine violations in the past and the answer was Frank Zorc and I participated in a phone call at lunch that Mr. Zorc was never on the City Council. Is that correct?

Mrs. Vock answered that is correct.

Mr. Heady said he was the litigant.

Mrs. Carroll asked which City Councilmembers were involved?

Mrs. Vock said I have the minutes right here.

Mr. Heady said Jack Grossett, Warren Winchester, Craig Fletcher came on after that ...

Mrs. Vock said it was Mr. Fletcher ...

Mr. Heady said Mr. Jordan.

Mrs. Vock continued stating Mr. Capra, Mr. Neuberger, Mr. White and Mayor Bowden.

Mrs. Carroll asked I'm sorry, what was their names? Who were they again?

Mrs. Vock answered Mr. Fletcher, Mr. Capra, Mr. Neuberger, Mr. White and at that time Sandra Bowden was the Mayor.

Mr. Heady said that was the Cure meeting though. That wasn't the meeting that was out of the Sunshine.

Mrs. Vock said yes, that was about three years before we actually got to the Cure meeting.

Mr. Heady said right. The Sunshine meeting violation was Jordan, Winchester, Grossett ...

Mrs. Vock said and Carolyn Ginn I think.

Mr. Heady said Carolyn Ginn was ...

Mrs. Carroll asked and who was the Mayor at that time?

Mrs. Vock said I'll have to check.

Mrs. Carroll said I was told that Mr. Winchester was the Mayor at that time.

Mrs. Vock said I will look back and find out for sure for you.

Mrs. Carroll asked Mr. Coment, who was it that brought this information to light to you that there may have been a Sunshine violation against this Council?

Mr. Coment answered it was Mr. Winchester.

Mrs. Carroll said thank you.

At this time, the Council went to Items 2-B) and 2-C).

Gerry Hartman gave an update (see attached document status reports).

#### **4. ADJOURNMENT**

Today's meeting adjourned at 2:15 p.m.

/sp



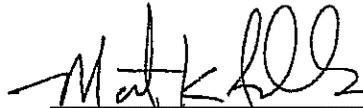
The Honorable Mayor and Members of the City Council

Page 2

June 15, 2011

The foregoing RFQ process would likely need to include conducting a public workshop with the qualifying utilities expressing interest. After evaluation, the City would publish notice soliciting more specific "letters of interest" from those utilities found by the City to be qualified to assume the contracts, such as meeting a certain minimum investment grade on their corporate/municipal debt.

If approved, this proposal would be authorized as an independent work order under the Master Agreement approved by City Council on May 17, 2011 and entered into on June 10, 2011.



\_\_\_\_\_  
Monte K. Falls, P.E.

MKF:jav  
Attachment

xc: Wayne Coment  
Gerald Hartman

June 13, 2011  
GAI Project No.: A100855.06

Mr. Monte Falls, Acting City Manager  
City of Vero Beach  
1053 20th Place  
Vero Beach, FL 32960-5359

**Re: Proposal for Professional Services to Prepare, Solicit, and Evaluate Request for Qualifications (RFQ) for Potential Purchase of FMPA/OUC/City of Vero Beach Power Entitlements and Obligations**

Dear Mr. Falls:

This letter constitutes GAI Consultants, Inc. (GAI) proposal to serve the City of Vero Beach (City) regarding preparing, soliciting, and evaluating an RFQ relative to the Potential Purchase of FMPA/OUC/City of Vero Beach Power Entitlements and Obligations. GAI has previously entered into a Professional Services Master Agreement with the City and understands this project will be issued as a Work Authorization under this Agreement. As GAI is an 800-person firm, assignment of this work will not impede our work that is currently in process with the City.

As the City moves forward with the potential purchase of the City Electric System by Florida Power & Light (FPL), it must investigate the possibilities for a sale or assignment of the contracts the City has with the Florida Municipal Power Agency (FMPA) and the Orlando Utilities Commission (OUC). These contracts are transferable only to members of the FMPA. The goal would be to transfer the entitlements together with the obligations under those contracts.

In order to maximize the potential value of the FMPA and OUC contracts and lessen the obligations of the City, it needs to be determined which FMPA members may be interested in taking over the contracts and the ability of any such entities to assume the contracts. In order to investigate the potential for disposition of the subject contracts, a public notice issued to qualifying utilities instituting an RFQ process would be most appropriate and should accomplish the following:

- (1) determine interest in the acquisition/assumption of the six contracts involved;
- (2) determine those utilities that qualify;
- (3) obtain letters of interest from interested qualifying utilities; and
- (4) make recommendations to the Council on the best way to dispose of the contracts consistent with the requirements of the contracts.

## SCOPE OF SERVICES

The GAI Team for this project is to be comprised of members from both GAI and GrayRobinson, P.A. The GAI Team shall perform the following tasks in conjunction with the RFQ for Potential Purchase of FMPA/OUC/City Power Entitlements and Obligations:

- A. The GAI Team will work with the City's staff, including Purchasing, to prepare the detailed Scope and Requirements of the RFQ Package.
- B. The GAI Team will assist the City to solicit responses to the RFQ Package.
- C. The GAI Team will coordinate with City staff to conduct a public workshop with the qualifying utilities expressing interest.
- D. The GAI Team will assist the City in evaluating the RFQ submittals.
- E. After evaluation, the City will publish notice soliciting more specific "letters of interest" from those utilities found by the City to be qualified to assume the contracts. The GAI Team will assist the City to evaluate these utilities.

## SCHEDULE

It is anticipated that preparation of the RFQ packet will be complete within two (2) weeks of receipt of notice-to-proceed. Solicitation of responses to the RFQ package will take approximately four (4) weeks. Evaluation of the responses to the RFQ package are anticipated to be complete within two (2) weeks of receipt and opening of RFQ responses. The GAI team can also provide specific negotiation assistance as an additional service with the timing to be negotiated with the City as and when requested.

## COMPENSATION

The compensation for this assignment, as detailed in the above **Scope of Services** is proposed on a not-to-exceed limit as follows and will be billed hourly in accordance with the rates previously adopted by the City. Negotiation Assistance with specific utilities will be provided as an additional service and will be scoped separately from this work authorization.

Team Member	Not-To-Exceed Limit	
GAI	\$	25,000.00
GrayRobinson	\$	10,000.00
Total	\$	35,000.00

## TERMS AND CONDITIONS

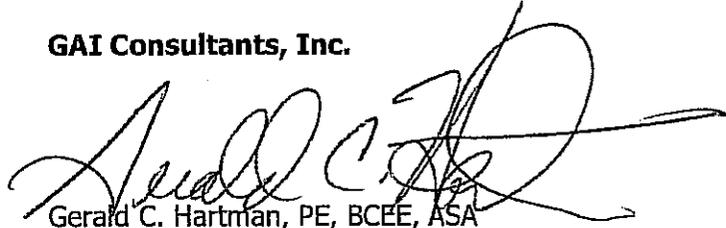
The terms and conditions contained in our Professional Services Master Agreement with the City continue to apply.

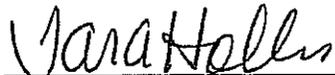
**CLOSING**

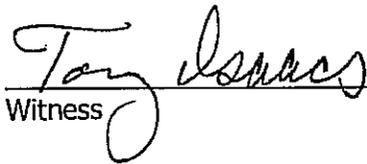
We look forward to providing the utility consulting services you desire. If the above is acceptable to the City, please execute one copy of this agreement and return it to our office. The receipt of a signed work authorization from the City shall constitute GAI's notice to proceed with the work.

Very truly yours,

**GAI Consultants, Inc.**

  
Gerald C. Hartman, PE, BCEE, ASA  
Vice President

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

Accepted by:  
**City of Vero Beach, Florida**

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Witness

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Authorized Signature

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Witness

\_\_\_\_\_  
Date



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Kramer, Vice-Mayor Turner, and Councilmembers  
 From: Wayne R. Coment, Acting City Attorney *wrc*  
 Subject: Ordinances for Referendum Questions  
 Date: July 13, 2011



As you are aware, the City Council is currently proceeding with its due diligence regarding potential sale of the Municipal Electric Utility and the Municipal Water & Sewer Utility. Included in each of those transactions as currently proposed by the respective purchasers are the sale of certain City assets and the leasing of others.

For the electric utility FP&L proposes purchase of the municipal power plant and lease of the land. For the water and sewer utility Indian River County's (IRC) proposal includes taking possession of the municipal waste water treatment plant at least temporarily. I previously queried IRC as to the vehicle by which IRC proposes to take possession of the property but to date the only response I have received is that it would be by "consolidation." However that does not answer the question as to transfer of possession and it is therefore presumed that IRC would lease the facility from the City as would typically be done when another entity takes possession of City real property. Section 5.05 of the City Charter requires approval by a vote of the electors of the City for both of these transactions as currently proposed.

Unless the City Council desires to have a special municipal election, the next scheduled opportunity to place the necessary questions on the ballot will be this year's November election. The deadline for submittal of ballot materials to the IRC Supervisor of Elections for the November election is September 9, 2011. Prior to that deadline, the City Council currently has regular meetings scheduled for August 16 and September 6. Of course the Council could also schedule necessary meetings at other times before the deadline.

If the Council desires to have the referendum questions on the upcoming November ballot, we recommend the ordinances with the ballot questions and explanatory statements be prepared for first reading on August 16 and at that time schedule public hearing on the ordinances for September 6. The Council's direction regarding the foregoing matters is respectfully requested and will be greatly appreciated.