

**SPECIAL CALL CITY COUNCIL MINUTES  
TUESDAY, FEBRUARY 12, 2013 9:30 A.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

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

**1. CALL TO ORDER**

Mayor Fletcher called the meeting to order at 9:30 a.m.

**A. Roll Call**

The Clerk performed the roll call.

**B. Pledge of Allegiance**

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

**2. ITEMS FOR DISCUSSION:**

**A. Discussion of Asset Purchase and Sale Agreement between the City of Vero Beach and Florida Power & Light Company**

Mr. Winger asked for a two week delay in discussing this item. He said that their Transactional Attorney did not start sending this revised agreement until Friday night so this has not given them enough time to go through the changes. He mentioned that in the last two days, two documents have come out from FMPA. One letter is addressed to Mr. Kramer (on file in the Clerk's office) and the other letter is addressed to Mr. Peter Gorry (backup material Priority #9). He said that the situation with FMPA is just at the starting point. He said that there are significant changes in the agreement they are looking at today and it is not the agreement approved by the Utilities Commission and Finance Commission. The public has not had time to review the new document. They also have the referendum that refers to the document. He asked Council for more time to study the agreement. He felt that he was ill prepared for it today.

Mrs. Turner suggested inviting their Transactional Attorney to come forward and review the latest changes and discuss whether or not they are substantial.

Mrs. Carroll asked Mr. O'Connor to delineate their time line and progressions that have been made based on other factors coming forward.

Mr. James O'Connor, City Manager, stated that today's meeting is being held to discuss the agreement in order to get some dialogue from the City Council. Staff will be looking for some action from the Council at their regular Council meeting to be held next week. The plan is to have an agreement that would be in substantial form.

Mrs. Carroll mentioned that the referendum is moving forward.

Mr. Winger commented that Council is inviting a legal challenge on the referendum because it talks about the FPL Purchase and Sale Agreement. His personal attorney is questioning whether the changes made in regards to the referendum would be legally binding.

Mr. John Igoe, Transactional Attorney, noted that this is addressed in the agreement and the referendum will be held 90 days after the signing of the agreement.

Mr. Kramer questioned if the public knows what document is being voted on.

Mr. Winger noted that the public is also voting on the Orlando Utilities Commission (OUC) agreement and there are changes to that agreement and they don't know what they are.

Mr. Igoe explained that they are public costs not exit costs. To be clear what they are voting on is the FPL Purchase and Sale Agreement. He said that their City Attorney has been going through the document and it has taken time. He said that most of the newer changes are being made at the request of Mr. Coment. In his opinion he doesn't view these as material changes. He said that none of the business terms have been changed and the purchase price remains the same.

Mr. Wayne Coment, City Attorney, agreed that the business deal has not changed. He said that really they are just cleaning up some of the language.

Mrs. Carroll asked Mr. Coment if he would agree that the majority of changes were instituted by him, representing the City.

Mr. Coment could not answer that question.

Mrs. Carroll continued by saying that Council has a document that has some changes in it and most were instituted by their City Attorney.

Mr. Winger did not agree with the statement just made by Mrs. Carroll. He said that there were changes put in the document by Mr. Coment that FPL would not accept.

Mrs. Turner reminded Council that they were not voting on the document today. She would appreciate letting Mr. Igoe tell them what changes were made.

Mayor Fletcher mentioned that he had plenty of time to review the changes and there were not many changes made to the agreement. His questions have been answered to his satisfaction by the City Manager, City Attorney or their Transactional Attorney. He said if Council has some issues with the contract then this is the time to address them. He will put on the agenda for their meeting next Tuesday that a formal vote be taken on accepting or rejecting the agreement.

Mr. Igoe gave a brief overview of the changes. He said that there are a couple of things that are still pending that would need to be resolved in the next couple of days. He said the first thing is that they received copies of the district licenses and sublicenses from Indian River Farms providing access to assets that are on Indian River Farms property (exhibits P & Q). They are pending because Mr. Coment has not had a chance to review them yet. He said that details have been worked out. There was a debate about the format of the agreement and they are just waiting for the City Attorney to review them. The other item is with the substation access agreement. This has to do with the fiber optic license. He said that the consortium will be licensing access to fiber optic usage to FPL for managing the system. The existing communication equipment owned by the consortium is generally housed inside the vault at the substation. The City is going to pay to move that communication equipment out of the vault so that personnel will have easier access for maintenance. However, the purchase price is going to be increased in order to cover the City's costs in moving the communication equipment (exhibit L-2). The equipment will still be on the substation property, but it will be in a place where the City personnel can access it without having to go into the vault and having escorts from FPL. Mr. Igoe did not believe any of the changes made to the document are material because there is nothing that changes the business terms of the agreement. He said that they have addressed longer notice periods in some cases and specifically addressed some compliance matters. There have been a lot of updates to some of the real estate exhibits. Also, some revisions have been made relating to leases that reference FAA and FDOT. He has made it clear that the rent paid on any leases at the Airport property has to be approved by FAA and FDOT. He said that there may have to be annual rate increases if the CPI increases. There is also a provision in the agreement that excludes the fuel oil at the Power Plant from the assets that would be conveyed that remains with the City. The City can use it or remove it and sell it before the closing.

Mr. Igoe mentioned that Mr. Coment pointed out that the City is contemplating a defined contribution plan so they made some changes to the pension section to reflect that. They have heard that the County is contemplating some road widening projects, so a change was made to the schedule to reflect this.

Mr. Winger asked if Indian River County decides to improve the roadway who would be responsible for the expense knowing that some of the roadways are outside of the City, but have City power.

Mr. O'Connor stated that the City would be responsible pre-closing as stated in the agreements now. They would have to relocate their assets to a suitable location on the right-of-way.

Mr. Igoe commented that Council will see reference to two (2) new agreements. He said that one is a grounding agreement that is not attached. It is going to be negotiated and finalized before the closing. This has to do with FPL's use of the metal casing on the fiber optic. There is reference to an agreement with North American Reliability Corporation (NARC). The terms of this agreement and the grounding agreement are outlined in Section 6.4(h) and 6.6(a). He said that these items were added because they realized that those agreements were needed and finished before the closing. He said with the regulatory approvals there were two (2) changes that came from the regulatory attorneys at FPL who felt this is a condition needed in order to close the transaction from FERC and PRC. However, if the approvals impose restrictions or limitations to make the deal economically unviable then FPL would have the right to terminate the contract. This is the same with the FMPA approvals. They have made it clear that if there are unforeseen costs the City would have the right to decide whether to close or not.

Mr. Winger referred to his backup material where his personal attorney talks about best effort because the way the agreement was unclear as to whether the City would have to pay the five million dollar penalty if they could not reach an agreement with FMPA. Mr. Igoe told Mr. Winger that there is no five million dollar penalty if they cannot close. Mr. Winger still had some problems with the wording. Mr. Igoe read the new language in the contract concerning this. Mr. Winger said that the wording is still in the contract in a different section.

Mr. Igoe commented that after reading that section that the City knows FMPA wants the City to pay for expenses for their law firm (Nixon Peabody), which is a foreseeable cost. They have also built into the agreement at the request of FPL the ability for them to say when they feel there is an unreasonable cost, but they will cover it in order to close. He was not anticipating any unforeseen or unreasonable costs. This is just a fair approach to protect the City. He reiterated that if FMPA imposes what the City seems to be unforeseen unreasonable costs the City has the right to walk away unless FPL steps up and agrees to pay for the costs. He doesn't view this as any changes in business terms, but to protect the City in unforeseeable costs.

Mr. Igoe brought up the changes in the section having to do with the dismantling of the Power Plant. He said that previously the agreement gave the City the approval to put off dismantling of the Power Plant, but both FPL and the City want to dismantle the Power Plant down to the foundation pad so that is the way it is worded now.

Mayor Fletcher asked Mr. Igoe to go over the reverter clause to the property of the Power Plant and explain the conversation that they (Mayor, Mr. Igoe and City Manager) had.

Mr. Igoe explained that FPL's Counsel told him that there was a reverter clause that impacted the Power Plant. He said what this means is if it was torn down and used for anything other than a public purpose the title would revert back to the Trustees of the Internal Improvement Fund (TIFT). This is a State agency that holds title to State lands. Mr. Igoe continued by saying that he determined that the reverter clause did not apply to the land at which the Power Plant sits. It applies to a parcel nearby that is partially submerged. The title company has requested

a survey and the attorneys on both sides (City and FPL) agree that the reverter clause does not apply, but they need to persuade the Title Company and they may have to have a new survey done.

Mayor Fletcher commented that his concerns were that it applied to the land where the Power Plant now sits, but now he understands that it is the land that is submerged.

Mr. Winger asked where is this section in the agreement. Mr. Igoe said that it is addressed in schedule 4.7(b).

Mayor Fletcher wanted this clarified before they vote on the document next week.

Mr. O'Connor was not sure that they could have a survey and certification from Chicago Title Company completed by next week.

Mayor Fletcher wanted this to be a priority. He understands that they may not have all this finalized by next week, but wants all parties to understand that it is a priority.

Mr. Igoe brought up another change that was made and that has to do with the venue for disputes if disputes arrive between the City and FPL. He said that the draft that was submitted to them was that they wanted Leon County as a mutual ground, but Mr. Coment pointed out that is not fair because it will be a burden if people have to travel.

Mr. Coment said that this is a decision for the City Council. He said that venue is not something that he would waive for the City. He has no problem with waiving having a jury trial, but feels that the venue should be in Indian River County where all the assets and people involved are located.

Mayor Fletcher asked Council if they wanted to accept the advice of their Attorney and have the venue be in Indian River County.

Mr. Igoe stated that he has pushed the FPL Counsel to agree with having the venue in Indian River County, but they have not agreed to it.

Mrs. Turner agreed with the home venue privilege.

Mr. Alex Ruby, FPL Attorney, commented that any dispute that there might be between FPL and the City and the hearing is held in Indian River County the judge would have to step down from presiding over the case because of a conflict of interest (FPL customer). So at that time they would be fighting over a venue.

Mr. Coment didn't see a judge having to step down because you are talking about over 1,000 customers.

Mr. Ruby said that FPL had no problem with moving the venue south.

Mrs. Carroll suggested St. Lucie County.

Mr. Coment did not buy Mr. Ruby's point in having to move the venue from Indian River County. He said that if the appointed judge had a dispute then another judge could be appointed from a different jurisdiction to hear the case. It would be easier for a judge to have to travel back and forth then it would be for the people of this County to have to.

Mayor Fletcher did not anticipate any problems, but if something does arise they need to decide on this now. He would push for Indian River County. He took an informal vote of the Council and it passed 3-2 to have the venue in Indian River County. Mrs. Carroll wanted to see the venue in St. Lucie County and Mr. Kramer wanted it in another County besides Indian River. If the attorneys cannot agree to Indian River County, then St. Lucie County would be Council's second choice.

Mrs. Carroll expressed to Mr. Igoe to push hard for the venue to be held in Indian River County, because that was the vote of the Council.

Mr. Coment reiterated that Council does not have a problem with not having a jury trial.

Mr. Kramer and Mr. Winger would like to have a jury trial.

Mayor Fletcher wanted to stay with the waiver of a jury trial.

Mr. Coment explained that it is typical in this type of contract to take the matter to a judge instead of a jury.

The informal vote of the Council was 3-2 to go with waiving a jury trial. Mr. Kramer and Mr. Winger voted no. This would not require a change in the agreement.

Mr. Igoe mentioned that were some changes in the lease agreements for the substations that are attached as Exhibits. He said with the fiber optic lease agreement one thing that was pending was the rent that would be paid by FPL for access to the fiber. He said it will be \$4.54 per mile of fiber and the City has agreed to cap the rent at \$23,800 a month and some of that money will go to Indian River County and the School Board so their approval is needed.

Mr. Winger asked Mr. O'Connor to check the figure that Mr. Igoe just mentioned. He thought that was more than the amount in the agreement.

Mr. O'Connor referred to an email that he had and the determined amount is \$23,800 a month that will go to the City.

Mr. Igoe mentioned that something else that was discussed is that the City is required to bring Units 2 and 5 at the Plant up to operational status prior to the closing.

Mrs. Carroll asked Mr. O'Connor if they were not at operational status now. Mr. O'Connor stated that they are up to industry standards. He said that this is just an acknowledgment that the City must continue to maintain the Units.

Mr. Ryan Fair, FPL, stated that it is necessary to have the Units operational at the time of closing.

Mr. O'Connor added that the overhaul for Unit 4 will take place in 2014.

Mr. Igoe will make the change in the agreement. He was happy to address any specific questions that Council might have.

Mr. Coment brought up the liability issue on negligence and wondered if it has been inserted in the contract.

Mr. Igoe referred to Section 10 (c) where it is in the contract and he read that Section.

Mayor Fletcher commented that he has reviewed the document and discussed his questions with the different parties involved and is satisfied that his questions have been answered.

Mr. Igoe will include the changes made today into a new document and send it to Council for their meeting next week. He went over the next steps of the process.

Mr. Winger circulated 13 different priority questions (please see attached). He said that they have already covered Priority #1.

Mr. Winger explained that the way these priorities were done was by various members of the public, so it probably would be appropriate to allow the public to come to the podium as the priorities are discussed. He said that very few of these ideas are his. His view is to get a fair deal and get the electric system sold as soon as possible.

Mayor Fletcher stated that the public would be allowed to make comments at the end of their discussion.

Mr. Winger brought up Priority 2 – Improve wording on page 63, Section 6.10 Employees, to “as much as possible protect our valued employees.” He was just asking that their valued employees are protected as much as possible.

Mr. Ryan Fair commented that FPL has been clear on their position with the employees and that is that they want to ensure and offer employees minimum employment for two years with FPL. They cannot guarantee that the employee will be able to work in Vero Beach, but will try to accommodate the employees as much as they can.

Mr. O'Connor looked at the FPL Union contracts and they have contractual agreements with their Unions. The employee will know going forward exactly what is involved and the opportunities available to them.

Mayor Fletcher felt that compared to the City utilities that FPL has huge opportunities available to their employees.

Mrs. Turner added that FPL has made a generous offer and they will make a good faith effort to take care of their employees.

Mr. Winger brought up Priority 11 – A request for Council to discuss the matter Mr. Steve Myers brought up. That is with the potential sale of the Electric Utility, the City could find itself in the position of having to terminate employees if agreements are not in place with all the Unions. He would like to see it in the contract that employees would not be terminated.

Mr. O'Connor explained that an employee will not be terminated if they choose to go with FPL or if they qualify to retire. He said that staff will negotiate in good faith with the Teamsters.

Mrs. Carroll gave an example if they chose to outsource their trash pickup. The employees would probably be laid off because a company such as FPL would not be offering them two years of employment. She said the "layoff" term is in the contract in case the City has to utilize it.

Mr. Winger was concerned with an employee getting laid off because of a dispute between the Unions.

Mr. Winger brought up Priority #3 – Address the recommendation of the Finance Commission that some better solution to the new substation that FPL wants be found that does not include moving it to the old Post Office site. He would like to see a task team formed to come up with a better proposal. He read his six points addressed in Priority number 3.

Mrs. Carroll recalled that she met with the City Manager, Planning and Development Director, and FPL to discuss the reasons why the substation has to be in close proximity to the Plant.

Mr. Ryan Fair explained that FPL will only be leasing the property that the Plant sits on for three (3) or four (4) years and assuming it is the City's desire to have that site cleared then FPL needs to have another site for the substation. He said that modifications were made to the contract that the old Post Office site does not necessary have to be the site where the substation will go, but a substation is needed.

Mr. O'Connor told FPL that there were two or three different sites that they could possibly use and FPL is in the process of looking at those different sites.

Mrs. Carroll explained that the required transmission and distribution part of the substation is inside the Plant at this time and when the Plant comes down that part of the substation will have to come down also.

Mr. Winger would like to leave the substation where it is. He said that Council has never voted on this and he would like to see the substation left where it is now. He said that there are other options.

Mrs. Turner reported the reason that the City retained this land (old Post Office site) was because when they move the Sewer Plant off of the river they will need part of that land and it will serve the City's needs.

Mr. Winger felt that was incorrect. He said that they can operate the Sewer Plant entirely from the Airport.

Mrs. Turner said that there will be some need for that land. She agreed that this is valuable land, but who is willing to come forward and give the City two million dollars in order to look for more land. She agreed to have some reverter clause put in to the contract if the substation has to go on that land. Mr. Igoe will look into that.

Mr. Winger went on to Priority #4 – Understand and Define the Consequences of Appendix O. This instrument allows FPL to long term lease various City assets at a nominal rent, but at any later date purchase the asset for \$1.00. He asked what assets will be handled in this manner and the reason for each.

Mr. Igoe explained at this point they are not contemplating using the capital lease. It would be utilized if there were assets (poles) that FPL needs access to and there are restrictions that cannot be addressed. It would be for personal property and not real estate.

Mr. Ryan Fair added that the concept of capital lease is that certain properties mirrors ownership, without having ownership. The City still retains title to the property, but FPL is required to handle all of the maintenance. He said that the City would have no liability, but would technically be the title owner. He used Indian River Farms as an example.

Mr. Winger brought up Priority #5 – p48 Section 4.12 ERISA; Benefit Plans would appear to limit COVB's ability to modify any benefit plans until Closing or Termination. He would like to see the wording modified to be sure that the City is free to negotiate its benefit plans pending closing or termination.

Mrs. Turner said that they needed to leave more flexibility as the City is entering into negotiations with the Teamsters for the next three (3) years.

Mr. Igoe said they have to be careful that FPL agrees to provide benefits to the employees. If the City is talking about incorporating new benefit plans with the Unions then they (attorneys for both sides) need to know about them.

Mrs. Turner said this would not increase the bottom line benefits.

Mr. Igoe stated that this is the same approach they took with the defined contribution plan.

Mr. Winger covered Priority #6 – Definition of Airport lease to the amount and duration. He said that the City will be strapped for money and it would be helpful in the planning process to know what the intentions are.

Mr. Ryan Fair addressed the Airport property and said that the substation site is needed and they are looking at leasing the Transmission & Distribution (T&D) building and working on their longer term plans. He said that they may need to have a more permanent site, which will allow for operations, but that has not been finalized yet. They have left the T&D site as an option and are evaluating it.

Mr. Winger commented that the City would love to have FPL as a tenant at the Airport.

Mr. Fair said that it is FPL's intention to have a presence here.

Mrs. Carroll asked if the lease at the Airport has to have FAA approval. Mr. Igoe said that it would.

Mr. Winger discussed Priority #7 – Filling the gap between signing and closing as to insuring the electrical system against major damage. He said that there will be at least three years before the closing takes place and the question is what happens in regards to FEMA with this asset under contract. He would like to see this referred to the Finance Commission for a suggested course of action.

Mrs. Turner commented that they chose not to retain their membership with FMEA.

Mr. O'Connor expressed that the City has an emergency response agreement that is maintained through the Purchasing Department. He said that the ten-million dollar number placed in the contract also applies to FPL in order to set a limit before deciding not to go through with the contract in case some sort of damage would occur.

Mr. Winger was concerned that under the contract the City has to deliver an electric system that is not damaged.

Mr. Igoe commented that they would have to restore the system if it was damaged by a hurricane in any event. There is a risk of ten million dollars on both sides.

Mrs. Turner brought up the memo from FMPA that states they are cooperating and working with the City to find a solution to extradite them from this agreement and hope the closing will take place before 2016.

Mr. Igoe recalled that when he met with FMPA, Mr. Fred Bryant, FMPA Attorney, opened the meeting by saying that FMPA supports the City in this regard as long as the bondholders and members don't have any risks.

Mr. Kramer expressed that he has talked to some FMPA staff and they don't see this happening before 2016.

Mr. Winger went over Priority #8 – Reference Schedule 1.1(57) FPL is performing less than adequately to remove the Power Plant and other structures. He said FPL is not removing the concrete slab under the buildings, which is a normal part of such a tear down. The argument has been made if there is contamination or a vault under the structures, if that was known, there would have to be remediation. But that is not true if such remediation would require tearing down the entire structure. Prudent business practice would indicate boring now is indicated. He asked what are they going to do with this land.

Mr. Igoe explained that from the beginning the offer from FPL was to dismantle the Plant down to the slab. FPL didn't want to be involved in digging up the foundation. If there are any spills underground they would come to light.

Mr. O'Connor expressed that the City does not know of any spills or environmental concerns.

Mr. Igoe continued by saying that FPL is not willing to pay the costs of tearing up the pad. Whatever is under there is the City's liability. He didn't know what the City was going to do with the property, but if they make it a Park then they will not have to dig up the foundation.

Mrs. Carroll asked if the slab that is being left there includes the slab underneath the tanks when they come down.

Mr. Ryan Fair put out a disclaimer for the public that he was not a Civil Engineer. He said that all of the dismantling will be done according to the law.

Mrs. Turner brought up Fort Pierce and the Plant that they once had and chose to dismantle it. Mr. O'Connor said that some costs were incurred and he would check with the Power Plant Director to find out the exact amount and provide the information to Council.

Mr. Winger went on to Priority #10 and said that they would come back to Priority #9. Priority 10 – Consideration of allowing City residents to opt out of smart meters without costs if the sale of electric to FPL is concluded. He said that they should work out some solution with FPL where a customer is not forced to go to a smart meter.

Mrs. Amy Brunges, FPL, stated that FPL would treat the Vero Beach customers like the rest of their customers. There is a postponement list and FPL will put those customers who don't want smart meters on this list. They (FPL) will abide with whatever the Public Service Commission (PSC) instructs them to do. Currently there are not any customers who have a smart meter that don't want one.

Mr. Winger went back to Priority #9 and said that he would probably need Mr. Gorry's help with this priority. Priority #9 - Report from Finance Commission Chairman on his concerns if the closing is now more likely to occur in 2016 than in 2014.

Mayor Fletcher reminded Mr. Winger that this meeting is to talk about the Purchase and Sale Agreement with FPL and not whether or not it is viable to the City to sell it.

Mr. Peter Gorry stated that these are his own assumptions and concerns and not necessarily those of the Finance Commission. He is trying to meet with the different parties involved and address the concerns that he has. He met with FMPA last week and they gave him what is contained in this memo as their current opinion regarding negotiations. If the closing is in 2016 there will be various risks imposed to the City. He made it clear that FMPA is not receiving any payment out of this.

Mayor Fletcher did not want to start on the FMPA contract. That is a work in progress and very sketchy.

Mr. Winger referred to Mr. Gorry's memo (Priority #9) and said some of the things that might occur if there is a delay.

Council recessed for lunch at 11:50 a.m. and Mayor Fletcher officially reopened the meeting at 1:00 p.m.

Mr. Kramer stated that he doesn't have any confidence that they will get this accomplished by the end of the year and he does not think that FPL does either. He said that there are a number of people that he talked to at FMPA and they think that it will go out to 2016. He is also under the opinion that there are some other defects in the contract and he will be looking at them. He sees an awful lot of problems with this contract and doesn't see the logic in voting on this so quickly. He has predicted that there will be a lawsuit resulting from this. He expressed that Mr. Rick Miller, Transactional Attorney, worked for the City of Lake Worth at one time and had to appear before FMPA and apologize to them for something that was done incorrectly. Then Mr. Igoe had to come and apologize to the City for not following the process to get out of the All Requirements Project. He reiterated that he doesn't see the closing happening this year and there will be lawsuits and he doesn't want to be a part of this at all. The public can dispute this and time will tell. He said in time he will be proved credible on this.

Mrs. Turner didn't realize that Mr. Kramer had such legal expertise and capable of critiquing their attorneys at that level. She commented that they have been talking about the electrical

contract for over four years. When they first started the City heard that they would never find any utility to take over their entitlements and through negotiations with OUC this problem has been solved. She disagrees with Mr. Kramer that FMPA is not willing to cooperate with the City. She believes that they can conclude this agreement and that it is time for them to get out of the electric business. The City has tried for years to hold their rates down and they still are 40% higher than FPL's rates.

Mrs. Carroll mentioned that this has been going on for the last four years. She said that for the last four years the public has spoken at the polls and for the last four years the Council elected were those that favored getting out of the OUC contract and the other contracts tied to the costly electric system. The referendum was held last year and it passed by 66%. They are currently again asking the public what they want to do with the referendum in March. Also, there will be a survey going out in the electric bills to all ratepayers asking for their vote on this matter as well. They have had a number of public meetings where individuals have come up and said please move forward. There probably has been no more than 15 people speak to them against the sale. She mentioned that the former City Attorney announced that he is against the sale, but has never come and spoke to them. She believes that the number of people in this community who are against this sale is a very small number. There have been individuals on this dais who have said that a partial sale would be a better idea. After over a year of discussing a partial sale, Mr. Kramer was asked to speak to the Utilities Commission and go over his plan with them. Mr. Kramer started out the meeting by saying he didn't have much time to put his presentation together, so he threw something together at the last minute. She said he threw together a number of spread sheets pasted from various budgets and tried to elaborate on the fact that a partial sale was a viable option. She said that anyone that has observed his presentation was also convinced, as she was, that nothing had been put together to create a viable option. She said that there is no partial sale option, regardless of the fact that a couple of members on this Council continue to say it is a viable option. She said that this has not been proven. There have been a number of concerns brought up with FMPA. She said that the concerns were so great that their State Representative, Mrs. Debbie Mayfield, met with FMPA and told them that she has heard that FMPA has not been working with the City. Mrs. Carroll pointed to a document consisting of seven pages indicating that FMPA has been working with their attorneys in trying to move forward with a solution. The Finance Commission is working on plans for the viability of the City and the retirement plan modifications and moving to a defined benefit. Their rates right now are 40% higher than FPL's. The City has burdened themselves to these contracts for so many years and yet the defects and problems as mentioned by both Mr. Kramer and Mr. Winger were caused by some of the people on this dais who signed them. A contract is a legal agreement between two individuals that is a give and take on both sides. She said that no contract is ever perfect in terms of making sure that both sides have one hundred percent of what they want. She said what they need to do as City Councilmembers is look at the contract and say is this enough to get them to where they want to be. She said in that context she did not agree with Mr. Kramer.

Mayor Fletcher asked Mrs. Carroll not to make this a personal attack between Councilmembers.

Mrs. Carroll concluded by saying that she believed that they should move forward.

Mr. Kramer stated that he did not want to respond personally to the comments just made by Mrs. Carroll because there are other issues that will be coming to them besides the utility issue. He said that when it comes to his partial sale concept that it was done two (2) years ago. But, as Mayor at the time he could not make a motion to move it forward. It was a viable option at that time, but no one really ever looked at it. He said that this was an FPL issue from day one and he has had a number of people tell him that. The numbers he presented to the Utilities Commission were viable and he did run the numbers by some other Utility Directors and even the City Manager who said it was a good presentation. The Utilities Commission was a political Commission that was put together by one member of the City Council and the Commission has never wavered from that one Councilmember's opinion and they will continue to go in that direction. He was asked to make the presentation and the Utilities Commission never asked any questions. He said it took them (Utilities Commission) about ten minutes to dismiss all five different options and they never spent the time to look at them.

Mrs. Carroll recalled at that meeting the Utilities Commission asked Mr. Kramer which option did he think would be the best since he had been working on them for over two years and he (Mr. Kramer) could not come up with the best option.

Mr. Kramer said that he gave the Utilities Commission several different options. He said that this is a group effort and not a single person effort.

Mayor Fletcher opened the meeting up for public comments.

Mrs. Caroline Ginn provided backup material to the City Council (on file in the City Clerk's office). She is for limited government and free enterprise. She does not see this as a good deal as it exists for Vero Beach. The contract could be amended in some places so that it becomes a good deal. She said once their electric system is gone, the City will not have the resources to purchase it back if they wanted to. She thinks that the purchase price is too small. This is a "sweet" deal for FPL and not a "sweet" deal for the City.

Mr. Glenn Heran, 1964 Gray Falcon Circle SW, stated that this is a great deal for the City and he has been working on it for the last five years. It is a tremendous opportunity for their community. Their customers will get FPL rates and that is the greatest thing about this. He said let's move forward. He brought up that by signing this agreement the City will free up reserves.

Mr. Ken Daige, 1846 21<sup>st</sup> Avenue, thanked Mr. Winger for a lot of thought and time that he has put into this. He thanked Mrs. Ginn for coming up and speaking on this issue. He said when she (Caroline Ginn) speaks people do listen. Council has made it clear where they stand on this issue. It is up to their citizens to make a decision. The public needs to listen to this meeting and observe all the issues that were brought up today. When they have an event (like a bad storm) they have to keep the system up and running. He asked will the City taxpayers have to pick up the bill for this and will the City have the money. Is the City going to be able to afford this and

take the hits. There may be potential liabilities. He asked what is going to happen to the City in the future and how much is this going to cost them. He said that what bothers a lot of people is that a corporation (FPL) is getting a large chunk of valuable property (referring to old Post Office site). This is all structured to please FPL. There are a lot of questions throughout this community about if Council is doing what is best for their citizenry. Some citizens have come forward and been ridiculed in the media so they don't want to come back up and speak to Council. He asked again if there was enough money put aside to make this deal work.

Mayor Fletcher commented that the dates set for the closing may not be accurate, but the point is if they don't set a date then nothing will ever get done. By setting a date they have a goal to shoot for. He said that they can't stop negotiating because of a lawsuit threat or else nothing would get done. He reiterated that at their meeting next Tuesday they will be voting to approve or reject the agreement.

## **B. Financial Expectations**

Mr. O'Connor recalled that this was put on the agenda to answer some questions dealing with the pension plan and how it will be addressed. Mr. Rocky Joyner gave a presentation to Council at their last meeting addressing these concerns.

Mr. Gorry said that he has been working on a model incorporating Mr. Joyner's recommendations and putting a five (5) year expectation of a gap for the City and how it would be covered (\$3 million dollars) and compute what the tax rate will be. He will be providing his options to Council. The effective date that he is looking at is January 1, 2014.

Council thanked Mr. Gorry for his time and the time that the Finance Commission gives to the City.

## **C. Policy for inviting Transactional Attorney to the meeting**

Mayor Fletcher would like to have City Council exhaust all of their options with staff before they casually invite the Transactional Attorney to one of their meetings. If they (Councilmember) feel strongly they have to talk to the Transactional Attorney then talk to him over the phone as opposed to asking him to a City Council meeting. He did not know if Council wanted to set a policy concerning this matter or not.

Mrs. Turner agreed that every Councilmember should have access to the Transactional Attorney if they have questions. However, she urged them to talk to the City Manager and City Attorney before going to the Transactional Attorney. She said to at least put it on the Council agenda so that Council can have an option to prepare questions for the Transactional Attorney.

Mr. Winger concurred that if a Councilmember feels that the Transactional Attorney needs to be at one of their meetings that they can bring it up and say that it is necessary to have the Transactional Attorney at a future meeting.

Mr. Kramer stated that they do need access to their Transactional Attorney when making some decisions. If they have him at a City Council meeting then they need to make sure that proper notice has been given.

Mayor Fletcher stated then the policy will be not to invite the Transactional Attorney or any other Attorney to a Council meeting unless it is approved at a Council meeting. He asked the Clerk to put this in their Policy book.

Mr. Igoe asked Council if he was invited to their meeting next week. Mr. Igoe was told that they would like him at the Council meeting, as well as the Utilities Commission meeting next week.

Mayor Fletcher had no problem with the Charter Officers requesting that the Transactional Attorney be at one of their meetings.

#### **D. City Council Goals for Next Year**

Mrs. Carroll thought that it would be helpful for Council to discuss some of the ideas that they have for the City. It is the responsibility of each Councilmember to bring forward issues that are important to their community. The idea of putting together some goals that they (City Council) could work on is something that she felt was important for this Council. She said that because they have been so wrapped up in the FPL issue there have been some things that have not been looked at. She noted that they still have not received Mr. Kramer's goals.

Mayor Fletcher went through his goals (please see attached).

Ms. Cindy Lawson, Finance Director, explained that the ability to fund the underfunded amount, which achieves the biggest savings, will have to wait until after the closing so that they have the money. The other piece is switching from the defined benefit to the defined contribution will impact their Union negotiations.

Mayor Fletcher told staff that they need to set a goal and let Council know what the goal is so that they Council can have an Executive Session to discuss it (referring to Union negotiations).

Mr. O'Connor expressed that they plan to have two (2) Executive Sessions. One will be for the negotiations with the Clerical Union and the other Executive Session will be held before they start negotiating with the Teamsters.

Mayor Fletcher wanted to have a date set for the Executive Sessions.

Mr. O'Connor explained that with the Teamsters they have to negotiate a minimum of 90 days out from the termination of the contract. He plans to send them a letter in May. He expressed that the City is willing to work with the representatives and employees to see what options and

alternatives that there are. He said that within the next month they will have their first Executive Session pertaining to the Clerical Union.

Mayor Fletcher continued going over his goals. He wanted Council to agree to give the City Manager direction to delineate a three year plan showing a 5% reduction of the City's budget for the next three years (per year). He is trying to avoid ad valorem tax increase.

Mrs. Carroll asked Mayor Fletcher if his numbers were based on the changes to the pension plan and at what percentage. Mayor Fletcher answered full funding.

Mrs. Turner recalled at the meeting where Mr. Joyner was present that she asked Mr. Coment to do some research to find out if there was any full funding available to them.

Mr. Coment reported that they received an unofficial opinion from a pension Attorney that said at the end of the plan when the last beneficiary is no longer receiving benefits then the surplus would go to the City.

Mayor Fletcher wondered if they should get a written statement from the State Attorney's office.

Mr. Coment felt that in going from a defined benefit to a defined contribution plan Council should probably hire a benefits specialist.

Mrs. Turner mentioned that at the Florida League of Cities seminar that she attended they did say that when you get into changing a plan to hire a specialist.

Mr. Coment felt that from a financial aspect that the City was well covered with staff and Mr. Joyner, but in the legal aspect that they need to make sure that they are on good grounds before they make any changes.

Mr. O'Connor agreed that an attorney that specializes in this sort of work will be needed as they move forward. But first they need to define what they are after. He said that he does know that you can freeze a defined benefit plan. They also know with a defined contribution plan any City can institute one. The mechanism on how to move them from one plan to the other will be the challenge. He said it is important to continue to emphasize that they have to negotiate in good faith with the Teamsters.

Mrs. Carroll commented that one of the things that was discussed was that there was roughly a \$3.5 million dollar deficit and if the City pays off a big chunk of the pensions then the 15% that Mayor Fletcher's states is necessary could be lowered.

Mr. Winger commented that they will need to decide what they want the resulting defined contribution plan to look like and what level do they want to pay. The other item is in the \$3.3

million dollars that not all of it comes from the General Fund so how do they deal with that. He said that there are going to have to be policy decisions made.

Mrs. Turner referred to Mayor Fletcher's 5% reduction. She said that with the sale of the electric company they will have around 338 employees. From the benchmarking exercise it puts them at more than 100 employees above the average benchmark cities. She said that if the average employee with benefits costs the City around \$70,000 the elimination of 15 employees will be a huge cost savings. She said if you go back and look at the organizational charts and middle management that reducing middle management needs to be looked at.

Mrs. Carroll mentioned another concept to look at is the cost of picking up garbage. The fact that their prices are in line with other municipalities and the County is great, but one thing that they need to consider is pensions and retirement of the employees in that department. They need to look at not just the short term equivalency, but the long term savings.

Mayor Fletcher expected Mr. O'Connor to adopt the goals that they are going over today as a part of his goals. Mr. O'Connor said that he has received that message.

Mrs. Turner went over her goals. She said that they addressed number one and number two of her goals (pension reform and Teamsters contract). She wants the lagoon beds looked at because government is the only organization that has all of the tools to address this issue. She will be bringing up at their next meeting to talk about an Indian River Lagoon Coalition.

Mrs. Carroll mentioned that she has seen that some of the most polluted areas in the City have been around the Fingers (Vero Isles). She said even though they have put in the baffles and put in the regulation about cutting grass, etc; there still seems to be a problem.

Mrs. Turner wanted them to explore options to remove/relocate the Waste Water Treatment Plant. She said maybe they could find a way to have the County treat their water and they could pump it from there and the City retains their water system, but would pay the County for that service. She doesn't think that anyone thinks that the Waste Water Treatment Plant on the lagoon is an asset to Vero Beach.

Mrs. Turner wanted to conclude the negotiations with South Beach on their water service and increase reuse water availability to their City customers.

Mr. O'Connor mentioned that the City has completed the pumping station so they have reuse water available, but what they are finding is when talking to some of their customers that they have to extend the lines in order to reach, is a financial exposure.

Mrs. Carroll suggested sending out a formal invitation to the neighborhoods letting them know that the reuse water is available.

Mrs. Turner's fifth goal was to "streamline bureaucracy for businesses. Consistent application of codes and regulations." She said that the Planning and Zoning Board and staff have done a great job in making this happen. Her last goal was to "instill customer service attitude in all City employees. We work for the taxpayers." She said that if we all remember that we work for the citizens that will go a long way for customer service.

Mrs. Carroll asked if there have been some difficulties with businesses interested in coming into the City and getting their businesses started.

Mrs. Turner commented that things have changed for the better because of new policies that have been initiated by the Planning and Zoning Board this year.

Mr. Kramer brought up the "downtown group" and said that they are experiencing freedom to do what they need to do. He said that to his knowledge they have not run into a lot of roadblocks.

Mrs. Carroll asked if there has been an increase in new business applications. Mr. O'Connor said that they have seen some new businesses and are seeing an expansion of the businesses that are in operation now.

Mrs. Carroll suggested talking to Mrs. Helene Casteltine, at the Chamber of Commerce, and have her share some ideas on how to promote the City as being open for business.

Mr. Winger went through all of his goals (please see attached). They are: 1) Move faster to resolve the Electric issue (sale); 2) City to have five year financial plan; 3) Move to a Defined Contribution Pension System; 4) Avoid Unnecessary Ordinance Regulations and 5) Out Source City Functions where cost/service can be improved.

Mayor Fletcher asked Mr. Winger if he would be willing to take the lead in working with the Finance Commission to begin implementing a five year financial plan. Mr. Winger was willing to do that.

Mr. Winger made it clear that in outsourcing some of their services that he wants to protect their employees. He said that one department to look at would be customer service. He said that the City has limitations as far as what they can do for heavy equipment, etc. He did wonder if the City needed a full service garage.

Mayor Fletcher agreed that they should look at if a full service garage is necessary and what can be outsourced.

Mr. O'Connor reported that he is talking to Enterprise who does garage repairs (in looking at outsourcing the garage). One challenge the City has is repairing the police cars because no one wants to take on the liability.

Mrs. Carroll went over her goals, which included the Twin Pairs, seagrass death in their lagoon, citizen involvement on their Boards, attracting businesses to the City and tourism.

Today's meeting adjourned at 2:24 p.m.

/tv