

**CITY OF VERO BEACH, FLORIDA  
OCTOBER 16, 2012 9:30 A.M.  
REGULAR CITY COUNCIL MINUTES  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**1. CALL TO ORDER**

**A. Roll Call**

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

**B. Invocation**

Pastor Jack Diehl of Our Savior Lutheran Church gave the invocation.

**C. Pledge of Allegiance**

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

**2. PRELIMINARY MATTERS**

**A. Agenda Additions, Deletions, and Adoption**

Mrs. Tammy Vock, City Clerk, requested that item 7-A) "Agreement between the City of Vero Beach and Coastal Florida Police Benevolent Association (Rank & File)," be moved up on the agenda and heard before Public Comment and that item 2C-2) be pulled from the agenda at the request of Ms. Debra Atwell, Historic Preservation Commission Chairman.

Mrs. Carroll instructed the Clerk to contact a member from the Historic Preservation Commission and ask them to attend a future Council meeting to give an update on what the Historic Preservation Commission has been doing and the status of the Certified Local Government (CLG) Designation.

**B. Proclamations**

**1. National Arts and Humanities Month – October 2012**

Mayor Turner read and presented the Proclamation.

**C. Public Comment**

**Agenda Change – Item 7-A) heard at this time**

**Agreement between the City of Vero Beach and Coastal Florida Police Benevolent Association (Rank & File) – October 1, 2012 – September 30, 2015**

Mr. Jason Odom, Attorney with Gould, Cooksey, and Fennel, explained that on behalf of the City he negotiated the collective bargaining agreement between the City of Vero Beach and the Police Benevolent Association (PBA). He referred to the agreement and told Council that what they have is a contract that the Union voted on and ratified at their last meeting. He wanted to give them some information on how they got to where they are today. He first thanked the City Manager, Police Chief and Human Resource Director, who were instrumental in helping to negotiate this contract and getting it before Council today. He said that many days and hours were spent in coming up with this contract. He explained that the contract that was in place expired in October, 2011. There were two (2) tentative agreements that failed Union vote. He became involved in June of this year, which started with a thorough review of the contract from top to bottom to look for ways to meet the Council's goals and directives to save money through various means. He went through the highlights of the negotiations. In Article 18, it covered the principle overtime for the Police Officers. He said that one of the most significant changes in that Article pertains to what constitutes hours worked to receive overtime. He said under the old contract Police Officers were paid overtime for holidays that they did not work.

Mrs. Carroll asked how many years was that stipulation in their contracts.

Mr. Odom knew that it was in the contract that expired and was probably in the previous contracts, but did not know how far that it went back.

Mrs. Carroll wondered if it was instituted when their former City Manager was a former Police Chief.

Mr. Odom continued by saying in Article 22 it includes their holiday provision. He said that two (2) holidays will no longer be recognized as holidays and they will be Veterans Day and Good Friday. He went over on how those two (2) came to be chosen. He said originally they were looking at the day after Thanksgiving and the day before Christmas. The Police Department expressed some concern about these holidays because those are high traffic intensive holidays. The average holiday costs between \$11,000 - \$13,000. This will be effective November 30, 2013. The largest change to the holiday pay structure is how the Officers are paid for holidays. He said under the old system the Officer who worked the holiday would be paid two and a half times their salary. They also had what was referred to as substitute holidays. So if an Officer was scheduled off the day of a holiday then the next work day would be considered their holiday and they were paid as though they had worked the actual holiday. That has been removed and there is no longer a substitute holiday. However, the Officer who works the holiday is still compensated with their normal pay plus time and a half. If they don't work the day of the holiday then the Officers will receive a compensatory day.

Mrs. Carroll knew that Mr. Odom had a significant background in employee law. She asked him if there were large businesses in the Nation that offer this as a routine benefit or was this something unique that he found within their PBA contract.

Mr. Odom commented that you would not see it in the private sector. He said it is far more common in the public sector with Police and Linemen in electrical companies.

Mr. Odom continued by saying that the medical leave will now be the same as the Personnel Rules indicate. The Officers will have frozen accounts effective October 1, 2014 and this is the same for annual leave.

Mayor Turner asked for some background as to why this was delayed until 2014.

Mr. Odom explained that it was part of a compromise. In Article 25, for retirement in the old agreement the contribution rate was 3% and now the proposal before them is 5.5% and the new hired Police Officers will be 8% effective October 1, 2012. He said salaries will remain frozen as of 2009 and some of the other Articles were cleaned up and modernized.

Mrs. Carroll thanked the City Manager for getting this contract in place. She said one of the things that this Council did in hiring Mr. O'Connor a year ago was charge him with getting this contract negotiated and presented on behalf of the City.

Mayor Turner made a motion to approve the contract. Mrs. Carroll seconded the motion. The Clerk polled the Council and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner yes.

### **1. Presentation by John Igoe, Transactional Attorney – Review and Approval of Agreements with Orlando Utilities Commission**

Mr. John Igoe and Mr. Richard Miller, with Edwards, Wildman, and Palmer, and the City's Transactional Attorneys, were at today's meeting. Mr. Igoe said that he would be going over the definitive agreements that have been negotiated and called for in the Memorandum of Understanding (MOU). He first wanted to say a few words about the All Requirements Contract. He said that the City mailed its three (3) year termination notice in relation to the All Requirements Contract on September 19<sup>th</sup>. Unfortunately, some of the project's participants were not included in the carbon copy list. The notice letter was sent to Florida Municipal Power Agency (FMPA) yesterday along with copies to participants and there were a few additional copies going out today. The result is the effective date of termination of the All Requirements Contract will be September 30, 2016 as opposed to September 30, 2015. He said that it was a glitch and he is taking personal responsibility and apologized for the mix up. He wanted to review a few relative data points about the All Requirements Contract in the hopes that this issue will not extract them from the primary purpose of getting over the key exit cost hurdle of this transaction. Mr. Igoe stated that after due notice the City reduced its obligation with the

CROD (Contract Rate of Deliver) notice to purchase power under the All Requirements Contract to zero megawatts commencing in January 2010. Since January 2010 the City has not been obligated and has not purchased any power from FMPA under the All Requirements Contract. Also, because of the notice FMPA is no longer obligated to provide power to the City under the All Requirements Contract. The plan on the sale to Florida Power and Light (FPL) all along has been to ask FMPA to waive the three (3) year notice so that the effective date of termination would coincide with the date of the closing of the sale of the utility system to FPL. He said assuming the proposed sale is approved by all of the parties they (the City) anticipate a closing date in January 2014. He said whether the termination notice is effective in 2015 or 2016 the plan will remain the same. This will not in any way impact the sale of the utilities to FPL.

Mr. Winger stated that he has some concerns with the All Requirements Contract. He asked what happens between the time that this deal is signed and they (the City) no longer have a power company, and the date that they are out of the CROD, which is two (2) years. He hears from Mr. Igoe that there is no great risk, which he does not agree with. He explained that the way that FMPA works is if one of the other 15 participants' defaults then what happens is the City of Vero Beach has liability. The question is what we have liability for. He referred to the original agreement of October 1, 1996, on page 30, which goes over how to get out of the All Requirements Contract. He said for him to move forward today he would want to see a legal opinion from Mr. Igoe's Bond Counsel in writing that there is no obligation under the CROD for that two (2) year period of time. He felt that they were paying to high of a price to Orlando Utilities Commission (OUC) and he went over the figures that they were being paid. He suggested that OUC have two (2) responsibilities. The first responsibility is that they take over the All Requirements Contract. He said also in these documents they are moving forward with FMPA he did not believe that it is the City's responsibility to negotiate with FMPA. He suggested having OUC take forward these agreements. He also believes that FMPA will cooperate with them, but it has to be done the right way. He does not have any problem with moving forward with what has been negotiated, but he does not think that it should not be signed. He wants to see an opinion on the CROD from their Transactional Attorney or OUC who needs to take the responsibility. He doesn't want to accept the liability that he feels they can avoid.

Mr. Igoe responded to Mr. Winger's points. He said that the All Requirements Contract is not a block to closing the transaction with FPL. The City was a party to the All Requirements Contract, they gave the CROD notice and the termination notice. He said if there are costs to terminate under the All Requirements Contract those are costs that the City agreed to pay a long time ago when they signed the contract. The notion of OUC assuming obligations of the All Requirements Contract does not make any sense because they would not be getting anything out of it. There is no power to be purchased or supplied, so they would be asking OUC to assume whatever liabilities the City agreed to assume when they signed the All Requirements Contract back in October 1996. He doesn't know what costs there will be, if any.

Mr. Winger did not agree with Mr. Igoe. He said that the City has a potential liability for two (2) years. All he is suggesting, because the chances are slim, is that Mr. Igoe give a formal opinion. Mr. Igoe was not in a position to render an opinion until after further discussions with FMPA about what the section on page 30 of the October 1996 agreement means to them. Mr. Winger said if that is the case then what Council should do today is give Mr. Igoe the direction to move forward, but without signing the agreements until this is settled.

Mr. Winger went back to the OUC contract and said that there was a mistake made with that contract. He said that this is their chance to protect against something bad happening to the City. He does not see why OUC would not assume the liability for the handsome price that they are getting to help them out of this situation.

Mr. Igoe stated that he did ask the Counsel of OUC this question and he said (speaking for himself) why would they ever do that. The notice of termination is irrevocable so the City will not be buying any power and FMPA will not be providing any power. They are just asking OUC to come up with some more money and they don't know how much.

Mr. Winger said that he would rather the money come from OUC than the taxpayers.

Mrs. Carroll reminded Mr. Winger that Mr. Igoe was hired by the City Council to protect their interest as they move forward with the sale. She said for Mr. Winger to confront Mr. Igoe with the statement that he does not believe what he is saying is correct she believes was a bit antagonistic. She wanted Council to remember that Mr. Igoe is their paid consultant for this issue.

Mayor Turner clarified that whatever obligations that they may incur under the All Requirements Project was a result of the City executing the OUC purchase power contract.

Mrs. Carroll added that whatever penalties that the City is required to pay as a result of getting out of the OUC contract is something Council in past years signed up for.

Mr. Igoe told Mr. Winger that people can have differences of opinion, so he was not as offended as Mrs. Carroll thought he was. He expressed that this is a very complex transaction. Up to this point they have faced what some people thought was insurmountable hurdles. He said a lot of people thought that FPL would never increase their purchase price, which they did and it was instrumental in them negotiating with OUC. Some people thought that the City would never find a way to terminate the purchase/power agreement, but OUC has agreed to do that. Some thought that the City would never find anyone to assume FMPA's entitlements and OUC has agreed to do that. Some thought FMPA would be unwilling to accommodate the City's goals. The FMPA has acted in good faith in finding members willing to assume some of their entitlements. He believes that FMPA is happy that they have been able to make this arrangement with OUC. He said that the next phase is the approval process from FMPA. This issue with

cost in connection with a waiver notice period on the All Requirement Contract is part of that process. He reiterated that whatever the costs are is an obligation of the City.

Mr. Winger thanked Mr. Igoe for his answers and dialogue. He still would like to see a “hard” opinion on this.

Mr. Igoe was not prepared to give a hard opinion, because the attorneys involved need to discuss this with FMPA. He said that if they proceed with their plan they will be seeking a waiver of the notice period for the All Requirements Project to coincide with the closing date with FPL. If there are some costs that FMPA is going to require that they pay, they will find that out. He doesn't think that there will be because they are at zero megawatts, but FMPA may have a different prospective.

Mr. Winger brought up the discussion that Mr. Igoe had with the Utilities Commission and saying that it cost Homestead \$100,000 to clear all the FMPA hurdles and said that it was a much different and smaller transaction. He referred to the GAI analysis of November 2011 and at that point GAI said the cost of clearing the various hurdles from FMPA was going to be one million two-hundred and seventy five thousand dollars. Then on June 30, 2011, Mr. Falls (Interim City Manager at the time) went through the same exercise and he identified only two (2) of the many items and came up with a cost between \$500,000 to \$750,000. His bottom line conclusion was one million dollars. His point in saying this is that the requirements to clear FMPA were going to be huge. He needed to bring this one requirement up now because if he didn't the City was going to be left with a liability and he does not think that it is necessary. He agreed that the agreements can be made with FMPA, but he wants to see them made the right way.

Mr. Kramer brought up the liability issue. He said that he has been told by some FMPA members that if the Plant is dismantled and they find some type of contaminants the City will be on the hook for some portion of that liability. He said as it was explained to him if they get out of the All Requirements Project it will be pushed on to the other members and that leaves him hesitant.

Mr. Igoe explained that the members include the City. He would expect that the municipalities, as well as FMPA, will act in good faith through the entire process. He said that the City under the All Requirements Project is not buying any power so no one is relying on the City to pay any of the expenses right now.

Mr. Kramer understood what Mr. Igoe was saying, but still did not understand why the other members would want to absorb this. He would like to see a statement from FMPA that says this is not an issue and they can move forward. Mr. Igoe told him that would be part of the next hurdle.

Mr. Igoe moved on to discuss the exit agreements. None of the agreements will be effective unless the City approves and closes the transaction of selling the utilities to FPL. The City agreed to work in good faith with OUC and FPL to complete these definitive agreements. He started with the termination agreement. He said that the

parties agree to terminate the agreement in exchange for the twenty million dollar payment as described when they addressed the MOU and it is required upon closing.

Mayor Turner mentioned that it has been stated by some members of the public that there is a possibility to exit the OUC contract in 2017 without any payment. She did not find any such term in the contract and asked for Mr. Igoe's opinion.

Mr. Igoe said that he was not aware of that provision.

Mr. Igoe went to the St. Lucie transfer agreement, which calls for the assignment and assumption by OUC with respect to its 15.2% share with FMPPA's entitlements with St. Lucie.

Mr. Igoe moved on to the Stanton transfer agreement, which covers the agreement to assign, assume and two separate assignments, which are one for Stanton 1 and one for Stanton II. This calls for a payment at closing for thirty-four million dollars from the City's sales proceeds to OUC. He said that there is a percentage interest referenced in Stanton II of 23.9521%, which is the percentage that all the lawyers use because it is reflected in the Stanton II contract. However, he found out that St. Cloud was added as a participant of Stanton II. They have the correct number of megawatts reflected in the definition of assignment. This is a conforming change to reflect the City's share of the FMPPA's entitlements. He received some excellent feedback from the Utilities Commission about schedule 1. There has been some verbiage added to the contract as requested by OUC and he added a sentence that reads there will be a closing statement at closing that will include a calculation of prepaid expenses, pre-transfer liabilities, post transfer liabilities and this satisfied OUC. He said if anyone had any questions about the agreements, he would be happy to go through them.

Mr. Kramer referred to Section 7.3 and said that it looks like FPL is given power and that they have a written consent with any changes between the City and OUC. He asked why that is.

Mr. Igoe stated that it is because they have such a keen interest in the exit cost agreement because it enables them to close the transaction with the City. When the transfer agreements are signed they will have a commitment from OUC to assume all the obligations at the prices that they have referenced. He said that it would not be in FPL's benefit if the City went back to OUC and changed the terms.

Mr. Kramer was not worrying about FPL's benefit. He is worrying about the taxpayers and would like to see in the agreement that nothing could be changed in this agreement unless a referendum was done.

Mr. Igoe explained that nothing can be amended without the City's consent.

Mr. Kramer's question was why everything has to have FPL's approval. He said that this is a good deal for OUC and it is a contract between OUC and Vero Beach. It just seems like they are elevating FPL as the moderator and the controller of this agreement.

Mr. Igoe stated that the agreements capture the deal that was negotiated and what makes the deal possible for FPL. He said that FPL has invested a lot of time, effort, and money in this transaction and they were instrumental in helping him negotiate this deal with OUC. They have an interest in knowing that these agreements are locked down.

Mr. Kramer noted that the City has also given up a lot of their time and effort to get their rates down. He is not in favor of having FPL control the process. He would like to see that "stricken" out or at least have something put in the agreement saying it is subject to a referendum.

Mr. Igoe felt that was a topic for a different day. They have an opportunity to propose a referendum once there is an agreement in place with FPL.

Mayor Turner felt that they were moving off the topic of these contracts. She said that OUC is a credit worthy participant to take over the City of Vero Beach entitlements. Their alternative without OUC would be to market their entitlements to each of these smaller cities that are struggling with lower property values, pension liabilities and various issues. So to have OUC take their obligations is incredible.

Mr. Kramer stated that there are other utilities out there that are municipal utilities that do beat FPL and use the same power.

Mrs. Carroll asked what he meant when he said that they "beat" them.

Mr. Kramer said they beat them in credit worthiness.

Mr. Winger provided FMPA with a letter from their City Manager dated October 19, 2012 and he also gave Council a copy of the first 58 pages from the document that they received from FMPA dated May 15, 2012 addressed to Mr. Igoe. He recalled that last October there was one hundred and eighty-one million dollars worth of bonds for backing Vero's portion alone for these projects. He is not totally convinced since they no longer have to take the power that they might somehow be trapped against these bond limitations. He asked Mr. Igoe for a firm opinion that is not so.

Mr. Igoe spoke with his partner, Attorney Rick Miller, after the last Utilities Commission meeting and Mr. Miller said that the information that he was giving out is correct. The FMPA is the issuer of the bonds related to the project contracts. None of the participants, including the City, are issuers of the bonds. He said that the City does not have any obligations with the bonds themselves, which was why there was no need to reference the bonds in the transfer agreements. He said that OUC is assuming all of the City's obligations under the project contracts, which is to pay money to FMPA who are the liable issuer for the bonds.

Mr. Winger referred to page 3, of the May 16, 2012 memo, which reads “In response, Mr. Miller offered that his firm would give an opinion letter to protect FMPA’s bondholders, stating that there would not be any adverse tax consequences from such an FPL purchase.” He asked if that has been done.

Mr. Igoe said they are in process of doing that, but it is a different topic. He explained the reason that made this work was FPL’s willingness to buy through OUC a portion of the power that the City would have bought for the first three years after the closing. That is a private use of power and that is the question that is being addressed by this opinion. The different Bond Counsels’ involved all believe this is possible and they will be able to deliver this opinion.

Mr. Winger felt that they were ready to move forward with the next step as long as they are not signing these agreements until they have some of this other information.

Mr. Igoe explained the reason they want to sign these contracts now is because these exit cost agreements make the deal possible. He said without OUC’s commitment in writing to do this they are creating uncertainty. This is the City’s opportunity to secure these agreements with OUC.

Mr. Winger did not think that OUC was going to walk because this is a very good deal for them.

Mayor Turner made a motion to execute the negotiated definitive agreements for the MOU. Mr. Fletcher seconded the motion.

Mrs. Carroll asked what occurred when their Utility Commission and Finance Commission reviewed these contracts.

Mr. Scott Stradley, Utilities Commission Chairman, reported that the Utilities Commission reviewed the documents and unanimously recommended to City Council that they execute the contracts. He said that these contracts don’t bind the City to anything until they close the deal with FPL. There is no down side to signing the contracts. The Utilities Commission also discussed in detail credit ratings. He said that the City has a good credit rating, but they (OUC) have a better one. He said that he provided the Utilities Commission with some additional backup material that came out of the News Weekly. He said in looking at that article, there was a quote from Mr. Winger who said that he was very concerned about their ability to quantify these costs and he would not be willing to go forward with the contracts until these costs were quantified. He said that now Mr. Winger’s concerns have been met. He said that the Utilities Commission would be glad to look into the potential liability with the All Requirements Project, if Council wishes them to do so. He understands that the liability exists today and they will have it until they are released. He doesn’t understand why after a six-million dollar lawsuit to get out of FMPA and given notice in a five year waiting period that other Councils and Attorneys did not get them out of this a long time ago. Mr.

Stadley reiterated that the Utilities Commission unanimously recommended to City Council that they do approve these contracts and go forward with their negotiations with FPL.

Mr. Peter Gorry, Finance Commission Chairman, also reviewed the contracts and asked the Transactional Attorney a number of questions. He said that one of the questions was about the All Requirements Project. The question was would the City be held harmless by any obligation to the All Requirements Project and does FMPA concur. The response was that this is still under negotiations. They also asked with the three (3) contracts presented to them was there going to be any additional material amendments to those contracts, which would change the perspective. They were told by the City Manager that he did not believe that there was going to be any material amendments. Mr. Gorry said that based upon that and until these contracts are executed the Finance Commission unanimously approved going forward. He added assuming that they know the issues are not in effect or enforced until the date of the closing and the sale.

Mrs. Caroline Ginn was speaking to Council as a former Councilmember and Mayor, as well as a former County Commissioner. She agreed with the comments made by Mr. Winger on the bonds. She also didn't think that they would ever fully get out of the All Requirements Project with the way that it is written. She provided Council with some information (attached to the original minutes), which she went through. She felt that the City of Vero Beach needed a referendum. She expressed that this deal was not good for the City and asked Council that they not sell the utilities to FPL.

Mayor Turner commented that there are close to 400 cities in the State of Florida who do not have utilities and they survive.

Mr. Igoe presented Council with a letter that he signed, which indicates that FMPA is the obligor under Project Bonds, meaning that FMPA is responsible for payment of those debt obligations (letter is attached to the minutes).

Mrs. Catherine Katrovitz, Mr. Philip Katrovitz, Mrs. Debora Daige and Mr. Ken Daige, all appeared at the podium as residents of Osceola neighborhood. Mrs. Katrovitz spoke for the group and said that they consider it their responsibility to protect their neighborhood. They don't know if their taxes will go up with the sale of the utilities. She noted that two members on Council have expressed their beliefs that they need to proceed with caution and know what they are getting into before they sign the contract. She said that it may be two or more years before this transaction takes place, which would give them time to reduce their current power bills (not selling to FPL).

Mr. Charlie Wilson urged Council to go forward with this memorandum and approve these contracts. It is all rewards and no risk. He understands people that urge caution is necessary. He brought up the pension plan and asked what the plan is. He questioned what is the plan for deferred maintenance on this 50 year old Power Plant. What is the plan when 60% of the customers demand that they be left out of this territory? What is the plan for doing nothing? The cost of doing nothing is more than the cost of this sale.

He said that the best way to keep Vero/Vero is to sell this Plant. The referendum has been talked about and he would love to hear what people have to say. But they need to consider the cost of having a referendum. If they delay moving ahead with this sale then they are going to be paying two million dollars a month for the delay. He suggested doing a survey if they want more information. The path to protect the City of Vero Beach is to pass this.

Mr. Peter Gorry addressed some of the issues just brought up. He said that the Finance Commission has been charged to look forward in the future. They are going to have a workshop and begin to look at all of the alternatives going forward and then come up with a plan.

Mr. James O'Connor, City Manager, mentioned that he has talked to their Actuarial who has provided some information in moving forward given the scenario of going with a different contribution pension plan, selling the utilities, losing 100 employees, etc.

Mrs. Carroll expressed that she hears a lot of comments that they don't have a plan in moving forward. She said that a lot of work has been done and will continue to be done in order to craft a plan. It is not finished yet and it is a work in progress.

Mr. Ken Daige stated that he has a vested interest in where their City goes in the future. He feels that both Mr. Winger and Mr. Kramer have brought up some good points. He agreed with Mr. Winger in moving forward with the concept, but not signing anything yet. He said that it looks like the residents of the City of Vero Beach are going to be on the short end of the stick and they need to know the long term repercussions. He mentioned that whatever is put in writing they are responsible for and they call it in the trade "whoops." He said if they make a "whoops" the residents, and the taxpayers of this community are going to have to pay for it. He recommended to the people watching the replay of these meetings to pay attention to what Mr. Winger has brought up. There are a lot of unanswered questions. He agrees that FPL has put in a lot of time and money in moving forward with this transaction, but they are a huge company. The City has also put in a lot of time and money on this. He wants the City to be in charge and not FPL. He asked them to move forward, but to not commit the City. He didn't want them to have what is referred to as a "whoops" contract.

Mrs. Linda Hillman mentioned that for quite a few years now they have been going through this potential sale. She said that Indian River County imposes a 6% franchise fee and it is not from the City of Vero Beach and they also receive property tax from the utility being FPL. She read something that was drafted by Mr. Glenn Heran that said that residents could save \$760.00 a year if this goes through. She said that when you have a 6% franchise fee that might be imposed on the City, and taxes could be raised she doesn't see the savings. She indicated that Mr. Kramer felt a partial sale of the outside County people would be good. She said three members of Council have said that when Mr. Kramer was first elected to the Council that he was not proposing this alternative. She read excerpts from a newspaper article back when Mr. Kramer first brought this concept up. She said that Mr. Kramer has stood firm on that and he has not changed. She

expressed that now the people on the City Council control their power rate. She said once the utilities are sold to FPL there will be no control. She doesn't understand why a partial sale is not included. It is feasible and they could see what would happen if they controlled their own power. The last referendum was to give the City the right to lease the property and not to sell the utilities. She feels that a referendum is needed for the public to decide if they want to sell the utilities to FPL. She brought up the sample election ballot that she recently received in the mail and told the public that they don't have to vote for three people even though there are three seats open on the City Council. They are allowed to vote for only one person.

Mr. J. Rock Tonkel, resident of Grand Harbor and member of the Utilities Commission, felt that this was a process that they needed to go through. He said that Mr. Winger has raised some points that have or will be addressed. There are no obligations today in moving forward in taking the next steps. He said because there is no obligation that it would be wise to take this step to keep the other agencies involved. They may or may not enter into the final agreements with FPL.

Mr. Mark Mucher, 617 Indian Lilac Road, wanted to correct the statement that he has heard about and that is that the 6% franchise fee is going to automatically be added to their utility bills. He said that it probably will happen, but now there is already a 10% utility tax being added to their bill. So he hopes that this 6% franchise fee will replace the 10% utility tax.

Mr. Brian Heady appreciated the comments made by Mr. Winger. He said that it was unfortunate that other Councilmembers think that Mr. Winger is being argumentative when asking these questions. He thanked Mr. Winger for doing his job. He asked Mr. Coment if the parties who sign these agreements are bounded by their signatures. He did not see Indian River Shores as having to sign the agreement, but in terms of the contract it identifies third parties. He asked Mr. Coment if there was not a place for a third parties to sign and that they would not be binded by this contract.

Mr. Wayne Coment, City Attorney, referred these questions to Mr. John Igoe, who the City Council has retained to handle this matter. He reiterated what has already been said that these agreements don't go into effect until closing, which is scheduled for 2014.

Mr. Igoe explained that the purpose for signing the contracts today is to assume their obligations for the payments. He provided Council with a list of the principal third party consents and approvals for the sale of the City of Vero Beach electric utility systems to FPL (please see attached).

Mrs. Carroll brought up the fact that one of their former Councilmembers spoke a few minutes ago in regards to a "whoops" contract. She thought that it would be an agreement of many people in this community that the OUC contract that was signed a few years ago may have been a "whoops" contract. She said based on the fact that their City Manager, Finance Commission, and Utilities Commission, has approved this

unanimously, she would suggest that they vote on the motion. She called the question. Mr. Fletcher seconded it.

Mayor Turner restated the motion and it passed 3-2 with Mr. Winger voting no and Mr. Kramer voting no.

Mr. Daige asked to respond to Mrs. Carroll's comments. He said that he has a great vested interest in their City. He said that Councilmember Carroll made some comments and he is not in agreement with. He said there are some things with the Orlando Utilities contract that are fuzzy, but those are Mrs. Carroll's personal opinions on it.

At this time, Council took a ten-minute break and reconvened the meeting at 11:40 a.m.

**2. Debra Atwell, Chairman of the Historic Preservation Committee, to give an update on the Historical Preservation Committee and the Status of the Certified Local Government (CLG) Designation**

This item was pulled from the agenda at the request of Ms. Debra Atwell. She provided Council with a letter (on file in the Clerk's office) in her absence.

**3. Florida Department of Environmental Protection will be giving a presentation on the Basin Management Action Plan for the Restoration of the Indian River Lagoon**

Ms. Mary Pollick, Basin Coordinator for the Florida Department of Environmental Protection, gave a Power Point presentation (attached to the original minutes).

Mayor Turner was shocked with the long planning horizons. She said that they have lost 12,000 acres of sea grass in the area between Sebastian and Vero Beach. She said if this deterioration continues and they wait for another five (5) years to come forward with a plan it will be frightening for the quality of their water.

Ms. Pollick said that is why they are getting this plan in place. She wanted to take these five (5) years to encourage cities to keep moving forward with stormwater management projects.

Mrs. Carroll asked Ms. Pollick who was her employer. Ms. Pollick said that it was the Florida Department of Environmental Protection (FDEP). Mrs. Carroll asked if the FDEP considered the significant environment disaster that some people are calling what has occurred with the seagrasses that Mayor Turner brought up. She said that it seems from the information that she has heard about that from the Sebastian Inlet to the Barber Bridge that the sea grass has been completely eradicated. She reiterated that to her that seems like a significant environment disaster. She wondered if this constitutes having a meeting and that some funds be set aside to find out why this has occurred and what can be done immediately to stop this. She said that if they wait until 2017 to look at the sea grass it will be too late. They need to have the FDEP come to Indian River County, put

together some sort of conference and bring the experts to determine what has happened and what they can do to protect it and it should be done immediately.

Ms. Pollick knew that St. John's Water Management District was working with experts from the University of Florida. However, she understands the points that Mrs. Carroll has made and will take this back to Tallahassee and suggest that they need to take a little more aggressive action.

Mrs. Carroll asked if something like this has occurred in other parts of the State within the last ten years.

Ms. Pollick did not think that this particular type of event has occurred. This is relatively new for Florida.

Mr. Winger had some information on this that he will provide to Ms. Pollick. He said that the Florida League of Cities are concerned and feel that something needs to be done at the State and County level.

Mrs. Carroll reiterated the urgency necessary for creating something at the State level to get some experts in the area to determine what is going on. She then commented that the County has not passed a fertilizer Ordinance and a large percentage of the County is utilized for the citrus and agriculture industry. She said there have been concerns if the runoff from the western parts of the County could have impacted the water quality that they are seeing now based on fertilizer flowing into the river.

Ms. Pollick mentioned that practices used today are better (using fertilizers, etc.) than they were ten years ago. She said as far as direct connections, that it was too early to say.

Mr. Winger commented that if anyone is interested in the water problems there is a book called "The Swamp" and the book goes over things that have been done through history and what has caused some of the problems that occur now.

Mayor Turner asked Mr. O'Connor to continue looking at pursuing possibly some of these State or Federal grants to accelerate their baffle box program.

#### **4. Lorne Coyle, from the Homeless Family Center, to speak about their new Thrift Store**

Mr. Lorne Coyle passed out a gift to Council and asked that they not open it yet. He mentioned that he received a letter from one of the homeless families staying at the Center. It was from a man who was at the Center with his daughter. He thanked them (the Homeless Family Center) for housing and feeding them, as well as providing transportation and thanked God there were people like him out in the world. This man is at the Center because he lost his job. He was a carpenter and because of the economy there has not been much work in the construction business. Mr. Coyle said that the biggest cause for homeless people is unemployment. He said that as of yesterday there

were 55 screened families on their waiting list. The Center now has an opportunity to open a thrift store, which would give some of these people a second chance. The idea is to train people for retail jobs. The grand opening of the thrift store will be on November 10<sup>th</sup>. They will be accepting donated goods and are asking for volunteers if anyone has the time. At this time Council opened their gift and it was a beanie baby that had all the information of the thrift store and training center. The website to find more information is [www.HomelessFamilyCenter.com](http://www.HomelessFamilyCenter.com).

Mr. Brian Burklew commented that as a new member of the Airport Commission. He agrees with what is happening at the Airport. He was at today's meeting as the Public Information Officer for his Rotary Club. He said that the City is helping them again with the second annual event, which is the Florida Craft Brew and Wingfest. The event will be on Saturday, February 23, 2013 from 11:00 a.m. – 4:30 p.m. He said that they have been so successful that they have a waiting list for vendors who wish to participate.

#### **D. Adoption of Consent Agenda**

- 1. Regular City Council Minutes – October 2, 2012**
- 2. Award of Contract to Advantage Consulting, LLC to Conduct a Wildlife Hazard Assessment and Develop a Wildlife Hazard Management Plan (RFQ No. 170-12/JO)**
- 3. Second Addendum to Employment Agreement – James R. O'Connor**
- 4. Monthly Capital Projects' Status Report**
- 5. Professional Engineering and Planning Services for Airport Capital Improvement Projects; City of Vero Beach RFQ 240-12**
- 6. Approval of License Agreement between the City of Vero Beach and Vero Beach Air Show, Inc., to conduct an Air Show at the Vero Beach Municipal Airport**
- 7. The Vero Beach Sunrise Rotary Club request permission from the City Council to sell beer and wine at their annual Florida Craft Brew and Wingfest**
- 8. Agreement and Consent to Amendment and Assignment of Commercial Lease Agreement between the City of Vero Beach, Kenneth E. Padgett, and Wolfenden Enterprises, Inc.**

Mr. Fletcher made a motion to adopt the consent agenda as presented. Mr. Kramer seconded the motion and it passed unanimously.

#### **3. PUBLIC HEARINGS**

- A) An Ordinance of the City of Vero Beach, Florida, amending the City of Vero Beach Land Development Regulations, Chapter 38, Article I, Relating to the Regulation and Use of Signs; Providing for Conflict and Severability; Providing for Effective Dates – Requested by the Planning and Development Director**

The City Clerk read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, reported that the regulations governing real estate, open house, construction, household sale, election and free expression signs in residential districts have been changed to a maximum of three (3) square feet in area and three (3) feet in height. He pointed out that the free expression signs and election signs will not go into effect until seven (7) days after the election.

Mayor Turner opened and closed the public hearing at 12:10 p.m., with no one wishing to be heard.

Mr. Kramer made a motion to approve the Ordinance. Mrs. Carroll seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner yes.

**B) An Ordinance of the City of Vero Beach, Florida, Amending Chapter 64, Article I, Development Review of the City of Vero Beach Land Development Regulations; Providing for Comprehensive Revisions to Development Review and Approval Process and Criteria; Providing for Conflict and Severability; Providing for an Effective Date. – Requested by the Planning and Development Department**

The City Clerk read the Ordinance by title only.

Mr. McGarry stated that at the request of the City Council the notification to property owners for site plan and site plan amendments was changed back to the original 500 feet and is indicated in this Ordinance.

Mayor Turner opened and closed the public hearing at 12:11 p.m., with no one else wishing to be heard.

Mr. Fletcher made a motion to approve the Ordinance. Mr. Kramer seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner yes.

**C) An Ordinance of the City of Vero Beach, Florida, repealing Ordinance No. 2009-05, Establishing the City of Vero Beach Planning and Development Department's Fee Schedule for Development Review Applications and Related Services; Providing for an Effective Date. – Requested by the Planning and Development Department**

The City Clerk read the Ordinance by title only.

Mr. McGarry reported that this Ordinance repeals Ordinance 2009-05, establishing the Planning and Development Department's fee schedule for development review applications and related services.

Mayor Turner opened and closed the public hearing at 12:12 p.m., with no one wishing to be heard.

Mr. Kramer made a motion to approve the Ordinance. Mr. Fletcher seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner yes.

**D) A Resolution of the City Council of the City of Vero Beach, Florida, Adopting a Revised Fee Schedule for Development Review Applications and Related Services; and Providing for an Effective Date. – Requested by the Planning and Development Department**

The City Clerk read the Resolution by title only.

Mr. McGarry recalled that at the first reading of this Resolution that Council requested that staff review the fee cost to make sure that they adequately recovered all the labor costs. They reviewed the fees and based on their records they feel they are about 8% lower than the full costs. They increased most of the fees by 8%. He included a copy of the comparison from the first initial proposal as opposed to the revised proposal (on file in the Clerk's office).

Mr. Winger recalled that the first proposal would have taken down the revenue to \$3,000 and there was a \$48,000 gap. He asked Mr. McGarry how much higher are the fees going to be than they were before.

Mr. McGarry estimated that the increase in fees was around \$7,000, assuming they have historical patterns.

Mayor Turner opened and closed the public hearing at 12:16 p.m., with no one wishing to be heard.

Mr. Fletcher made a motion to approve the Ordinance. Mrs. Carroll seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner yes.

At this time, Council took a lunch break and the meeting reconvened at 1:30 p.m.

**4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING**

**A) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Supplemental Joint Participation Agreement with the State of Florida, Department of Transportation to Develop a Wildlife Hazard Management Plan (FDOT #430487-1-94-01). – Requested by the Airport Director**

The City Clerk read the Resolution by title only.

Mr. Eric Menger, Airport Director, reported that this is a companion item to the item that they approved on the consent agenda (item 2D-2). He explained that both the Federal Aviation Administration (FAA) and the Florida Department of Transportation (FDOT) have offered funding for this project. However, because the FAA funding was reduced from the original requested scope of work the FDOT requested that the City execute the Supplemental Joint Participation Agreement (SJPA) to accommodate the different project funding percentages. He recommended approval of the Resolution and acceptance of the SJPA.

Mrs. Carroll asked if this was taken to the Airport Commission.

Mr. Menger answered yes. He said that all of the Airport Commission received copies of the Resolution and SJPA and no questions were raised by the members.

Mr. Fletcher made a motion to approve the Resolution. Mayor Turner seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner yes.

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

- A) An Ordinance of the City of Vero Beach, Florida, Providing and Establishing Revisions to the Budget for the City of Vero Beach, Florida, for the period beginning October 1, 2011 and ending September 30, 2012, by increasing the General Fund by \$3,185,429; increasing the Excise Tax Bond Sinking Fund by \$6,699,144; by decreasing the Street Paving and Drainage Fund by \$1,999,500; by increasing the Infrastructure and Real Estate Improvement Fund by \$3,355,504; by decreasing the Electric Fund by \$6,324,884; by decreasing the Electric R&R Fund by \$4,696,297; by decreasing the Water and Sewer Fund by \$1,954,728; by decreasing the Water and Sewer R&R Fund by \$1,486,350; by increasing the Airport Fund by \$1,161,434; by decreasing the Airport Construction Fund by \$3,739,239; by increasing the Marina Fund by \$115,620; by increasing the Solid Waste Fund by \$7,343; by increasing the Recreation Fund by \$49,999; by increasing the Recreation Construction Fund by \$23,762; by increasing the Confiscated Property Fund by \$6,372; by decreasing the Law Enforcement Education Fund by \$15,275; by decreasing the Crestlawn Cemetery Trust Fund by \$3,750; All from Revised Revenue, Expenditure and Transfer Estimates. – Requested by the Finance Director**

The City Clerk read the Ordinance by title only.

Ms. Cindy Lawson, Finance Director, stated that this is the second and final budget amendment for the fiscal year that just ended on September 30<sup>th</sup>. She said that this is based on their current estimates of revenues, expenditures and accruals. She said that

they are doing this a little earlier than they normally would after the closing of the fiscal year, so it is very conservative. She said that with some of the funds they may end up slightly better than what they are predicting now. They find themselves in a far better position than they were in last year about this time with respect to revenues and expenditures versus the original budget. She said that this is due to some of the new changes that have been implemented this year. She provided additional information to Council yesterday, which is the analysis of changes in fund balances/unrestricted net assets (on file in the Clerk's office). The Finance Commission has reviewed this budget amendment and unanimously voted to recommend to Council that they approve it as is.

Ms. Lawson briefly went through the budget amendments. She said that the biggest change in the General Fund is that there is a little over three million dollars, which was caused by their refinancing of the loan back in July. They will see in the General Fund a \$676,000 debt service amendment that was made early, but this will be reversed and the fund balance replaced in FY 2012-2013 by the corresponding amount. She thought by the audited fiscal year the real increase in fund balance is going to be around \$99,000 and possibly better. In the electric utility the revenues have decreased by \$6.3 million from the original budget. She said although rates increased in January 2012, kWh sales were lower due to a milder winter and summer than the prior year. However, the total operating revenues for FY 11-12 are projected to be \$2 million higher than FY 10-11. The decrease in revenues versus budget was offset by lower purchased power costs (\$4.4 million under budget) as well as decreased operating costs and transfers. In the Water and Sewer Utility Fund the majority of Water and Sewer fund departments had lower than budgeted operating salaries, due to vacancies remaining unfilled as the utility was restructured. The projected increase for bad debt expenses at year end is primarily the result of audit adjustments in FY 10-11 and FY 11-12 to properly reallocate uncollectible accounts previously booked exclusively to the Electric Utility Fund. The transfer to the Water and Sewer capital projects fund is being decreased by \$1.615 million and the Water and Sewer R&R Fund is projected to have a \$6 million cash balance at October 1, 2012, with approximately \$1.2 million of this amount tentatively set aside for early retirement of debt and the remainder available for future year capital projects.

Mr. Winger asked if this was the end of the budget amendments or will there need to be another one.

Ms. Lawson stated that this was the end of the budget amendments. She said by State law the amendments have to be adopted by the end of November.

Mr. Fletcher noticed that there was a \$73,000 increase for the Recreation Fund. He asked what this money was being spent on.

Ms. Lawson explained that it was a combination of a little decrease in the revenue and they were a little more conservative estimating their revenue for 2013. They also had a slight increase in salaries, which was due to a retirement payout.

Mr. Fletcher recalled that they were asking the Recreation Department to look at increasing some of their fees for some of the services that they offer. He asked for the status of where this was at.

Mr. O'Connor stated that the Recreation Department will be coming forward with some fee schedules for Council's consideration. Hopefully this will be completed in December. He said one of the issues they are working on is with the Little League Association. He said the other proposed new fees have been established and will be recommended to Council. He was trying to bring all of this to Council at one time as opposed to doing it multiple times.

Mr. Winger felt that the Recreation Commission and Recreation Department have done a great job with the rates. He hoped by the end of December they would ratify whatever the new rates are and have a recommendation on what the best alternative is for the Little League. He said at the Recreation Commission meeting where the Little League was present they stated if they had to pay the entire \$35,000 electric bill it would be catastrophic for them. However, they need to find some middle ground in helping the Little League and he does not think that it is reasonable for the taxpayers to have to pay \$35,000.

Mr. O'Connor said that this should be addressed at their November meeting. He mentioned that in using Little League as an example, there probably is only about 40% that are City residents that participate in this organization, but Little League is for the entire region, which they should take into consideration.

Mr. Fletcher asked if the Little League have talked to the County about splitting the fees.

Mr. O'Connor thought that the Little League was going to go before the County Commission.

Mr. Winger added that the Chairman of the Recreation Commission has been forceful in saying that the Little League needs to go and talk to the County and what their contribution to the program will be. He was not sure if they have gone before the County or not.

Mayor Turner appreciated the summary provided to them by the Finance Director. She expressed some concern with the Marina suffering a decrease in their net assets. She wondered if they need to be raising the rates and costs at the Marina.

Mrs. Carroll wondered if the Marine Commission has discussed this.

Mr. O'Connor did not think that this issue was put on one of the Marine Commission agendas. However, they are aware of the budget. He said that he talked to the Marina Director and another issue that came up is the spread on their fuel where sales are down.

Mrs. Carroll referred to the backup where it states that the decrease is primarily due to dock and dry storage rental revenue. She finds that surprising because she thought that the dry storage was completely full. She asked why there is this decrease of \$200,000 in revenues.

Mr. O'Connor explained the filling of the dry storage spaces took place in the later part of the year and there were a lot of vacancies in the first part of the year. He said that Mrs. Carroll was correct, that it is full now.

Mr. Winger noted that the gross profit was down on diesel and gasoline about \$65,000. He said that they need to set a gross profit margin just like any other retailer and they need to strive to get to that gross profit margin.

Mr. O'Connor agreed that needs to be done. He said that unfortunately the large boats that purchase a lot of fuel go out of one of the inlets where the competition exists. He has discussed the fuel costs with the Marina Director.

Mr. Fletcher instructed the Marine Commission to put this on their agenda for discussion.

Mrs. Carroll added that she would like the Marine Commission to take a look at the numbers and give any recommendations that they could to the Marina Director and Finance Director in terms of modifications that need to be made so that they don't run into this situation moving forward.

Mr. Fletcher thought that the Mayor should ask the Marine Commission to consider this issue.

Mayor Turner agreed that needed to be done.

Ms. Lawson commented that they were too conservative in their revenue estimates.

Mr. Fletcher noted that the Marina is supposed to be an Enterprise Fund and this is not much of an Enterprise.

Mr. Kramer referred to the monthly financial report, which indicates to him they are running ahead of where they are supposed to be by around \$58,000.

Mr. Winger explained the reason for that was because fuel prices were higher so that increases their revenue. However, on the other hand their gross margin is lower.

Ms. Lawson reported that there will be more expenses coming in, which will include the first payroll that was made in October. The other issue is the budget shows the principal and interest payments as an expense, but in an Enterprise Fund principle and interest payments are not an expenditure. She is hoping to try to find a way to include some summary pages that do a better job of conveying the real bottom line in the monthly financial report.

Mrs. Carroll brought up the decrease for Crestlawn Cemetery. She talked to someone who works at one of the local funeral homes who told her that the lawn is being maintained at the Cemetery, but the grave stones are not. She said that this may be affecting sales. She suggested that the Public Work's department pay a little more attention to the grave stones.

Mr. O'Connor said that will be done. He noted that the schedule of maintenance has been adjusted at the Cemetery because of costs. He said that there are less man hours being spent at the Cemetery in order to reduce costs.

Mrs. Carroll suggested putting an application of herbicide over the grave stones in order to keep them clear so they look presentable. She would be happy to set up a meeting for Mr. O'Connor and the funeral home representative that she spoke of earlier.

Mayor Turner made a motion that they move this Ordinance to a future hearing on November 13, 2012. Mr. Fletcher seconded the motion and it passed 5-0 with Mr. Winger voting yes, Mr. Kramer yes, Mrs. Carroll yes, Mr. Fletcher yes, and Mayor Turner yes.

## **6. CITY CLERK'S MATTERS**

Mrs. Carroll brought up two (2) emails that Mr. Winger had sent to Mr. Barry Moline, at Florida Municipal Power Agency (FMPA), which the City is no longer a member of. Mr. Moline has voiced his opinion that he is opposed to the City selling their electric system to FPL. She read the emails and asked Mr. Winger what type of secret communications were taking place that he asked him not to respond to his City of Vero Beach address.

Mr. Winger explained that he was at a Florida of League of Cities meeting on Friday and he was using his blackberry. He said that Mr. Moline did not respond to any emails that he sent to him. He did talk to him over the phone. Mr. Winger said that he has a business and personal relationship with Mr. Moline. These are relationships that he has with other people, such as Mr. George Christopher, Mr. Craig Dunlop and Mr. Rocky Joyner. He reiterated that he received no written communication from Mr. Moline, but did talk to him over the phone. He wanted his opinion on the All Requirements Project and if they were on solid ground. Mr. Moline told him that he should have some concerns and they should be brought up (discussed earlier in the meeting). He would be happy to reveal whatever Council wishes.

Mrs. Carroll read the email where it stated "Igoe and O'Connor swept under the carpet and I think we should transfer the liability to OUC as part of next weeks agreement." She asked Mr. Winger what he meant by "swept under the carpet."

Mr. Winger explained what he was saying is that he has concerns about how we exit the All Requirements Contract. He believes that it wasn't adequately considered. He used the cliché "swept under the rug."

Mr. Kramer mentioned that they were not spending any money on FMPA, so talking to a private citizen like Mr. Moline is not a Sunshine Law violation.

Mr. Coment expressed that it is not so much a Sunshine Law issue, as it is a public records issue. He said that it doesn't matter what device, whether it is at City Hall or home if there is any communication created or received that has to do with City business then it is a public record.

Mrs. Carroll commented that is why she brought this up and she noted the disclaimer that is posted on all of their emails. She asked Mr. Coment to initiate a public records request of Mr. Winger since he has just stated that he is using his blackberry as a method to find out information having to do with City business. She asked as a public records request that any communications between himself and Mr. Moline or any other State agencies in regards to public information that they receive a copy of those records. She was concerned with what types of secret communications were transpiring between him and Mr. Moline.

Mr. Winger had no problem with Mr. Coment looking at his blackberry and all of the files that are on it.

Mr. Winger brought up giving information to the newspapers. He said that when a reporter calls him he does give them information. The reason he does it is because he believes that a big part of his job is to help the public understand issues and find out what the public wants. He said that it is his job to do what the public wants. He tries to be as transparent as he can.

Mayor Turner stated that the importance of bringing this up is public records. She said that if any Councilmember collects any information on any item that they may be voting on in the future it is a public record and it must be turned in to the City Clerk.

Mr. Winger brought up that from time to time he has done analysis and has turned the analysis over to Mrs. Vock. He told Mrs. Carroll that in this particular case that she was correct.

Mr. Coment added that the policy has been that when a Councilmember receives something or sends something that the Clerk gets copies of it and as a matter of course she copies the information for all of the other Councilmembers.

## **7. CITY MANAGER'S MATTERS**

### **A) Agreement between the City of Vero Beach and Coastal Florida Police Benevolent Association (Rank & File) – October 1, 2012 – September 30, 2015**

This item was heard earlier in the meeting.

**8. CITY ATTORNEY'S MATTERS**

**9. CITY COUNCIL MATTERS**

**A. Old Business**

**1. A vote to direct the City Attorney to complete the attached draft Ordinance and bring it back for first reading on November 13, 2012. – Requested by Councilmember Richard Winger**

Mr. Winger put this item on the agenda because he believes that the voters should have a voice on whether or not they approve the sale of the electric utility to FPL. He also believes that the voters have a right to a referendum to know the specific financial details of the sale of the taxpayer's City owned electric utility. They have a right to know what the resulting potential power savings will be, tax increases, and any diminishment of services. They also have a right to be provided with a five year or longer analysis after the close of the sale estimates of City revenue/expenses and resulting services. He said if they allow their City Attorney to draft the Ordinance then they can control the wording. He said there is no question that there is going to be a petition coming forward and that is dangerous. He told Council that initially he drafted this Ordinance with the help of Mr. George Christopher. There was an error in the first Ordinance that he drafted and he changed it to include the words "Asset Purchase and Sales Agreement." He will bring this back on November 13<sup>th</sup> unless someone wants to pursue it today. The referendum could be voted on March 13<sup>th</sup> when Indian River Shores has their election. He is concerned that they would sign something and preclude a referendum. If a referendum is done after the sales contract has been signed there could be all kinds of complications. He just wanted Council to know that he has modified this Ordinance to make it more accurate.

Mrs. Carroll recalled that she proposed a somewhat different approach than doing a referendum. She said for a referendum, the voters themselves that reside within the City would be the ones responsible for making the determination. She said at her house she has one electric meter, but there are three voters in her home (herself, her husband and her daughter). She said if you compare this to someone living alone there would only be one (1) vote. So her house get three votes for determining if they sell the utilities is not quite fair to the one person living by themselves who only gets one (1) vote. The concept that she brought up before, and what the County is using, is that they are doing a vote by mail type survey. Back in February she asked Ms. Lawson to provide to her a report of the actual customers that they have and what their classifications are. She went over some of the meters that the City has. She said based on the last census there were 15,000 residents in the City, but close to 20% of those residents were under the age of 18, which leaves them with about 1,000 residents. There are 9,600 residential meters within the City. She said within the County the meters that are under the City's electric system are another 18,000 individual meters. There are also multi-family meters and some of them are not voters and there are apartment complexes where there is only one meter per

apartment complex. What is important is that within their City limits they have 2,217 individual commercial meters. They have almost the same amount of commercial businesses outside the City that is using the electric system. There are about 275 commercial properties both inside and pretty close to the same outside, which are at the demand rate (high rate) and then one (1) Industrial customer who is Piper, which in itself uses over a million dollars worth of electricity a year. She said when you add all of this up there is around thirteen million dollars worth of sales going out from the electric system to those individuals. She felt that it was important that they look not just at the residents, but also the meters that individuals have. All total the report showed that there were 33,200 meters and very distinction in terms of their breakdown. They could send a survey out in their utility bill, color code them if they want to, then each person paying the bill of their house or business can send the survey back to the City. What she feels will happen is the vast majority of residents and outside City individuals with meters on their businesses or homes are going to say please move forward with this deal. She said that this is an option that she would put on the table if in fact the City Council felt it was important to do.

Mr. Winger stated that he was going to call for a vote on November 13<sup>th</sup> for this referendum. He told Council that the petition that is being talked about would be a charter amendment to preclude the sale of any utility. He said if there is a referendum and it is fairly worded, such as the one that he drafted, it will pass. In their system it is one vote, one person, which is the way they are going to elect the President of the United States. He said that if they don't do this referendum then the people will and he does not think that is useful.

Mrs. Carroll was concerned that the attorney Mr. Winger has worked with on some of these issues is very involved with the IRNA, who are strongly against the sale to FPL. She is also concerned that Mr. Winger has private conversations going on with Mr. Barry Moline who is also against the sale. However, when Mr. Winger ran for office last year, he provided information saying that the City should sell the electric at a fair price. She asked Mr. Winger if he was looking for a fair price or was he looking to kill the sale.

Mr. Winger felt that was a ridiculous question and not appropriate. He said that he was not associated with IRNA or the Taxpayer's Association.

Mr. Fletcher felt that they were getting into politics and needed to get back to their business meeting.

**B. New Business**

**10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

**A. Mayor Pilar Turner's Matters**

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

Mayor Turner reported that Mr. Ed Wiegner has resigned from the Utilities Commission. The Treasure Coast Council of Local Governments is inviting the Council to their annual luncheon. She thanked all the galleries downtown for participating in the downtown gallery stroll. She attended Tour to Vero where many bikers rode for a good cause. She said that National Night Out at Riverside Park was a wonderful night out. The fire girls also had an event that was fabulous. She reminded the public that Vero Beach Sports Village will be hosting the Jake Owens concert in December. Also, in preparation for the Chili cook-off contest, she provided Council with some recipes for them to look at.

**B. Vice Mayor Craig Fletcher's Matters**

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

No items for discussion.

**C. Councilmember Tracy Carroll's Matters**

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

Mrs. Carroll reminded everyone that on Saturday, October 27<sup>th</sup> they will be having their annual Halloween parade.

Mrs. Carroll shared some information on the quit smoking initiative (on file in the Clerk's office).

Mrs. Carroll noted that the Chamber of Commerce is looking for people to be involved in their annual Leadership Training program. She said that they are now accepting applications.

Mr. O'Connor was a student in the last class that they had and said that it was outstanding.

Mayor Turner noted that Mrs. Carroll did a good job in talking about her experience with the Leadership Training Program (available on-line).

Mrs. Carroll invited everyone to the Halloween Party at the Heritage Center scheduled for October 20, 2012.

**D. Councilmember Jay Kramer's Matters**

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

Mr. Kramer reminded the public about the Treasure Night Trunk Show scheduled for October 18<sup>th</sup>.

**E. Councilmember Richard Winger's Matters**

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

Mr. Winger reported on the Beach and Shores Committee meeting that he attended.

**11. ADJOURNMENT**

Today's meeting adjourned at 2:26 p.m.

/tv