

**CITY OF VERO BEACH, FLORIDA
FEBRUARY 2, 2010 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

1. CALL TO ORDER

A. Roll Call

Mayor Kevin Sawnick, present; Vice Mayor Sabin Abell, present; Councilmember Tom White, present; Councilmember Brian Heady, present and Councilmember Ken Daige, present **Also Present:** James Gabbard, City Manager; Charles Vitunac, City Attorney, and Tammy Vock, City Clerk

B. Invocation

The invocation was given by Pastor Dawn Reichart of Christ by the Sea.

C. Pledge of Allegiance

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

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption

Mr. White made a motion to adopt the agenda as presented. Mayor Sawnick seconded the motion and it passed unanimously.

B. Proclamations

None

C. Public Comment

Dr. Stephen Faherty read a prepared statement (please see attached).

Mr. Glenn Heran stated that it has been said by a few City Councilmembers that under the OUC contract that the rates will be less than Florida Power & Light (FP&L). He asked who told them that and where did they get that information. He noted that on November 17, 2009, Mr. White expressed concern that there would only be a \$46 reduction in the utility bill and he thought that it would be around a \$112 reduction. Then on December 1, 2009, Mr. White showed again some concern that rates were not going to be lower. At the tea party candidate forum held for City candidates former Councilmember Fromang stated that the rates were comparable. He didn't know what comparable meant when she said that. He wanted to know why three Councilmembers

think that the City of Vero Beach's rates are going to be lower than FP&L's. He wanted to know who told them that. He asked was it Mr. Sloan, Mrs. Hersey, Mr. Gabbard or Mr. Vitunac.

Mr. Charlie Wilson wondered if their City Attorney normally makes changes to all of their contracts or just to the OUC contract. He also wondered if the City should worry about their approved contracts being changed. He said before them is the OUC contract which could be in effect for the next twenty years. He said that none of the Council are lawyers. The City has paid millions of dollars for people to look at the legalities of the contract and now they are being asked whether something is substantial or not. He said they are not qualified to determine whether something is substantial or not. The testimony that they will be hearing today is from interested parties. They are people who want to protect their jobs, contracts, reputation or their seats on the City Council. He does not see how they can go forward without some sort of outside Counsel or a ruling from their Auditors. He said the facts are that there was no contract attached to the vote that took place at the City Council meeting (April 15, 2008), the provisions of the contract were hidden for two years and there was only three months from the time that the contract was revealed and the time that it took place and proper notice was not given. He said that there are requirements in State law that if you are going to indebt the citizens that you represent, you have to have the information in a timely matter. He suggested that they may want to have some sort of outside Counsel look at this that is not on the payroll. At their last City Council meeting the City Attorney asked them to retroactively approve the changes. He was glad that they did not do that. He said that four months ago the three Councilmembers who are members of the Indian River Neighborhood Association (Mr. Abell, Mr. White and Mr. Fish) would have all approved it. It is clear that the Council and staff will not subordinate themselves to the will of the voters and as a result he has researched and found Florida Statue 166, which allows for a referendum. He said that if this Council cannot make the proper decisions then the decision will have to be taken away. He said there are two ways to do that. He said either they can vote to put a referendum item on the ballot in November (decide about the Power Plant, decide about the OUC Contract, and decide about what they are going to do) and if they don't then it takes a petition of 1,060 signatures to put the referendum on the ballot. He said this afternoon, depending on what happens at this meeting this morning, he is going to the Supervisor of Elections office, he has an organization called Operation Clean Sweep, and they will endeavor to take the signatures of 1,060 voters and place a referendum item on the ballot and let the people vote on whether or not this City is competitive in the election business.

Mr. David Gregg came to today's meeting as an interested party. He does not live in the City at this time. He lives in the Moorings. He reported that in 1972 the City Council approved a contract with FP&L for the sale of the electric power system. He is now working with four individuals who have an alternative plan that they would like Council to consider. It does not involve a paid consultant or paid attorney. He requested permission to be able to make a presentation to Council in two weeks. He asked Council to wait in making a decision for two weeks and the group he is working with will present to them a detailed proposal that he thinks is in the best interest of the public.

Mr. Heady requested permission to address the last speaker. He asked the City Clerk to put this request on the next Council agenda under his matters.

Mr. Robert Walsh thanked City Council for returning to democracy and ending their three minute time limit speaking rule. He said that citizens have a right to complain to their government as a lot of the citizens have done concerning their electric bills.

Mr. J. Rock Tonkel made a call yesterday to one of the City Councilmembers without hearing any of the presentation this morning. He suggested setting aside any ratification of the contract today. After hearing David Gregg's comments they should hold this discussion and defer action on the ratification of the contract.

Mr. Randy Pinch expressed that there are some sitting Councilmembers who want to keep the Power Plant for some reason. He has not heard why they want to keep the Power Plant. He keeps hearing what Tom White has said in the past, which is be careful when it comes to selling the Power Plant. You might get what you wished for. He wanted to hear from those people who are adamant about keeping the Power Plant to explain the pros and cons for keeping the Power Plant.

Mr. Heady mentioned that since Mayor Sawnick was selected as their Mayor he has always allowed the Council to make comments after someone has spoke under Public Comments. He feels that this is appropriate and part of their job. He said that if this has changed he wanted to know why and who the Mayor has talked to about changing these procedures. He said that he is not going to sit quietly while the Mayor silences any Councilmember.

Mr. White wanted to make it clear that he was not a member of the IRNA. He serves all of Vero Beach and not just one individual group. He brought up the OUC contract and said that there was some confidentiality to the OUC contract because of the other two bidders. He referred to a couple of speakers this morning and wondered when they received their electrical engineering degree. He expressed that the City Council depends on the expertise of the people who have the knowledge to advise them (referring to staff, Mrs. Hersey and Mr. Sloan). He feels that there has been a lot of misinformation and he hoped today that a lot of those questions will be answered.

Mr. Abell expressed that this process has been going on for about four years. He thought that there was a lot of nitpicking taking place in referring to the changes made in the contract.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – January 19, 2010**
- 2. Special Call City Council Minutes – January 14, 2010**
- 3. Florida Boating Improvement Program Grant Agreement**
- 4. Mayor Sawnick attending APPA Legislative Rally**

Mr. White made a motion to adopt the consent agenda. Mr. Abell seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

- A) **An Ordinance of the City of Vero Beach, Florida, amending Chapter 58 “Personnel and Retirement,” Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide for Compliance with Chapter 2009-97, Laws of Florida; providing for Repeal of all Ordinances in conflict herewith; providing for severability; providing for codification and providing an effective date.**

Mayor Sawnick read the Ordinance by title only. He opened and closed the public hearing at 10:03 a.m., with no one wishing to be heard.

Mr. White made a motion to approve the Ordinance. Mr. Abell seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

None

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

None

6. CITY CLERK’S MATTERS

None

7. CITY MANAGER’S MATTERS

- A) **Request from Historic Preservation Commission for the City Staff to Prepare a Property Tax Exemption Ordinance for Historic Designated Properties**

Mr. Tim McGarry, Planning and Development Director, reported that the City Council enacted an Ordinance governing historic preservation in Chapter 76 of the Code. That Chapter provides that properties designated as historic under the City’s Ordinance are eligible for tax exemption for the assessed value of all improvements, which would result in restoration, renovation, or rehabilitation of the property if an Ordinance establishing such an exemption is adopted. This will allow an exemption from property taxes up to ten years. There are also provisions that could apply to non-for-profit organizations. He said that deed restrictions are placed on the property and the Council would have final

say. He needed Council's approval on this because it involves tax dollars.

Mayor Sawnick asked Mr. McGarry to explain why this was needed and will it help preserve buildings in the City.

Mr. McGarry reported that the City adopted a Historic Preservation Ordinance back in 2008 and at that time recognized that there were not a lot of incentives for property owners to have their homes become designated historic. So the Historic Preservation Commission believes that this will get property owners to want to reinvest in their properties and it will also be good for neighborhood revitalization.

Mr. White brought up County taxes and asked if the County would be helping.

Mr. McGarry explained that this was just for City taxes. He said that the County would have to adopt a similar Ordinance.

Mr. White recommended that the Mayor send a letter to the County asking them if they would go along with the City Ordinance.

Mr. Heady commented that a tax exemption is one tax transfer to another. If they exempt one property then they don't eliminate some need, or cost, or staff, but what they do is transfer the tax from a piece of property to the other homeowners in the community. He would object to that. However, he would be in favor of an exemption for ten years for any improvements made to the property.

Mr. McGarry explained that is what this Ordinance will do. He said this tax exemption would only be for improvements made to the property. He said the only case where this might not apply is if a not-for-profit organization did at least fifty percent improvements on the property they could get up to a hundred percent of the ten years.

Mr. Heady said that is fine as long as it is only for the improvements and it doesn't change the tax base or become a tax burden to someone else.

Mr. Abell felt that there should be something in the Ordinance that covers what happens if in the ten years the property is sold. They need to be able to reclaim the exempted taxes.

Mr. McGarry stated that a provision will be in the Ordinance covering that. He said basically it runs with the property.

Mayor Sawnick commented that one thing people say about Vero Beach is that they don't want to lose their historic buildings or historic "feel."

Mr. Heady thought that he was hearing two different things. He is hearing one request by a Councilmember that there be some rebate of taxes that have been sold within a period of time and then he is hearing that the tax abatement runs with the property. He felt it

was important that this credit runs with the property because that would allow someone to come in and do some renovations and if they sold the property that the tax credit would still run with the property.

Mr. McGarry explained that the Florida Statutes covers what must be in the Ordinance. He said that they could also tweak the Ordinance to have those things in it that the City would find desirable.

Mayor Sawnick asked Mr. McGarry when the Ordinance will be coming in front of them.

Mr. McGarry said that it would be within the next three months. He needs to get approval from both the Historic Preservation Commission and the Planning and Zoning Board and then he will bring it before Council.

Mr. Daige made a motion to approve the request by the Historic Preservation Commission for City staff to prepare a Property Tax Exemption Ordinance for historic designated properties. Mr. White seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

Mr. White made a motion to have the County consider a tax abatement on historical properties. Mr. Heady seconded the motion.

Mayor Sawnick clarified the motion, which was to send a letter to the County and to the School Board. Mr. White did not think that the Schools could help. The letter would just need to go to the County.

Mr. McGarry suggested that the letter be sent out after they have their Ordinance drafted.

Mr. Heady explained that this letter would be just for consideration and should be sent to the County and also the School Board. He thought that the School Board could go along with it as long as they didn't reduce the tax base. The exemption is only being given for improvements. He encouraged Council to send these letters out now and let them (County and School Board) know what they are considering and they may be able to give some suggestions on improving the Ordinance as it is being drafted.

The motion passed unanimously.

B) Orlando Utilities Commission and the City of Vero Beach Compliance Services Agreement

Mr. John Lee, Acting Electric Director, explained that when the City was a member of the FMPA all requirements project there were certain rules that they had to follow and FMPA handled those duties for them and then billed them. However, now since they have exited from the FMPA contract they need someone to perform these services. What is before them is a one year contract for OUC to do this. The contract is based on time and materials because standards change daily.

Mayor Sawnick asked how is this different from their previous agreement with FMPA.

Mr. Randall McCamish, Transmission and Distribution Director, explained that FMPA did not bill these services separately. The fees came out of the fees that they paid for electricity.

Mr. Heady wanted to make sure that they just don't end up with a large bill and that they are aware of what they are being billed for.

Mr. McCamish explained that they would be receiving an itemized bill and would be working with OUC staff on a day to day basis.

Mr. Lee added that OUC will provide them with an itemized bill every month. They will go through the bill and will be aware of what activities are being done by OUC staff. This way they will be able to determine if there are some things that City staff can do. He said at this point they need to have the expertise of OUC to handle these duties.

Mr. Abell pointed out that there is a rate schedule on page 12 of their backup material that is pretty clear.

Mr. Daige requested that staff come back once a month and give Council a report on how this is going. He would like to see a copy of the bill and time sheets that will be used every month. He made this in form of a motion.

Mr. White cautioned them on encroaching on the day to day operations of the City. This is Mr. Lee's responsibility and if he feels that Council needs to know something then he can bring it before them. He agreed with receiving a copy of the invoice every month. He didn't agree with adding another layer of government and having time sheets done.

Mr. Daige felt that as they were beginning with this new process that they needed to know what was going on.

Mr. Heady did not want to burden their employees. He said that when Council receives the monthly report and they have questions then they can bring them up at a Council meeting.

Mr. Lee stated that he will bring the first bill to Council at one of their Council meetings with a detailed summary and then after that he will provide them with a monthly general summary.

Mayor Sawnick made a motion to approve the agreement with Orlando Utilities Commission and the City of Vero Beach for Compliance Services and also that Mr. Lee would provide them with a monthly summary update on the costs. Mr. White seconded the motion.

Mr. Heady asked the City Attorney if this contract in any way has any tie at all to the OUC contract.

Mr. Vitunac answered yes. He said that if the OUC contract goes away then so does this contract.

Mr. Heady then asked the City Attorney if they could have this agreement in place without having the OUC contract in place.

Mr. Lee felt that this agreement and the OUC contract are two separate contracts. He said that they have a 90 day option to get out of this agreement and OUC has agreed to provide him separate invoices.

Mr. Heady wanted it made clear that their vote on this agreement has “zero” to do with the OUC contract.

The motion passed 5-0.

C) Oil Purchase and GSAP 2 Refund

Mr. Lee explained that when the City joined the all requirements project they had some oil in their storage tanks that FMPA purchased from them. When they exited the all requirements project they were required to buy that oil back. They have taken inventory of the oil and have agreed on a price, which the City has received a bill for. He suggested that the Mayor or City Manager sign this agreement or that Council give him authorization to sign it. Mr. Lee said that in addition to this the FMPA received a refund and we (the City) are entitled to part of that refund and what FMPA is suggesting is that they take the price of the oil, subtract out the refund and send them the difference. He will work this out with the Finance Director.

Mr. Heady asked Mr. Lee if there was money coming back to the City of Vero Beach. Mr. Lee answered yes. Mr. Heady asked if this money was paid in prior months to the OUC contract. Mr. Lee answered yes. Mr. Heady mentioned that these costs were included in the bills that the ratepayers paid. He then asked why they could not take this money and give it back to the ratepayers.

Mr. Lee thought that was an excellent idea. He has talked to the Finance Director about the best way to do this. He will bring it back to Council when they decide the easiest way to do this and the appropriate time to do it.

Mr. Heady made a motion to approve the oil purchase and GSAP 2 refund with the caveat that this money be returned to the ratepayers. Mr. White seconded the motion and it passed unanimously.

D) December 2009 Financial Update to be Presented by Finance Director Stephen Maillet

Mr. Steve Maillet, Finance Director, presented Council with a financial update and showed all of his information on the doc cam (information on file with the original minutes). He appreciated any feedback from Council as he goes through this process.

At this time, Council took a five minute break and reconvened at 10:57 a.m.

8. CITY ATTORNEY'S MATTERS

A) OUC Contract

Mayor Sawnick explained that Mr. Vitunac will be going through a document that shows what changes were made to the OUC contract (on file in the City Clerk's office). He said that the contract was approved two years ago and he was not on the Council and neither was Mr. Heady.

Mr. Vitunac gave some background of why this contract came about. He said that the contract was signed in the 40th month of a 60 month notice period that the City gave. The City was unhappy that it was being charged by FMPA and consequently had to charge to its customers. The City has been losing money every year for fifteen years since they signed the FMPA contract. They were losing enough money that it was worth a chance at arbitration. The City spent a lot of money going through arbitration and unfortunately lost with a vote 2-1. This left no other recourse but to exit the FMPA arrangement. The City of Vero Beach was the first and only City to do this and they were told that they would never be successful and it would never happen. But the City Council was courageous enough to go through with doing this. The City kept its rates low (last rate increase was 1992), but the rates kept going up because of the cost of fuel from FMPA. To try to buffer this cost increase, the City kept using its reserves. It should be clear to everyone that the rates charged to the County customers and the City customers have always been the same bottom line rate. Although, recently they did have to have a rate increase and they structured their rates to be the same as FP&L's. There is no out of City surcharge any more. At the moment their rates are higher than FP&L's, but the rates will be substantially lower than the current FMPA rates. Their rates are now competitive with other utilities. He expressed that the rate that FP&L charges its customers has never been offered to Vero Beach customers. He then put on the doc cam a calendar showing the crucial two weeks that changes were made to the OUC contract.

Mr. Heady asked if it would be appropriate for anyone testifying at today's meeting to be sworn in.

The Clerk swore in everyone testifying at today's meeting enmasse.

Mr. Vitunac continued going over the calendar. He said that April 15th was the date that Council met and approved OUC as their power provider. The Council had indicated that they wanted the Utilities Commission to review the contract and give their recommendations. Staff arranged on Monday April 7th for the City Council to have one

on one interviews with Sue Hersey, their consultant, R.B. Sloan, former Utilities Director, and staff to go over the redacted contract line by line to see if they had any questions. Mr. Vitunac then showed a copy of the City Manager's calendar for that day, which shows the times that all City Councilmembers attended these meetings (April 7, 2008). The contract that they reviewed was eventually signed by the Mayor. He said that Mrs. Hersey is at today's meeting to give a quick rundown on what she told Council at the April 7th one on one meeting. He said when the Utilities Commission met they all agreed that the OUC contract is a great one and they said a good job was done in protecting the City and County utilities customers.

Mayor Sawnick wanted to make it clear that what they were discussing today was the changes made to the contract and whether anything further should be done.

Mrs. Sue Hersey, Consultant, stated that she traveled to Vero Beach on Sunday, April 6th and met early in the morning in Mr. Gabbard's office on April 7th. They met with each Councilperson separately and what was presented to them was the working draft of the contract, which she has with her today and will show it to anyone who wants to see it. She said that it was unredacted and had all of the pricing information in it. She said at that time that information was confidential and they had to treat it as such according to the laws. On April 7th, Mrs. Hersey said that she brought with her all of her working files and all of the bids from the three top bidders. She went over a Power Point presentation with each Councilmember, which was the same Power Point presentation that she presented the next day to the Utilities Commission. She said that the meetings went on throughout the afternoon. At the request of Mr. Daige, she also met with the Finance Director and went through the models that had been used. She said all the information was available at that time. At the meeting held with the Council on April 7th, she explained to each Councilmember that they would be putting a redacted version together by that evening and that they would be delivering it to the Utility Commission members and Councilmembers so that they could have it by April 8th when the Utility Commission was scheduled to have their meeting. Everyone was told not to reveal the name of the utility company chosen until it was made public. The copies of the contract were made in the evening and they went to a copy center to make the copies. Then a Vero Beach Police Officer hand delivered each one of the packages to the Utility Commission members. She reiterated that the presentation that was given to the Councilmembers was then given to the Utility Commission and they unanimously voted to approve the recommendation. Then a week later on April 15th the Council approved the agreement and on April 16th Mayor White signed the contract and it was sent to OUC. The person that had to sign it at OUC was not there on Friday, April 18th so he signed the contract on April 21, 2008. She said that absolutely no changes were made between the 16th and the 21st. The changes that were made to the version given to the Utility Commission and the final version were typographical/grammar errors, etc.

Mr. Vitunac asked Mrs. Hersey if what she was saying was that all the changes were made before April 15th when Council made their motion to approve the contract.

Mrs. Hersey answered yes.

Mr. Heady asked Mrs. Hershey if what she gave the City Council on April 7th was an unredacted and redacted version of the contract and both versions were identical except for redaction sections.

Mrs. Hersey explained that in the room they did not have the redacted version, but they had an unredacted version. They told each Councilmember that by that evening they would be putting together a redacted version.

Mr. Heady then said that the redacted version was a product of the version they saw that day.

Mrs. Hersey explained that nothing was redacted. She said that evening they had a version that was redacted and a corresponding unredacted version at that time.

Mr. Heady asked her if there were two different documents.

Mrs. Hersey said that it was a document at a different point in time. There may have been a couple typos that had been caught and corrected by the evening. There was nothing of substance different.

Mr. Heady asked Mrs. Hersey if she did the redactions.

Mrs. Hersey answered no. She said that the redactions were done by OUC.

Mr. Heady thought that what he heard Mrs. Hersey say was that after she met with the City Councilmembers then the redactions were made.

Mrs. Hersey said yes that the redactions were done that evening. They were done by OUC. She asked them what information that they wanted to redact and they made the redactions from the version that the City Councilmembers reviewed. She said that OUC redacted the information because she wanted them to tell her what information they wanted to keep private.

Mr. Heady brought up the 400 pages of emails that went back and forth after the meeting and those 400 pages resulted in the changes that they see in the contract.

Mrs. Hersey stated that they are going to go through all of the changes and each one of the changes were made before the City Council made their decision on April 15th with the exception of the one that Mr. Daige asked for at the meeting.

At this time, a portion of the City Council meeting from April 15, 2008 having to do with the OUC contract was shown to the public.

Mr. Vitunac then went through page by page all the changes that were made in the contract. He made it clear that the changes (with the exception of the one that Mr. Daige

made) were all done before Council voted on the contract on April 15, 2008. During his presentation Council was encouraged to ask questions if they had any. He thanked staff who helped make this document possible.

Mr. Heady asked when the 50 million dollar penalty was put in the contract.

Mr. Sloan did not know. He said that the penalty clause was in the contract when Council approved it. He then briefly explained what CROD meant referring to the FMPA contract.

Mr. White realized that Mr. Vitunac was going through this contract for the public's benefit. He said that these changes were made before Council approved the contract. He said that the contract has been signed, delivered, and sealed. He heard the word ratifying and asked if they are going to ratify the contract.

Mr. Vitunac stated that staff is not asking that they do anything. He said that the twenty year contract is in effect at this time.

Mayor Sawnick added that Council has had a couple of weeks to look over the document outlining the changes that they received from Mr. Vitunac. He said that the contract was executed on April 21, 2008 and hopefully this presentation today has clarified things.

Council took a five minute break at 12:50 p.m.

Mr. White hoped that the public understood that the changes made to the contract were not material to the contract. He asked if previous Councils' sign a contract what makes it legal for new Councilmembers or Candidates to question that contract. He then asked if it was legal for them to even be doing this.

Mr. Vitunac explained that they could always bring contracts up to make sure they are legal. If they do something else (like changing the contract) then they would be violating the contract.

Mr. Abell felt that this whole exercise was a waste of time. He hopes that the public understands that some of the comments being made were bogus. He said lets proceed.

Mayor Sawnick commented that this presentation was for the public to see what the changes were. He hopes that whatever they do in the future that they do it in the right way. He thanked Mr. Vitunac and staff for putting this together. He had no problems with allowing the public to speak as long as what they were speaking about were the changes made to the contract.

Mr. Heady felt that some of the Councilmembers were annoyed in respect to having to do this entire exercise. He said that the misinformation is the cause for this meeting. He mentioned that there was conversation at the last meeting about the changes and the dates

that the contract was signed. It was an assumption that Mr. White signed it on April 21st and that changes were made prior to Council looking at the contract.

Mr. Vitunac reiterated that the changes to the contract were made after the Council looked at the contract on April 8th. There were no changes made after the contract left the City to be signed by OUC. The changes made were the ones that he just went over.

Mr. Heady stated that the City Council looked at the document and the changes that he went over happened after the City Council looked and discussed the document with the City Manager, City Attorney, Mr. Sloan and Mrs. Hersey and then Mr. Maillet. But, at the Council meeting the City Council was not informed that there had been these changes were made.

Mrs. Hersey reiterated that OUC made redactions on anything they wanted to remain confidential.

Mr. Heady said then Mrs. Hersey and Mr. Sloan went to staples to make copies of the redacted contract and those copies went to the Utilities Commission and the City Council. He asked Mrs. Hersey how OUC transmitted the redacted copy to her on that day.

Mrs. Hersey stated that the contract was emailed to Mr. Sloan on April 7th (please see attached verification of the email).

Mayor Sawnick noted that they will have public comments and then table the remaining items on the agenda to be heard at their next meeting. He said that they will adjourn immediately following public comments.

Mr. Charlie Wilson said that was a fine presentation. He said part of the concerns are if these changes were made before Council voted on the contract on April 15th. He said that at one time he asked for a copy of that meeting and he asked for a copy of the backup. There was no contract in the backup material. He understands that on the date that Council adopted that contract that there was "no" contract. What they did was they adopted the Power Point presentation. He agreed that on April 7th that all City Councilmembers were briefed and some say that they saw an unredacted contract. Some of the Councilmembers say that they did not see an unredacted contract. Mrs. Hersey was very clear in saying that Council was presented with a contract. She didn't say that Council read a contract or even received a copy of the contract. According to former Councilmember Debra Fromang, she said that there wasn't a contract, it was on a computer. Mrs. Hersey has testified that there was a working draft of the contract. So the Council was shown some sort of document on April 7th. He said between April 7th and April 15th a number of changes were made. According to the City Attorney, all these changes were made between April 7th and April 15th. Then on April 15th the Council voted with no contract in their backup. He said not only did Council not see a correct contract, but there was not one presented to them. He said the fact is that this Council did not adopt a contract. He said that is the key issue here. He said that the Mayor of the City of Vero Beach, according to the Charter, has no more authority than any other

Councilmember. Mr. Wilson continued by saying that the City Attorney and City Manager testified to the State Attorney's office that there were no changes. He said now they do see there were changes. At the last City Council meeting, the City Attorney gave Council some options, such as ratifying the changes retroactively, going back to the original contract without the changes and to renegotiate the contract. He went over some of the changes. He asked Council if they knew what the material difference in the contract was by changing the effective dates. The effective date has been changed several times. He stated for the record that he was not an attorney, which is why he was asking them to hire outside Counsel. In the contract they went from turnover date to effective date, which means it eliminates the possibility of litigation. He said that this is a material change. He pointed out that a contract, such as this one, can be challenged for five years. He went over number five, offering a memorandum versus an RFP, they changed the word wholesale capacity, they changed the bonds, they said when you capitalize a word it means nothing. He said that it is not true that changes the definition of a word. They changed a lot of words by adding an "s" which there is considerable difference. They changed the word electric to Plant. He wondered why this could only happen in the City of Vero Beach. He said that they do not have a valid contract and Mr. White did not have the authority to sign that contract. Mr. Daige said during the campaign that he thought they were going to bring the contract back. Mr. Wilson said that his guess would be that this will be challenged within the next five years. There is good reason that there are major concerns regarding this contract. He said that once he gets this on the agenda for a referendum for the November ballot they will be able to debate it. He will have it on the ballot while candidates are running for office and he will let them try to defend themselves.

Mr. David Gregg stated that this has been a very stimulating meeting. He was not going to argue about the legality of the contract. He just has a couple of questions. He has heard criticism of the public of being misinformed and he wanted to know how the public has been misinformed.

Mayor Sawnick explained to Mr. Gregg that things said can be interpreted in different ways.

Mr. Gregg then asked the members of the Council who approved the contract if they were ever made aware that FP&L would charge the City 3.4 million dollars a year to transmit the energy across their lines into the Vero Beach system.

Mr. Daige told Mr. Gregg that he was here just to listen to the public's comments.

Mr. White answered not until recently.

Mayor Sawnick asked Mr. Gregg not to address each Councilmember individually.

Mr. Gregg stated that he has been in this City a long time and this is the worst example of government by the people, for the people, that he has ever seen.

Mr. J. Rock Tonkel stated that he was challenged earlier in his statement from the last meeting that there would be a vote taken on the contract. He remembers at that meeting that Mr. Heady said that he was not going to act or vote on a contract if he only has ten minutes to read it. He thought that this contract would be brought back for a vote.

Mayor Sawnick commented that Mr. Vitunac did bring up at the last meeting about approving the contract retroactively, but he was just going over options that the Council could do. He said that this meeting was to just go over the changes in the contract.

At this time, there was no one else wishing to be heard under the Public Comments portion of the meeting.

Mr. White made a motion to table Councilmember's matters until the next Council meeting.

Mr. Heady asked the City Clerk if she would read the motion from the April 15th meeting. The Clerk told him that she did not have those minutes in front of her, but would have someone bring them to her and she would then read the motion. The one question he had on the contract is the difference between what the Councilmembers were told and the redacted copy and in his request to find that information, one of the things that he asked for was a copy of the document that was shown to the City Councilmembers on April 7th. In fact, Debra Fromang came in and the two of them spent a couple of hours trying to find the contract. They went through Mr. Sloan's old desk because Mrs. Fromang knew where the contract was and the only contract that they found in the desk was the April 21st contract. They were never shown a copy of the unredacted copy that was given to Councilmembers for their consideration. After a lengthy conversation with Mr. Sloan and staff from the City Manager's office they went down to the City Attorney's office and requested the same document from him and it was determined that the document did not exist. He said that this is the biggest contract in the City of Vero Beach's history and there is not one maintained for the public records. He checked with the City Clerk to see what was in her files and that document is clearly missing. In conversations with Mrs. Fromang and Mr. Vitunac it was determined that the City never did maintain a copy of that contract and that contract went back with Mrs. Hersey to Massachusetts. He still has not seen a copy of that document. He was told by Mr. Vitunac that Mrs. Hersey would bring a copy with her and a copy would go to the City Clerk for her records. The real problem that is evident here is that there is no record that was maintained by the City on what the numbers were that was in that contract. He feels that poses a problem because you cannot compare documents, whether or not the numbers stayed the same. Now what they have to do is rely on a document that comes back a couple of years ago from Massachusetts. He said to him it is clear that there is a violation of the open records law. He said that there could never be any assurance that the numbers that they are looking at today are the same numbers that were in the original contract. He said that one of the things that he did was to take the redacted copy and the unredacted copy and he printed the redacted copy on a transparency. If you take a redacted copy and an unredacted copy and print it on a transparency what you have is an identical overlay. He also did this with the penalty clause page and the interesting thing

with this if you look at the redacted section and then the unredacted section the redacted section is not long enough to cover the 50 million dollar figure put in the contract.

Mayor Sawnick asked Mr. Heady if there was a decision by the Council that he wanted them to make or anything that he wants them to do.

Mr. Heady wanted to be able to finish his comments. He continued by showing the unredacted copy and the redacted page and said that it was pretty clear that there was a lot added on that page. The problem that he sees is the words on the redacted copy don't fit in the space that is redacted. He said because there is no record and no one in City Hall thought that it was important to maintain an original copy, the public will never have any degree of confidence in this contract.

Mrs. Hersey stated that all the files were emailed to the City. She did not know what to say to Mr. Heady because he has asked her for the chronology from April 8th to April 21st and she has answered his request. She has given him every document he requested. She recalled that Mrs. Fromang talked a lot about the contract and what a good contract that it was. How could she say that if she hasn't read the contract? Mrs. Hersey said that she takes issue with what Mr. Heady is saying because what he is saying is that this team changed the documents materially and they did not. They have the emails to prove that they did not. She provided him with all the information that he has requested. She understands that Mr. Heady was not at the meeting on April 8th, but there were a lot of people that were there.

Mr. White mentioned that in regards to the confidentially agreement, they were shown the unredacted contract, but were not allowed to keep a copy of it. They were allowed to look at it, but were not allowed to take the original contract.

Mrs. Hersey said that nothing changed between the unredacted and the redacted version. She has that available if anyone wants to look at it.

Mr. Abell expressed that he spent several hours looking at these contracts and is confident there has been no material changes.

Mr. Heady commented that Mr. Abell points out how ridiculous this exercise is. The City Council at the time was given one hour to review a document that was very costly for our consultant to put together. He said part of what they (Councilmembers) were given was a Power Point presentation and then Mr. White stated that he read the document. Mr. Heady said that he wants to know anyone who could read through and understand this document in less than one hour. Mr. White also said that he remembers the numbers in the document and that they haven't been changed. Mrs. Hersey points out that she has complied with everything that I have asked her for. Mr. Heady said that he still does not have, as of today, the original document that was presented to the City Councilmembers on April 7, 2008. Mrs. Hersey testified that Mrs. Fromang gave rave reviews in her comments concerning the contract at the Council meeting when it was approved. He

knew that Mrs. Fromang is a lawyer, but did not think that she could have read and understood this document in the little time that was allotted to the Councilmembers.

Mr. White replied to Mr. Heady's comments. He said that he was fortunate to be the Mayor that year, so he was involved more so with the contract than the other Councilmembers. He had a little bit more knowledge of the contract and what was in it. However, he said that he did not read the whole contract in an hour. He felt that the procedures taken with the contract were done right and everyone worked hard on making sure that they were done right.

Mayor Sawnick made a motion to delay discussion of Individual Councilmembers' matters until their next meeting (February 16, 2009). Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

At the request of Mr. Heady the Clerk read the motion from the April 15, 2008 meeting when the OUC contract was approved.

9. CITY COUNCIL MATTERS

- A. Old Business**
- B. New Business**

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

- A. Mayor Kevin Sawnick's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**
 - A) Civic Education**
 - B) Citywide Green Initiatives**
- B. Vice Mayor Sabin Abell's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**
- C. Councilmember Tom White's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

- D. Councilmember Brian Heady's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**
 - A) Trip report/request**
 - B) Internet connection for meetings**
 - C) OUC Contract**
 - D) Tallahassee/League of Cities**
 - E) Brainstorming Session Report**
- E. Councilmember Ken Daige's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**
 - 3. Comments**

11. ADJOURNMENT

Mr. White made a motion to adjourn today's meeting at 1:53 p.m. Mr. Abell seconded the motion and it passed unanimously.

/tv