

MINUTES
THE TOWN OF INDIAN RIVER SHORES
6001 North Highway A1A, Indian River Shores, FL 32963
REGULAR TOWN COUNCIL MEETING
Thursday, April 22, 2010
3:30 p.m.

PRESENT: E. William Kenyon, Mayor
William H. Ahrens, Vice Mayor
Frances F. Atchison, Councilmember
Gerard A. Weick, Councilman

STAFF PRESENT: Robert J. Bradshaw, Town Manager
Laura Aldrich, Town Clerk
Chester Clem, Town Attorney
Richard Jefferson, Building Official
Bill Schauman, Director, Public Safety

OTHERS PRESENT: Tom Cadden, Utility Liaison; 6 Residents; Lisa Zahner, Vero Beach
32963 reporter; 7 other guests

ABSENT: Michael B. Ochsner, Councilman (excused)

1. **Call to Order**

- a. Pledge of Allegiance
- b. Invocation – Councilman Ochsner
- c. Roll Call

Mayor Kenyon called the meeting to order at 3:30, and these items were performed with the Roll Call as reflected above.

2. **Consent Agenda**

- a. Approval of March 25, 2010 Regular Town Council Meeting Minutes

A **motion to approve the consent agenda as presented** was made by Councilmember Atchison and seconded by Vice Mayor Ahrens. It **passed unanimously** with no discussion.

3. **Mayor's Items**

- a. Electric Utility Update
- b. Electric Utility Financial Presentation (Dr. Stephen Faherty & Mr. Glenn Heran)

Mayor Kenyon introduced Dr. Stephen Faherty and Mr. Glenn Heran, with the former speaking first. He referred to a rate study last done by the City in 1992, which if compared with the rates today, shows that there is no way the City of Vero Beach (COVB) under the Orlando Utilities Commission (OUC) contract can match rates of FPL. He began a slide presentation with an electric bill calculator that compared rates for the County, City, Indian River Shores, and OUC, which illustrated a greater than 30% rate disparity. The next slide showed the weighted average of bills for the past 10 years for a customer with 1,000 KWhs and one with 2500 KWhs. The percentage of customers to which the City of Vero Beach provides electricity that are inside the City limits is 39% (12,954), in the County is 51% (16,940), and in Indian River Shores 10% (3,322). Everyone pays 34% more than rates under FPL would be, with actual numbers quoted in the COVB budget for electric billing for the current fiscal year as \$92.4 million. That means under FPL rates, the anticipated billing would be just under \$69 million, or rounded to \$23.5

This is a Public Meeting. The Town of Indian River Shores does not transcribe verbatim minutes. Should any interested party seek to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs any type of special accommodation for this meeting may contact the Town Clerk at 231-1771.

million less. The City residents and businesses would have \$9.4 million more, the County \$11.7 million, and the Shores \$2.3 million more dollars in the pockets. This is an **annual** amount we are overspending. He expounded on the facts that revolve around the \$23.5 million in rate differential and the many ways our economy could be boosted by this savings.

Mr. Glenn Heran explained the financial model that illustrated the benefits of selling the COVB Electric system to FP&L. He discussed financial details of what would happen if the utility were sold for \$200,000,000, with the average annual net benefit to a city resident of \$754 *decrease* in property taxes per year, or a worst case scenario of \$509 property tax increase if the utility is given away. The Public Service Commission (PSC) regulates the rate of return (about 10%), and therefore requires a reasonable sale. The fair market value of transmission and distribution infrastructure owned by the COVB was estimated by City Manager Jim Gabbard to be valued at \$300 million.

FPL would have more customers and more income. Even if FPL got their tax rate increase, their rate would be 27% less than COVB, which is a \$14 million increased economic effect to the community. Mayor Kenyon asked if this model had been shown to Vero, and Mr. Heran said he has shown it to Councilman Brian Heady, but not to the rest of Council as it takes more than their 3-minute rule will allow. Dr. Faherty said that R.B. Sloan and John Lee have seen it, and neither of them found deficiencies in the model as presented. The City is considering having an appraisal of the system. The FMPA book value shows the equipment totally depreciated.

Mayor Kenyon asked what the next step is, and Dr. Faherty suggested it would be good for Indian River Shores to meet with the City and ask for their justification to keep the utility. There also may be a need in the future for the County and the Shores to send a letter to the PSC to open the 1981 Territorial agreement to change, which was made when ten percent (10%) of the COVB customers were outside the city, now it's 61%. The natural development and natural boundaries also have changed over time.

The complaint filed by Dr. Faherty and Mr. Heran to the PSC was discussed briefly, which is still in abeyance. The City asked the PSC to dismiss it, and it was refused. If the Town and county joined hands, it may work, the complaint could be dropped. Mr. Heran closed by stating that in 1976 the City discussed selling the utility, and John Little had received a price of \$46 million.

The Mayor and Council thanked Dr. Faherty and Mr. Heran for the presentation.

c. City of Vero Beach Proposed Utility Referendum (Charlie Wilson)

Mr. Wilson, 1057 6th Ave., Vero Beach thanked the Council for the opportunity to discuss a referendum that he is involved with to gather petitions allowing it to be included in the upcoming City of Vero Beach elections. Since his visit to the Council last month, the equivalent of \$2,000 in cash and in-kind service was raised in unsolicited contributions. At the Hibiscus Festival, in eight hours volunteers gathered 510 signatures of the 1006 signatures needed to get the issue on the ballot. The one-day event for soliciting signatures has not been held yet, and may be replaced by a petition insert in the newspaper. Mayor Kenyon asked if they were sure that the statement that will be printed on the ballot is enforceable by the law, and the answer was that their attorney signed off on it, and they were following the 1976 petition as a model. The petitions have to be verified as having legitimate signatures (registered voters who live in the City) by the Supervisor of Elections, and then a public hearing by the City Council will follow. A majority vote by the City Council will then allow it to be put on the ballot. More general discussion followed. Mayor Kenyon said they appreciated the work that has been done on this.

Mr. Bradshaw inquired about the wording on the referendum, and Mr. Wilson read it as follows:

“Upon receipt of an offer to purchase assets of Vero Beach Municipal Electric, by a power provider regulated by the Florida Public Service Commission, resulting in proceeds that provide sufficient funds to retire all monetary obligations of the electric utility enterprise fund, the City of Vero Beach shall within 12 months after receipt of

such offer petition the Florida Public Service Commission to abolish its territorial agreements. Within 24 months after receipt of said offer the City of Vero Beach shall not expend dollars from any source (local, state or federal) for the transmission, distribution and/or generation of electric utilities except in the case of assets that may be deemed non-transferrable including FMPA investments in St. Lucie Nuclear, Stanton 1 and 2 base load generation which may be managed for resale if necessary. *(That means we could accept the electricity and sell it right back at no loss, Mr. Wilson interjected)* All other provisions of the charter inconsistent with this provision shall be void and this section shall prevail.”

In essence, there has to be a buyer who is regulated by PSC, it has to be within 24 months, and anything not able to be sold has to be managed. The council asked for blank copies of the referendum, which were provided.

d. **CCNA Update (Tom Cadden)**

Mayor Kenyon said that Mr. Cadden speaks on behalf of the Committee that was formed to investigate the availability of an engineering firm to evaluate the water, sewer and irrigation needs of our Town and the County. Mr. Cadden said that they met last Thursday, and he was absolutely thrilled with the meeting, as a good job was done in condensing it to what had to be done initially. A starting place is to have interviews with each of the elected officials, and then a cursory valuation of all of the systems, which the County already has theirs. When the GAI presentation of what needed to be done was received, he was surprised that they were so far apart in concept. The finished product included Phase I being full of additional scope that he recommended only agreeing to the top line of \$37,000 split between the three entities. Every firm that provided a proposal said that there has to be a consensus between the County, City and the Shores, which is why interviewing the elected officials to determine the course of the project was so crucial. The bottom line for Phase One was \$167,000.

4. **Planning, Zoning and Variance (PZV) Board** (No meeting – nothing to report.)

5. **Town Attorney**

a. **Treasure Coast Regional League of Cities (TCRLC) Interlocal Agreement**

Mr. Clem said that this had to do with the submittal of the TCRLC Agreement that was copied in their packet, which was identical to what had been adopted before. The only change was the word “Chairman” to “President.” There are 13 municipalities in the Treasure Coast who belong to this league, which has very limited power. A **motion** by Councilmember Atchison, supported by Vice Mayor Ahrens **to approve the TCRLC Interlocal Agreement as Amended and Restated passed unanimously.**

6. **Town Manager**

Mr. Bradshaw said he had no issues to bring to their attention.

7. **Call to Council**

Committee Reports

Metropolitan Planning Organization (MPO). Councilmember Atchison said that the MPO met, and Phil Matson said that some stimulus money remained. About \$600,000 to resurface 12th Street to Old Dixie Highway was granted, and needs for 2035 were still under discussion.

Treasure Coast Regional League of Cities (TCRLC). Councilmember Atchison said that next month this group will meet at the FPL nuclear plant, and she thought maybe other members of the Council would be able to attend. She will get details and let the Council know.

Sustainability. Nothing to report.

Affordable Housing. Vice Mayor Ahrens said that they have not met yet this month.

Land Acquisition Advisory Committee (LAAC). Councilman Weick said they have not met, and the Committee may be abandoned by the County. Commissioner Solari was in the audience and

said that about six committees have to come back before the Commission on a resolution and the other five by ordinance in order to be deactivated.

Parks and Recreation. No report.

Beach and Shores. No report.

Treasure Coast Council of Local Governments (TCCLG). Mayor Kenyon said that the guest speaker represented a California company that will be opening a graphics animation facility in St. Lucie, which will be starting off with about 500 employees. Their West Coast office has about 1700 employees whose average salary is a little over \$100,000, and anticipate a little over \$70,000 average salary here. They chose central Florida because of the available pool of talent produced by the local schools.

Economic Development Council. No report.

Treasure Coast Mayors. Mayor Kenyon reported that the Indian River County mayors met this month and discussed visioning an image of Indian River County. They are each to write a statement of what they perceive the county will be in 2020.

Councilmember Atchison asked for an update on the sand situation, and Vice Mayor Ahrens said that there was an article in the paper this morning that 41% placement has been completed to date, and an extension of possibly 15 days is being requested. Commissioner Solari said that Ranger Construction is using the argument that they started nine days late getting the permit, so nine days on the other side of the contract is fair.

8. Call to Audience

Ted Robinson, 50 Caserea Court, speculated about **FPL extending its territory into the remaining portion of Indian River Shores** with the residents possibly petitioning for a referendum. Mayor Kenyon said the problem is that the PSC in Tallahassee controls the territorial rights to serve this area, which currently belong to the COVB. We have until October 26, 2011 to notify the City whether we will stay with them. Mr. Robinson asked if there was a cancellation clause, and the Mayor replied no, not before then. The Mayor asked the Town Attorney to comment, and Mr. Clem said that this is what we've been hearing for the past hour or so, the complexities of the matter. If the COVB agrees to sell it, and FPL has to want to purchase it. Dr. Faherty added that the Water/Sewer/Irrigation issue can be decided locally, but the electric franchise depends on the territorial agreement. Mayor Kenyon assured Mr. Robinson that many hours have been spent in trying to work through this, and something will be done by next year.

Glenn Heran added a point to his presentation that, according to John Little, one of the provisions in 1976 when they had had a successful referendum to sell the electric utility and had contracted with FPL to sell it to them, was that it was denied by antitrust rules. Apparently FPL was warned to never approach the Vero community again, and being desirous of pleasing the PSC, do not want to be seen as a political take-over machine. So, is FPL more interested in our 34,000 customers when they already have 4.5 million customers? It must be an amicable environment here for them with council and staff. Last November was the first time in 34 years that FPL was invited to the City for discussions.

Commissioner Joe Flescher said that **regarding the beach sand**, they were stopping for the turtle nesting season. One nest has already been reported ten days ago, and he believes there is just cause to extend the sand placement. The Vice Mayor questioned the 41% progress when they are supposed to be 100% complete. The Commissioner replied that there were challenges with the grain size, and rain delays. There were no challenges with vehicle flow or any problems with the sand trucks at all, and the second mine worked through this weekend.

Commissioner Flescher continued that there is **boatless shark fishing** occurring here in the Shores, as was discussed in the most recent County Commission meeting. It is an internet-

