



**BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA**

**MINUTES OF THE
JOINT PUBLIC MEETING OF THE INDIAN
RIVER SHORES TOWN COUNCIL,
VERO BEACH CITY COUNCIL, AND INDIAN
RIVER COUNTY BOARD OF COUNTY
COMMISSIONERS**

TUESDAY, OCTOBER 28, 2014

**Richardson Center on the Mueller Campus of
Indian River State College
6155 College Lane
Vero Beach, Florida, 32966**

**COUNTY
COMMISSIONERS**

DISTRICT

Peter D. O'Bryan, Chairman	District 4	Present	Joseph A. Baird, County Administrator	Present
Wesley S. Davis, Vice Chairman	District 1	Present	Dylan Reingold, County Attorney	Present
Joseph E. Flescher	District 2	Present	Jeffrey R. Smith, Clerk of the Circuit Court and Comptroller	
Bob Solari	District 5	Present		
Tim Zorc	District 3	Present	Leona Adair Allen, Deputy Clerk	Present

1. CALL TO ORDER 9:00 A.M.

**9:00
a.m.**

A. FACILITATOR INTRODUCTION

Mayor Brian Barefoot, Town of Indian River Shores, called the Joint Public Meeting of Indian River Shores Town Council (the Town), City of Vero Beach Council (the City), and the Indian River Board of County Commissioners (the Board) to order. He introduced the Town's meeting Facilitator Attorney Chester Clem.

B. PLEDGE OF ALLEGIANCE

Town Manager Robert Stabe, Jr., led the Pledge of Allegiance to the Flag.

C. INVOCATION

Town Manager Stabe also delivered the Invocation.

D. ROLL CALL

9:03
a.m.

Town Clerk Laura Aldrich called the Roll for the Town: Councilman Thomas Cadden, Vice Mayor Gerard Weick, Mayor Brian Barefoot, and Councilman Richard Haverland. Councilman Thomas Slater was absent.

City Clerk Tammy Vock called the Roll for the City: Vice Mayor Jay Kramer, Councilmember Pilar Turner, Councilmember Amelia Graves, and Mayor Dick Winger. Councilmember Craig Fletcher was absent.

County Administrator Joseph Baird called the Roll for the Board: Chairman Peter O'Bryan, Vice Chairman Wesley Davis, and Commissioners Joseph Flescher, Bob Solari, and Tim Zorc. Also present were County Attorney Dylan Reingold, the County's outside legal counsel Floyd Self from Gonzales, Saggio, and Harlan LLP, Tallahassee, and Deputy Clerk Leona Adair Allen.

Attorney Clem welcomed everyone in attendance, and pointed out that this meeting was the second stage of the State-mandated conflict resolution process (when one governmental body is involved in a lawsuit with another) regarding the City's excessive electric rates and lack of parity for the Town and the municipalities of the unincorporated County.

COMMENTS BY THE PUBLIC

2.

9:06
a.m.

Glenn Heran perceived that the latest amendment proposal to the Orlando Utilities Commission (OUC) contract was an attempt by three City Councilmembers to keep the City in the electric business, even though the will of the community was to sell to Florida Power and Light (FPL). He reported that the amended contract proposal would increase rates 17% higher than FPL, and would include the risks associated with continuing to stay with the Florida Municipal Power Agency (FMPA). He asked the councils to focus on exiting FMPA in a manner that would reserve the peoples' interests.

9:07
a.m.

Dr. Stephen Faherty believed the crux of the concerns regarding the court case and the Public Service Commission filing was the Territorial Agreement. He commented on the City ignoring the Public Service Commission; the desires of the taxpayers; City customers being affected economically by the impact of higher rates; the significant rate differential between FPL and the City; restricting Franchise terms to 30 years; and the Florida Interlocal Cooperation Act of 1969. He also expressed concerns about some of Mayor Winger's statements regarding increased rates and property taxes.

9:11 a.m. Daniel Stump, member of the City's Finance Commission, revealed that the Board and Town had recently received a proposal from Attorney Robert Scheffel Wright from Gardner, Bist, Wiener, Bowden, Bush, Dee, LaVia & Wright, P.A., and the City's utility Attorney. He felt it was an attempt to offer a reduction in electric rates being charged to the residents of the Town, out-of-County residents, and the ratepayers in the City. He requested the proposal be rejected, and that the rights of the constituents to become an FPL customer, which would be in unison with 64% of the City's voters who approved the Sales Agreement in last year's Referendum be considered. He also suggested all legal counsels find a way to bring in the FMPA and the OUC under the jurisdiction of the Circuit Court because they were necessary parties under the litigation.

9:14 a.m. Harry Howle was convinced that the proposal convoluted things because of the many unknowns in the contract, and did not think it was looked at thoroughly. He felt the timing was suspect, and reminded everyone that many of the things being proposed was part of the FPL deal, and anything short of selling to FPL would be a loss for everyone.

9:15 a.m. Peter Gorry, Chairman of the City's Finance Commission, relayed that the Finance Commission was tasked to produce a list of potential reductions of rates, and eighteen of those reductions were implemented. He reasoned that since no one knew what the final contract would be, and to say that the City was not seeking lower rates prior to outside interference, was wrong.

9:17 a.m. Brian Heady wanted the lawsuit to end, and to move forward with the sale of the Vero Beach electric utility to FPL.

9:21 a.m. Charles Wilson provided a timeline from 2008 to present; supported last year's Referendum; felt the City does not belong in the electric business regardless of the rate; believed FMPA was the problem; and requested that if an impasse is reached today, that another meeting be scheduled in two or three weeks.

3. **OPENING STATEMENTS ON THE ISSUES IN CONFLICT**

Pursuant to Section 164.1055, Florida Statutes, at the Joint Public Meeting the primary conflicting governmental entities are to consider and seek agreement on the issues identified in the conflict assessment phase.

9:27 a.m. Attorney Clem declared this meeting to be a formal proceeding required by the Florida Statutes, where the members in attendance should attempt to reach an agreement.

A. MAYOR OF TOWN OF INDIAN RIVER SHORES

9:28
a.m.

Mayor Barefoot expressed that the Town did not relish being in an adversarial position, but fortunately there was the conflict resolution process to aid in resolving their unreasonable electric service rate issues. He provided background and explained the details of the 1986 Franchise Agreement which: (1) relinquished the Town's statutory right to provide residents with electricity for a period of 30 years; (2) gave the City's electric utility permission to serve the Town's municipal boundaries for a period of 30 years; and (3) provided the City's electric system with access to the Town's right-of-way and other public areas for 30 years. In exchange, the City had agreed to charge the Town and its citizens with reasonably priced electricity. He revealed that the City had a long history of excessive electric rates, and for years, Towns people or residents have expressed concerns that the City's rates were unreasonably high. He said approximately 20% of the Town's residents were served by FPL, while the remaining 80% were served by the City; the significant disparity between the two rates continue to create an unacceptable situation whereby neighbors are being forced to pay vastly different rates for essentially the same amount of electricity. He felt not only was the disparity unfair, but it was extremely divisive, which was why the Town was seeking not only lower rates, but rates that are comparable to FPL's. He also emphasized that the Town thinks the City's electric rates are unaccountable because the City is using its electric revenues from its nonresidential customers to subsidize its General Operating Budget. He believed the Town has a statutory obligation to see that its citizens are protected from unreasonable rates and unfair utility practices.

Mayor Barefoot shared some of the Town's observations regarding the proposal, and touched on some of their concerns. He commended the City Council, its representatives, and the OUC for seeking new opportunities to lower rates, but from his perspective it was too little, too late, and too risky. He was convinced that the dispute goes beyond the rates, and instead was founded upon the decisions that the City's predecessors had made, and continues to plague their community. He was convinced that the utility's destiny was entirely in the hands of FMPA, who decides what one can charge for the electric services provided, whether one can sell the utility system, and whether one can exit the business. He voiced concerns that the Town had not been given the opportunity to approve or comment on the contracts, and believed the solution would be for the City to sell its electric utility.

Mayor Barefoot disclosed that if the City would be unwilling or unable to effectuate the sale, the Town would consider a lawsuit to be the only option available to provide their residents with long-term rate relief, and if the City would be unwilling and unable to lower its rates to parity, then

the discussion today should not be focused on what rate reduction is being considered, but what actions the Town and City could take together that would allow a parting of ways with respect to the electrical service in the most cost effective manner. He hoped that the City would be able to develop new ideas to close the sale to FPL, or bring its electric rates to parity with FPL on a long-term basis. He advised the City to plan accordingly, because after the Franchise Agreement expires in 2017, the Town may not be using Vero Beach's electric utility.

9:43
a.m.

B. CHAIRMAN OF INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS

Chairman O'Bryan briefly remarked on the lawsuit, and agreed with Mayor Barefoot's comments. He outlined the Board of County Commissioners' position, saying that the Board had been very clear for the last five years, that a full and complete sale of the City of Vero Beach electric utility to FPL would be the best option, and that it would provide all County residents within the municipalities of the unincorporated County with a fair and reasonable rate structure. In the event the sale cannot be completed, the Board requested that the City provide the following functional equivalence of the sale under the following principals: (1) charge a rate substantially equal to those of FPL; (2) cease the subsidy for the City's General Fund from the City electric utility; and (3) form a governing Board with full and complete authority over the electric utility that fairly and proportionately represents the geographic makeup of the City of Vero Beach electric utility customer base.

9:45
a.m.

C. MAYOR OF CITY OF VERO BEACH

Mayor Winger, speaking for himself as Mayor, not the City Council, said he was advised by his attorneys not to speak, and would leave the details to the attorneys and the City Manager. He was aware that if this dispute goes to Court, absolute accuracy would be imperative, so he would defer questions to them; however, he made the following points: (1) In January, the City had a 1.2% rate reduction, and in June a 4.2%, reflecting the 2014 commitment to lower rates as soon as possible. He was confident that potential actions would result in similar modest rate reductions; (2) The key element in the FPL sale would be to find a buyer for 40% of the power and take or pay for FMPA under contract. He reported that they had a buyer for the FMPA contract at one time, but they withdrew in June, so at this time there were no other buyers. He recounted that in April 2008, the City entered into a long-term contract with OUC for the remaining 60%, which took effect in January 2010 and expires in December 2029; (3) On July 14, 2014, the partners at FPL and OUC agreed that the City could negotiate lower costs against the OUC contract while maintaining the FPL Sales Agreement in force until December 2016, even though the City was still contracted to OUC until December 2029.

He did not consider this to be a done deal since it offers the City an opportunity to negotiate significant rate reductions over the term of the Agreement. He was not optimistic that the City could achieve FPL rates until they close the problematic FPL sale, which they could not do until the FMPA contract dilemma is resolved; (4) He started discussions regarding a utility authority representing all customers, and the City had since begun the initial work for legal counsel and community approval; and (5) The City developed a mechanism to validate any decision as long as it is supported by Counsel, the Town, and the County. He was hopeful that everyone could band together to achieve the goal that everyone wants - lower power rates equally for everyone.

4. **BREAK - 10:20 a.m. to 10:34 a.m., which was followed by the discussion of Item No. 6.**

5. **DISCUSSION OF WHETHER AGREEMENT CAN BE REACHED ON THE ISSUES IN CONFLICT**

The discussion will be between elected officials in the order as recognized by the Facilitator. Staff and Counsel also may participate upon request and as recognized by the Facilitator.

9:52 a.m. Chairman O'Bryan commented on Mayor Winger's statement regarding him not speaking and leaving the details to those in charge. He believed the problems over the last 30 years were entirely symptomatic and staff driven. He pointed out that the staff-level mediation meetings to be held (per the State-mandated conflict resolution process) were for elected officials to discuss the issues in an attempt to resolve them, and with Mayor Winger stating he would defer questions to staff and counsel, saw no point in wasting time, and suggested moving to mediation.

9:54 a.m. Commissioner Solari and Mayor Winger discussed and debated revisions/options to the contract of 2029, short term reductions and risks, negotiations with OUC, and the elimination of the 6% transfer from the electric utility to the General Fund.

10:01 a.m. Councilmember Graves explained her rationale for transferring funds from the electric utility system to the City of Vero Beach General Fund, and asked if anyone could provide an actual plan on how to close the sale to FPL, the Council would like to hear it.

10:05 a.m. Mayor Winger revealed that the City had a 6% return, and FPL had a 10.5% return on their investment, with 10% to 12% being uniform across the State.

10:07 a.m. Chairman O'Bryan spoke about the County's water and sewer utility, and the administrative fee that was paid to the County's General Fund, which

covers human resources and payroll. He informed the City that the water and sewer utility does not transfer any rate revenue back to the General Fund, and requested the City to follow the same standard.

10:08
a.m. Vice Mayor Kramer wanted to run their utility in accordance with the standards of the other utilities in the State of Florida, and would welcome the idea of doing away with the transfer should it be uniform across the State, which would also include FPL.

10:08
a.m. Mayor Winger analyzed issues relating to rate parity, comparable rates to FPL, whether there should have been a count or Referendum based upon meters, and whether the City was on the right course in creating authority.

10:10
a.m. Discussion ensued between Mayor Barefoot and Mayor Winger regarding the utility authority and the five members of the City Council.

10:13
a.m. Mayor Barefoot supported the issues and points made by the County Commissioners. He reiterated that the Town intends to exercise their right to provide electricity to Town residents when the Franchise Agreement expires, unless the City completes the sale of its electric system to FPL, or brings its rates for non-resident customers to long-term parity with FPL.

10:15
a.m. Commissioner Solari felt that Mayor Winger was focused on the idea that the City is in business to run a business and make a profit. He thought that Mayor Winger sometimes failed to realize that those at the table were in government, and their job is to provide for the good of their community.

10:16
a.m. Mayor Winger responded by saying that the proposal Attorney Wright brought forward included a \$500,000 reduction in the transfer/return on investment. He said he believed there should be a return on the investment, disclosed that the City was diligently looking for ways to reduce rates, and was open for discussion on how to do it.

6.
10:35
a.m. **FURTHER DISCUSSION IN THE EVENT THAT NO RESOLUTION IS AGREED UPON BY THE PRIMARY CONFLICTING GOVERNMENTAL ENTITIES**

The discussion will be between elected officials in the order as recognized by the Facilitator. Staff and Counsel also may participate upon request and as recognized by the Facilitator.

Clerk's Note: This Item was heard following the break.

10:37
a.m. Commissioner Flescher thanked everyone for their input, was not optimistic on reaching a resolution, and reminded those at the table that

they were representing the people/constituents, not themselves. He voiced concerns over customers paying excessive rates that they cannot afford, and having to move from one area to another so they can afford their rates.

10:38
a.m. Mayor Barefoot asked Councilmember Turner, who sits on the FMPA Board, to inform everyone of what she expects regarding the City's rates going forward.

10:38
a.m. Councilmember Turner provided an update and pointed out that in her last Board meeting, there was an increase for the Stanton I and II contracts, which means that for the 2014-2015 budget year, the costs for those two projects would be 20% to 26% higher than they were the year before, and the capital investment will be paid for by the rates. She suggested when the negotiations begin, everyone start with what is agreed upon, which is the complete sale to FPL. She asked that each group assign a representative to meet and decide the best way to move forward with the sale.

10:41
a.m. A brief discussion ensued regarding the Sunshine Law.

10:43
a.m. Mayor Barefoot wanted to give the mediation process a try since there was so much expertise - attorneys, CPA's, and those with experience in finance and negotiating. He suggested waiting until after the November election to see who wished to be part of such a group. He was sure the Town would be willing to participate in resolving the issues with rate parity before the Franchise Agreement expires.

10:44
a.m. Mayor Winger responded to questions regarding investments in infrastructure, and further discussed reduced transfers, return on investments, previous City Councils, and rate sustainability.

10:54
a.m. Councilmember Haverland confirmed with Councilmember Turner, that when she mentioned there would be a 20+% change in rates, that it would affect 40% of the businesses, and applauded everyone's efforts to reduce costs.

10:55
a.m. Mayor Barefoot concluded that there was an impasse, and asked respective councils to design a mediation process that would move forward with the next step.

10:56
a.m. Facilitator Clem asked for a show of hands for those who believed an impasse was reached, and there was CONSENSUS.

A. **DISCUSSION OF MEDIATION PROCESS, INCLUDING POSSIBLE MEDIATORS**

10:56
a.m.

Facilitator Clem announced that the next step would be to select a mediator, with a timeline of 14 days from today. He suggested the attorneys for the County, City, and Town converse and select a mediator to go through the mediation process.

B. **DISCUSSION OF DATE, TIME, AND VENUE FOR MEDIATION**

10:57
p.m.

Respective councils will select a mediator and establish a mediation date, time, and venue.

7. **ADJOURNMENT**

There being no further business, the Chairman declared the meeting adjourned at **10:58 a.m.**

ATTEST:

Jeffrey R. Smith, CPA, CGFO, CGMA
Clerk of Circuit Court and Comptroller

Wesley S. Davis, Chairman

By: _____
Deputy Clerk

Approved: December 16, 2014