

MINUTES OF PRELIMINARY PUBLIC HEARING AND REGULAR MEETING OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD MONDAY, DECEMBER 20, 2010, AT 6:00 P.M., AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA

Prior to opening the preliminary public hearing, Chairman Allen stated there would be an invocation followed by the pledge to the flag. Chairman Allen gave the invocation and Commissioner Zeller led in the Pledge of Allegiance immediately following.

(1) Preliminary Public Hearing RE: Revisions to the Utilities Commission's Public Street Lighting and Private Outdoor Lighting Electric Rate Schedules:

Chairman Allen called the preliminary public hearing of the Utilities Commission to order, to publicly discuss and consider revisions to the Utilities Commission's Public Street Lighting and Private Outdoor Lighting Electric Rate Schedules. He then requested for a roll call to be taken and a majority of the Commissioners were in attendance as follows:

Commissioner William H. Reynolds (ABSENT – ILL)
Commissioner Oscar Zeller
Chairman Walter Allen
Commissioner Jeanne K. Diesen
Commissioner William E. Hall

Others in attendance were as follows: R. Mitchum, General Manager/ CEO; T. Beyrle, Director of System Ops. & Generation; M. Rodriguez, Director of Electric Ops.; J. White, Director of Engineering; D. Hoover, Director of Water Resources; R. Lemoine, Director of I.T.; P. Di Chiara, Director of H.R.; L. Klinkenberg, Director of Finance; B. Bilinski, Controller/Budget Supervisor; E. Fisher, Public Information Manager; D. Wood, Customer Service Manager; D. Zorge, Customer Service Supervisor; T. Cook, Contractor – Senior Network Analyst; J. Lutz, Sr. Internet Analyst; B. Keehn, Administrative Support Specialist; D. Simmons, Exec. Adm. Offices Mgr./ Recording Secretary; W. Preston, U.C. Legal Counsel; Khalid Resheidat, NSB Asst. City Manager/Public Works Director; Robert Tolley and Robert Hall, both members of the public.

Mr. Preston then stated this preliminary public hearing was authorized by the Utilities Commission during their November 15, 2010, Regular U.C. Meeting, and notices appeared in the Orlando Sentinel at least ten days prior to this date. Notices were also placed on the bulletin board at the Utilities Commission office at 200 Canal Street and City Hall at 210 Sams Avenue. Proof of publication of advertisement for this hearing will become part of the minutes. (A resolution revising the public street lighting and private outdoor lighting electric rate schedule as established by the Utilities Commission, City of New Smyrna Beach, Florida; rescinding all resolutions or portions thereof in conflict herewith and providing for an effective date.)

(1) Preliminary Public Hearing RE: Revisions to the Utilities Commission's Public Street Lighting and Private Outdoor Lighting Electric Rate Schedules (cont.):

Chairman Allen then opened the preliminary public hearing for any comments, for or opposed to the rate schedules. There being no comments nor public participation, Chairman Allen closed the preliminary public hearing. This hearing closed at 6:04 p.m.

Regular U.C. Meeting:

Chairman Allen requested a roll call to open the Regular U.C. Meeting, and the same attendees were present as listed above for the Preliminary Public Hearing.

(1) Agenda Changes, Additions and Deletions:

Chairman Allen then asked if there were any agenda changes, additions or deletions. There being none, he proceeded to the next item.

(2) Approval of Consent Items:

Chairman Allen stated okay, we'll move on to item 2., the approval of consent items. We have seven items on our consent agenda, and asked do we have a motion for approval.

Commissioner Diesen made a motion to approve the consent items: item 2-a. Minutes of Regular Meeting held 11-15-10, approve as submitted; item 2-b. Security Services Agreement, approve the pilot Security Services Program to become a permanent program until such time as the CEO/General Manager deems this service no longer needed, and ratification of the execution of the contract with Allegiance Security Group, LLC; item 2-c. WRF Stormwater Consent Order, no action requested/required, informational only; item 2-d. Triennial Report (FY 2008-2010), ratification of the proposal submitted by ECT for the preparation of the Triennial Report for Fiscal Years 2008-2010 for an amount not-to-exceed \$13,500 and ratification of the CEO/General Manager's execution of the associated Task Authorization form; item 2-e. Change Order No. 6 – Ortega Industrial Contractors, Inc. – Glencoe WTP and Smith St. Pumping Station Water Facility Improvements, ratification of the execution of Change Order No. 6* with Ortega Industrial Contractors, Inc. for the Glencoe Water Treatment Plant and Smith Street Pumping Station Water Facility Improvements (*increase in the amount of \$2,676 and additional 152 days to final completion); item 2-f. Fiber Optic Conduit Installation (2") – Hazen Construction, LLC, approve and ratification of P.O. No. 00009534A in the amount of \$32,300 to Hazen Construction, LLC, a sole source vendor, and ratification of the associated material purchase orders - P.O. No. 00009532 in the amount of \$877.12 to Graybar Electric Company and P.O. No. 00009533 in the amount of \$4,558.40 to Gresco/Capstone Utility Supply; for a total cost of \$37,735.52; and item 2-g. Developer's Agreement and Addendum – Southeast Volusia Habitat for Humanity (Corbin Park Subdivision), approve the Developer's Agreement and Addendum for Southeast Volusia Habitat for Humanity and authorize the General Manager/CEO to execute these documents. Commissioner Hall seconded Commissioner Diesen's motion which then passed unanimously on a roll call vote.

(3) Public Participation:

Chairman Allen stated at this time, it's public participation, and asked if there was anyone in the public that would like to address the Commission. There being none, he moved on to the next item.

(4) General Manager's Report

(4-a) Financial Status – November 2010:

Ms. Klinkenberg addressed the Commission and stated good evening. For the month ending November 2010, our change in net assets is a loss of \$53,693.00 for the combined system. And for our forecast reports our year to date balance is unfavorable variance of budget versus actual of \$38,000. These losses are due in general to the over-recovery of the fuel adjustment; an over-recovery of funds reduces our revenues. The balance of our fuel and purchased power cost adjustment is approximately \$3.2 million and you'll see later this evening what the U.C. plans on doing to reduce our over-recovered funds. She then stated if there are no questions on the financial statements, I'll go on to the audit.

There being no questions, Ms. Klinkenberg continued and stated the field work for the audit for fiscal year 2010 is almost completed. They've (Brent Millikan & Co.) been on site analyzing our financial statements, controls and risk assessment tools for well over a month now. To date, other than five client recommended, so U.C. staff recommended entries, the auditors only have one recommended entry for us and it's the Crystal River 3 Nuclear Plant. A few years ago I brought to you how they had changed the rules and regulations on decommissioning of the nuclear plant and in March of 2009 Progress Energy issued their new report publically which is suppose to be issued every three years and it was actually due in 2008. They just provided that report to us last month that was available in March supposedly. It was too late for last year's audit but in the new decommissioning report they've upped the cost of decommissioning it, of course, but with the interest rates so low the future value is actually a little bit less now than it would be then so there's a major accretion calculation that has to be done and it's a 75 year calculation. It's very complicated so we've actually asked the auditors to help us with it because accretion is a very new concept to accounting and nuclear is like always changing, so they're helping us prepare that entry. That's the only one* (*recommended entry) that they've found at this time, so far we have a clean bill of health across the board on our books. She concluded by stating and I think that's it unless you have any other questions about the audit or decommissioning or...

Chairman Allen confirmed the Commissioners had no questions, thanked Ms. Klinkenberg, and then went on to the next agenda item – Counsel's Report.

(5) Commission Counsel's Report:

Mr. Preston indicated he had no report.

(6) Old Business

(6-a) Request for Letter of Intent (Interest) – Green Coast Energy LLC:

Mr. Mitchum stated what we're looking for here is a Letter of Interest, a non-binding Letter of Interest for Green Coast Energy so it can move forward. He added we're gathering more information.

Chairman Allen stated okay, do we have a motion for approval.

Commissioner Zeller stated I make a motion we approve the Letter of Intent / Interest to Green Coast Energy, LLC (sic Inc.) – approving the Letter of Interest (LOI) between the Utilities Commission and Green Coast Energy Inc., and authorization for the CEO/General Manager to execute.

Commissioner Diesen seconded this motion and it passed unanimously on a roll call vote.

(6-b) Request for Letter of Interest – Earth, Wind & Fire Technologies:

Chairman Allen stated the second item is a request for a Letter of Intent (Interest) for Earth, Wind & Fire Technologies (EWF), do we have a motion.

Commissioner Diesen then stated could I ask a question, did we say a Letter of Intent originally or was it a MOU.

Mr. Mitchum stated I believe they were asking for a MOU originally. I think there was some confusion there on that, some of us were thinking a Letter of Interest/Intent and they were asking for a MOU. But in speaking with them (EWF) the MOU would be forthcoming after we've seen their process in operation. We told them this time I would try to get a Letter of Interest for the financial and start moving, so they can start gaining information for us on that.

Commissioner Diesen stated okay, thank you.

Commissioner Hall then jokingly asked did we ever find out what hit song Earth, Wind & Fire had in the 60's.

Chairman Allen replied not yet.

Commissioner Hall asked anybody know, and added come on folks somebody knows.

Commissioner Diesen stated I looked it up on the internet but I've forgotten; it wasn't that memorable.

Chairman Allen stated okay, do we have a motion.

(6-b) Request for Letter of Interest – Earth, Wind & Fire Technologies (cont.):

Commissioner Diesen stated so moved. She made a motion approving a Letter of Interest (LOI) between the Utilities Commission and Earth, Wind & Fire Technologies LLC, and authorization for the CEO/General Manager to execute same.

Commissioner Zeller seconded the motion and it passed unanimously on a roll call vote.

(7) New Business

(7-a) Modification to Fuel and Purchased Power Cost Adjustment Clause (FPPCAC):

Chairman Allen stated as we move on to new business, a modification to fuel and purchased power cost adjustment clause.

Mr. Mitchum asked if the Commission had any questions on that item.

Commissioner Zeller commented it's a nice Christmas present.

Mr. Mitchum concurred, yes it is.

Chairman Allen stated we need a motion for approving a modification, which is a decrease to the fuel and purchased power cost.

Commissioner Zeller made the motion approving a modification (decrease) to the fuel and purchased power cost adjustment clause, from the current \$37.70 per 1,000 kWh to \$31.40* (sic \$31.41) per 1,000 kWh effective with the first billing cycle in January, 2011.

(*PLEASE NOTE – There was a scrivener's error in the recommended action section of the agenda item. The amount should have been \$31.41, not \$31.40. The recommended amount from staff, which is shown in the attachments and the summary section of this agenda item, is \$31.41 per 1,000 kWh. The amount of \$31.41 per 1,000 kWh will be implemented with the first billing cycle in January, 2011 and a subsequent agenda item will be submitted for the next U.C. meeting to be held on January 24, 2011 explaining this error and ratifying the correct amount of \$31.41 per 1,000 kWh.)

Commissioner Hall seconded this motion which then passed unanimously on a roll call vote.

(7-b) Virtualization of U.C.'s Data Center:

Chairman Allen stated as we move onto the second item under New Business, it is virtualization of the Utilities Commission's data center; Mr. Mitchum.

Mr. Mitchum stated if you have any questions I'll have to refer that to the I.T., they can explain that a little better.

(7-b) Virtualization of U.C.'s Data Center (cont.):

Chairman Allen asked Mr. Lemoine if he could just kind of give the Commissioners a little understanding there.

Mr. Lemoine addressed the Commission and stated sure, thank you very much. He stated we've been looking at our server room, our capacity for the systems that we run, and I'm sure most of you probably know that we have system A, it's on server A, and it may take a 1/3 of that server. So the other 2/3 of the server is not being utilized but yet we have to buy servers every so many years to keep up with the technology and the warranty. So we looked at how many servers we have currently, which is 27. We're at the point now where we have to replace some of those because they've reached end of life. Each one of those servers we have to pay a warranty so that we have a four hour response should one of our systems go down to replace any parts that may be necessary. A couple of months ago we were looking at the new technology that most companies are going to which is called virtualization, whereby running different software you can reduce the amount of hardware because a couple of systems may be reside on one server. So we no longer have to continue to buy servers, warranties for those servers, or energy to power those servers.

Mr. Lemoine stated in the option that I gave you in your packet tonight you'll see where the first option continuing the way we're going will cost us over a three-year period about \$122,000. If we switch to a virtualization mind-set, we're looking at \$88,000 over a three-year period of time, so we're saving money and moving to the newest technology. In addition I included the fact that we will save about \$13,000 in electricity alone from plugging those servers in that we'll be able to not have to use any more. All of this is really attributable to the disaster recovery plan we've had for a few years but we have not been able to implement because we want to put our data center out at the headend building. With the advent of the fiber network being completed due to the project that's about to get underway with the Walmart installation, we'll be able to complete the fiber link to all of our buildings within the City, thereby giving us a true disaster recovery plan. We'll be able to run the same systems concurrently on two different systems, so if system A goes down, if something happened here in our server room, system B which is a replication of that will continue to operate from the headend building. This is all our plan and this is the first step in doing that. So not only do we have the newest technology, we have a more inexpensive use of the technology.

Commissioner Diesen asked what's the timeline.

Mr. Lemoine answered well the plan is a three-year plan. I expect for us to be able to implement it much quicker than that. The three-year plan was devised because of the fact that we had to get that fiber out to the headend building, which has happened much faster than we anticipated. We're going to have the conduit in the ground with the water project and then when we have the financial ability to buy the actual fiber and pull it through that conduit, we'll be able to complete that circle.

Chairman Allen stated okay and then recognized Commissioner Hall.

(7-b) Virtualization of U.C.'s Data Center (cont.):

Commissioner Hall stated I have a couple of questions. The \$13,000, say from not plugging in the servers, is that a one time savings.

Mr. Lemoine stated well it will be over three years it will be \$13,000, but it's about \$4,000 a year it costs us for the extra servers that we have to plug in. We're going to go from 27 servers down to about 12, 12 to 14 servers.

Commissioner Hall stated your division supports all the other divisions in this enterprise.

Mr. Lemoine stated correct.

Commissioner Hall then asked everybody else is okay with this.

Mr. Lemoine stated I haven't had anybody push back and say they don't want to go to this new technology. We've had quite a bit of conversation with Finance, especially because of the sensitivity of that information and that process, and we're not going to virtualize any of their systems. It will be all of the other systems, we have email and those kinds of things will be all virtualized, not the financial systems, too sensitive.

Chairman Allen stated I like the idea in the recommendation that you give, especially for the disaster recovery and the process of looking at moving and developing that at the headend building and I think it probably behooves us that, in as a timely manner as we can to be able to get that fiber in to get that developed so that we have that ability, so if something did happen that it's a lot easier to recover.

Mr. Lemoine stated you'll probably see the proposal sooner than later to fund that project.

Chairman Allen stated okay, good. He then asked if there were any other questions. There being none, he asked if there was a motion.

Commissioner Diesen stated I make the motion to approve the virtual/cloud based data center model option which will permit the I.T. Department to purchase the needed hardware and software to begin the transition to the newer and more flexible model of I.T. management and disaster recovery (Total estimated cost - \$88,243.40). Commissioner Hall seconded this motion and it passed unanimously on a roll call vote.

(8) Possible Other Business – Time for Commissioners:

Chairman Allen then stated okay, item 8., Possible Other Business and Time for the Commissioners; Mr. Mitchum.

Mr. Mitchum stated he didn't have anything unless someone else has.

Chairman Allen stated okay, Commissioner Hall.

(8) Possible Other Business – Time for Commissioners (cont.):

Commissioner Hall stated let me go last.

Chairman Allen stated okay, Commissioner Diesen.

Commissioner Diesen stated yes, I do have something. I think everyone, I know everyone on this Commission got a copy of something that was sent over from the City that is to be on the Planning and Zoning Board agenda for 1-3-11, which means it will come up before there are any more meetings so I thought we needed to speak to that issue at this time. She then confirmed that all the U.C. Commissioners knew what she was talking about. She then stated okay, I'd like to read this into the record, I have some verbiage here that I would like to read into the record regarding that. It will keep me safer than just speaking off the cuff because if I do I, well anyway, this would be the more gentle way to do it. As you know we got a copy of this from our General Manager and I do believe we have to address it and address it at this time so: We, as in the Utilities Commissioners, U.C. staff, and U.C. legal counsel have all put forth much effort to assist in providing documentation for a real understanding of why the U.C. is in fact limited by law to be a service provider and what it would violate if the U.C. did, from a legal and fiscal standpoint, offer incentives for economic development.

Commissioner Diesen stated and that issue keeps reoccurring, it comes at us from either the Economic Development Board, and now it's going to come at us from P&Z, we hear it coming out of workshops, we hear it...so, let's look at it.

She then continued: In addition to Florida Public Law 67-1754 and 85-503 and governing regulations New Smyrna Charter Chapter 15 and U.C. Resolution No. 28-78, there's another applicable City Ordinance within Chapter 82 of the New Smyrna Beach City Charter, Section 82-2, which states, and I read to you:

Sec. 82-2. Policy to vest power in utility commission.

It is declared to be the public policy of the city that the utilities commission established by chapter 15 of the Charter shall be in complete charge of all utilities in accordance with the resolution of intent adopted by the city commission. It is the further declaration of policy that the utilities commission shall be separate from the city commission of the city insofar as the laws of the state and the previous ordinances and covenants will allow and that the city commission shall cooperate to the fullest extent to guarantee the separation of the operation of the utilities from the politics of the city. (Ord. No. 94-07, § 3, 10-10-2007)

She then stated emphasis added and continued: Recently, during the last City Commission meeting two City Commissioners stressed the need for opening a continuing dialogue between the City Commission and the Utilities Commission and to be on the same talking points; to be partners with the City in their efforts for economic development. Another recent comment made was to continue to leave that highway open which used to just be an alleyway. It's unfortunate that this is another example of expressed mistrust or disdain for the Utilities Commission because of a lack of understanding of the authority and limitations imposed upon the U.C. by the above which hinders the relationship and continuing dialogue which both the U.C. and City desire.

(8) Possible Other Business – Time for Commissioners (cont.):

Commissioner Diesen stated and we've made a lot of progress in trying to work together but once again I see this as having the potential to undermine a lot of the good work that we've been doing and attempting to work with the City Commission and on the Economic Development Board. So I just felt it important to bring this up tonight and I'd like support on this, I think we need to let the folks across the street know what we're thinking about and one more time reiterate why we can't do the things that we're being asked to do. We can't do things that aren't legal and I don't know why that's so difficult to understand but apparently it is, and so I think we need to send them some information.

Commissioner Hall stated well we already have in Mr. Preston's four page memo which was direct, well written, and to the point.

Commissioner Diesen interjected I think we have to address that.

Commissioner Hall stated because I had to defend it, and added to Commissioner Diesen you were there when I was on the hot seat at the Economic Development Advisory Board. My only concern about your statement is the City Commission infers all five Commissioners and I'm not sure if we have a problem with all five, that's just me now, again, that's...

Commissioner Diesen stated well do you want to call out...

Commissioner Hall stated I'm not sure, I'm not sure.

Commissioner Diesen stated to Commissioner Hall, well if you do, I'll be right there with you.

Commissioner Hall stated I think we all know the two or three that are, do understand our position.

Commissioner Diesen stated and I agree with you that it's not in total and I also believe that this didn't originate probably without some aiding and abetting, I don't know that to be true but it is familiar language.

Commissioner Hall interjected abetting from where, from where.

Commissioner Diesen stated from outside the one P&Z member that supposedly sent this forward to be included on their agenda for 1-3-11.

Commissioner Hall stated okay.

Commissioner Diesen added and I just think it's important that we have something there that night when they start to discuss this, I think they need to know where we, one more time, we need to reiterate because that talks, this goes to the very heart because if you read this item that they're going to be discussing on the third, they want a study commission, they want a

(8) Possible Other Business – Time for Commissioners (cont.):

study operations, our permitting processes; that's getting dangerously close to interfering with the operation of the utility. Even though the last sentence says and nobody, you know, this won't be binding, then hello, why are we doing it.

Commissioner Hall stated let me play the devil's advocate with you, we have nothing to hide.

Commissioner Diesen stated right.

Commissioner Hall stated we know what we're doing is correct, it's been that way for a long time, we're not the first U.C. Commission to be doing things this way, we're not following the Commission, we are following the law. So I have no fear of an ad hoc committee coming in to study what we're doing as long as it does not slow down what we have to do. At the same time, I agree that we have to say something and I have no problem with what you're saying.

Chairman Allen stated well, it would also get back to sending Mr. Preston's letter again with the basic statement. He stated to Mr. Preston, your letter basically really put it out there clear.

Commissioner Hall stated my suggestion is that you highlight your points, your succinct points in red.

Mr. Preston commented well that would be the whole letter.

Commissioner Diesen then stated and this also, can I make one other point, I'm going to, okay.

Chairman Allen answered yes.

Commissioner Diesen stated and that is there is so much productivity lost in this whole process of this, whatever this game is, if it's a game, back and forth and around, a lot of time goes into researching and getting answers and doing this and doing that and then it comes back another way and one more time, we're paying our attorney to say the same thing over and over again; that's getting expensive. And at some point, and it costs us in productivity time for employees on both sides of the street. Some where, some time, someone has to say okay, we understand what the U.C. can and can't do and we acknowledge it. Now, as Mr. Mitchum stood up and so eloquently said the other day at that meeting, here's our position, here's what it is, you know, we don't pay for development, for the infrastructure for development, we can't, we aren't, the ratepayers aren't doing that. So, I don't, I don't understand why someone would want to put together a group to study our processes and our fee structure and how we do business and yet say, well but it wouldn't be binding on anyone. Then why one more time are we beating a dead horse.

Commissioner Hall stated well...

(8) Possible Other Business – Time for Commissioners (cont.):

Commissioner Diesen added, is the horse not dead?

Commissioner Zeller stated I side with Commissioner Diesen, I think it's really bordering on political interference with the utilities for a politically appointed committee to come in here and to try and judge us.

Commissioner Diesen interjected and that clearly was why...

Commissioner Zeller stated and it may not even be bordering, it may be interfering with.

Commissioner Diesen stated right, and that's, you're right, I agree.

Commissioner Zeller stated it's by their direction, we were, our constitution says that we will not be political.

Commissioner Diesen stated that's right, that's why we were separated.

Commissioner Zeller stated so, we were separated.

Commissioner Hall stated at the December 7th Economic Development Advisory Board meeting there was a comment made about attorneys and opinions and I'm going to paraphrase because I was not there but I did get the notes from Mrs. Simmons. Something to the fact that you can go to ten different, you can go to several different attorneys and get a different opinion, so what weight does this man carry (referring to Mr. Preston). I've got a great response, what I think is a great response when we meet again in January. We pay Mr. Preston to give us opinions and he doesn't sit down and write them off the top of his head, he has never lead us astray in the years that he has been our attorney and we all know that if he were to lead us astray we'd have a new attorney sitting there. The man happens to be a very, very good attorney and I would bank everything I own on his opinions.

Mr. Preston stated well, I thank you.

Commissioner Diesen stated I think we all would, I think we all have confidence in him and we know we're not being misled or misdirected, we're trying to just go down the straight and narrow path that we have parameters in which we have to operate. And I'm not saying it's the whole City Commission but there's some where, there's a momentum that's driving this again and again and again, and until that stops that, this productivity issue is going to continue and continue. And it's not, it just isn't fruitful and it certainly does not lend itself to a partnership and trust. And we had, I thought, I thought we were making strides and I hope we have and I hope that can continue but something like this, as far as I'm concerned, can derail the whole train. And that's sad, that's, I'm sorry for that.

Commissioner Zeller stated I think what the Economic Development Board is confusing our location and what we have to offer with trying to buy businesses and bring them to town.

(8) Possible Other Business – Time for Commissioners (cont.):

He added Wal-Mart asked for nothing, Publix asked for nothing, Winn Dixie asked for nothing...

Commissioner Hall added CVS asked for nothing, Walgreens asked for nothing; we can work up a list.

Commissioner Zeller stated I mean people...

Commissioner Hall stated good companies don't ask...

Commissioner Zeller continued, come here for the location and the labor pool.

Commissioner Hall stated and frankly ABC doesn't have to ask for things because they're making good money.

Commissioner Diesen stated and we worked with the hotel and worked that out.

Commissioner Zeller stated yes.

Commissioner Diesen stated you know, and Venetian Bay, remember when this started, I mean they joined in, it's not, that's what I don't, that's the part I don't understand. I don't understand how these folks that keep coming back don't understand where we are and what our limitations are by law. And it's a matter of wanting the ratepayers, if we just think, instead of saying Utilities Commission each time, if we say the ratepayers. You know, we want the ratepayers to pay for development.

Commissioner Zeller stated or the taxpayer, which is the ratepayer.

Commissioner Diesen stated well in our case, our rate, yes, but the taxpayer in the City is different than our ratepayers because about, what 25% of our base is outside the City limits. So you know, you want a real hornet's nest, you start telling South Beach they're going to pay for development in the City of New Smyrna. Now just, even if we could, guess what might happen.

Commissioner Hall stated well I can see Bob Granstrom right now...

Commissioner Diesen stated well I see a few others...

Commissioner Hall added going ballistic on that, yeah. He stated you know this brings up something else, just an aside, I was, maybe, no, I'm not going to say it. I think the taxpayers of New Smyrna Beach, at some point, are going to rise up on this impact fee business. Impact fees are put in for a reason and that's because business never supports itself, growth never supports itself. I've heard from real estate people, great friends of mine, and I've heard from business people and I will tell you I haven't seen my taxes go down in my life time in the City

(8) Possible Other Business – Time for Commissioners (cont.):

because of growth. Growth does not pay for itself and that's why impact fees were put in. I faced this in another life, impact fees for new schools, and was sued by the Builders of Volusia County, twice. We won both times by the way, but you know, mark my words, when the citizens, and I think some are already figuring it out, when they, when they come to the realization that impact fees are being reduced and being reduced significantly to bring in quote "businesses", there's going to be a reckoning. He then added Commissioner Diesen has a resolution, or a statement.

Chairman Allen answered a statement.

Commissioner Hall stated does she, do we need a vote to have that read into the record or can you as Chairman accept it into the record.

Chairman Allen stated Mr. Preston.

Mr. Preston stated it's been read into the record itself. What you can do is verbally agree to support that, amongst all or some of you, so that that can be a statement which can be taken to whether it be the P&Z Meeting as they consider this document that they had put together, or elsewhere. And you may do that, I said simply verbally, you may do that verbally or by a vote as well.

Chairman Allen stated okay.

Commissioner Hall interjected I think Mr. Tolley wants us, he's been trying to get our attention for 10 minutes.

Mr. Tolley addressed the Commission, stated just a quick one, Bob Tolley, as a follow-up to what Commissioner Hall said, the public doesn't know about this document. I'd really, really appreciate it, and I'm sure our ratepayers would if you could read that document into the record, so they can go back and find it later because they don't even know about this. So if you have it in front of you would you mind reading that document into the record.

Commissioner Zeller asked Mr. Tolley, the memo from the Planning and Zoning?

Mr. Tolley stated I'm sorry... and then stated the P&Z.

Commissioner Zeller stated yes, the memo from them, I think we ought to, that's a good idea.

Mr. Tolley stated I think it's a good idea for you guys to read it into the record.

Mr. Mitchum then stated I don't have a problem reading it, I don't have a copy of it.

Commissioner Diesen stated all right, the recommendation, do you want me to read it in then. She then stated: Recommendation of the New Smyrna Beach Planning and Zoning Board

(8) Possible Other Business – Time for Commissioners (cont.):

to the New Smyrna Beach City Commission. She stated and this was, I guess it came forward although it's not in the minutes (sic recording) of the 6th, I guess the December 6th P&Z meeting, and it is, it says presented at P&Z Meeting last week to be discussed 1-3-11 at P&Z, by a P&Z member, I guess it was brought forward, not a City Commission item at this time*. (*from City Manager, note attached to proposed Recommendation.)

Commissioner Diesen then reiterated, Recommendation of the New Smyrna Beach Planning and Zoning Board to the New Smyrna Beach City Commission. In support of the City of New Smyrna Beach efforts to actively promote economic development and increase business opportunity which depend, in part, on accountable and efficient operations of departments, agencies and sub-agencies of the City of New Smyrna Beach, the Planning and Zoning Board recommends that the City Commission establish an ad hoc study committee specific to the Utilities Commission. More specifically, the P & Z Board recommends that this study commission examine the permitting processes/practices of and assessments of fees -- impact and other -- by the Utilities Commission on new and expanding business and industry. The study committee shall additionally examine the operations, permitting processes and fee assessments of utilities operations of similar sized municipalities within the State of Florida for purposes of comparison. In its report to the City Commission, the study committee will identify and recommend opportunities for improved operations of the Utilities Commission specific to economic development and business opportunity should any be discovered through the process. This commission shall operate and report back within a time certain, be composed of stakeholder representatives to be approved by the City Commission, and conduct business within the Sunshine and Public Records laws of the State of Florida. The recommendations shall have no binding authority on the City of New Smyrna Beach or its Utilities Commission, but will be used in a manner such as deemed appropriate by the City Commission. She then concluded by stating, now.

Chairman Allen stated it's read into the record.

Commissioner Diesen stated and I will refrain from saying anything.

Commissioner Hall stated may I ask a question, do we know if all members of the Planning and Zoning Board were at that meeting. I'm just curious because...

Chairman Allen stated I don't.

Mr. Mitchum stated no, I believe.

Commissioner Hall stated I have heard that there were a couple not.

Commissioner Zeller asked who was the author of that paper.

Commissioner Hall inquired Bohannon?

(8) Possible Other Business – Time for Commissioners (cont.):

Mr. Preston stated no one, we don't know that I'm aware of.

Commissioner Diesen stated we don't know who wrote the paper.

Commissioner Hall stated as to who.

Mr. Preston stated actually authored this document.

Commissioner Zeller commented that paper was not written by committee, that paper showed up and was approved by them probably.

Commissioner Diesen stated I think that's a pretty good assumption. There are a number of things about that, that bothers me. If you were going to do it, if you're going to do a study you have professionals do a study. You don't, I'm a researcher so it gets me a little hot, if you will, when somebody is going to do a study of the processes of an organization that I'm a part of and they are not professionally oriented to doing those things and you're going to make recommendations on changes to an agency that's very well run. I don't think that any other one in the State of Florida, if they make comparisons can stand up to us quite frankly. And so that bothers me a little too, so I may as well go ahead and say it. She then added I'll keep quiet now.

Chairman Allen stated well, the one real problem I see with it is we have qualified staff that does good diligent work and you're going to put together an ad hoc committee to come in and study a process that you do which takes, is very professional. And who's going to, if you're going to do a study on something that is as professional and as technical, you have to go out and get somebody that has that same identical technical experience and to go through everything you have. And who's going to pay for that technical experience too, and then they're going to, and then you're going to, somebody's going to try to question and they really don't understand the operation.

Commissioner Diesen stated well, and again, it's dangerously close to interfering with the operation of the utility.

Chairman Allen stated well it is, it actually does interfere.

Commissioner Hall stated when I read the memo from the Planning and Zoning Board, I don't think they were thinking about professionals coming in, I think...

Commissioner Diesen interjected no, they're talking about an ad hoc committee.

Commissioner Hall stated they want citizens.

Commissioner Diesen stated yes, that's going to walk around and...

(8) Possible Other Business – Time for Commissioners (cont.):

Commissioner Zeller stated they want a politically appointed committee to come in here and grade us.

Commissioner Diesen stated yes, a politically appointed being the key phrase. She added good Commissioner Zeller.

Commissioner Hall stated well, it hasn't passed muster yet with the City Commission that we know of.

Commissioner Diesen stated no, it goes to P&Z but I think they need to know and that's why I would like something sent over so that it's there. The other thing is I think we, if we could it would be helpful, as many as could show up at that P&Z meeting once it gets agendaed. Once we see it on the agenda, I think, frankly I think somebody from this Commission needs to be at about every meeting that goes on; it's an eye opener.

Mr. Mitchum stated if I may add something, my concern, because like you said this was just passed out supposedly at the last P&Z meeting and it hasn't been on the City's agenda, it did show up over at the City because we got it from the City Manager of course. And like you said it will not be discussed at the P&Z Board until after the City's meeting, correct?

Commissioner Diesen stated no, the P&Z meets on the first Monday after the new year, on the 3rd, and the City Commission won't meet until the 11th.

Mr. Mitchum stated right, like I said, I agree with you, and I agree with Commissioner Hall that I have no problem examining the way we run the utilities, but it is bordering in that area of interference. And I think it is up to the City to somewhat educate their boards or whatever they've got as to what their, what they can and cannot do is what I was trying to add in and trying to clarify. So I agree that we need to do something, you know at least let them know what we're looking at.

Commissioner Hall then asked, has anybody here been on the Planning and Zoning Board?

Commissioner Diesen stated yes, five years.

Commissioner Hall stated I was on it twice and sometimes they have a tendency not to listen to the advice from the person from the City staff who is helping them out. I mean I saw it both times, both different times I was on the P&Z. He stated to Commissioner Diesen, now you might have worked with a different Planning and Zoning Board than I did.

Commissioner Diesen stated well, on the other hand, there are times when if they're new or they haven't, they don't have a solid background like four or five years or experience or something, that they'll go right ahead and take the recommendation of staff. And, I, I mean it goes both ways, it just depends on the makeup of the particular P&Z Board.

(8) Possible Other Business – Time for Commissioners (cont.):

Commissioner Hall stated yes.

Commissioner Diesen stated you were on there with me for awhile, I think.

Commissioner Hall stated no.

Commissioner Diesen stated no, you came on, you took my place.

Commissioner Hall stated I was on there with a former Mayor and a former City Commissioner.

Commissioner Diesen stated okay.

Commissioner Hall added and it was very interesting.

Commissioner Diesen stated we had lively discussions I'll say that. Any way, I, that's, I leave it, you know, with that. If you all want to back in what I'd like to do or if you don't want to that's okay, I won't be angry.

Chairman Allen stated we'll back you.

Commissioner Hall stated yes, just don't, yes, we'll back you.

Commissioner Diesen stated okay.

Chairman Allen then stated do you want to vote on that.

Commissioner Diesen stated consensus is okay.

Chairman Allen stated consensus.

Commissioner Diesen asked Commissioner Zeller are you there.

Commissioner Zeller stated to Commissioner Diesen I'm with you.

Commissioner Hall stated do you want a thumbs up.

Commissioner Zeller stated thumbs up.

Chairman Allen stated thumbs up.

Commissioner Diesen stated all right.

Chairman Allen then added we're with you. He then added so that's on the 3rd.

(8) Possible Other Business – Time for Commissioners (cont.):

Commissioner Diesen then stated okay, so I will give this to you, to Mr. Preston.

Mr. Preston stated I have it.

Chairman Allen then stated Commissioner Hall.

Commissioner Hall asked does Commissioner Zeller want to say anything.

Commissioner Zeller stated yes, I'm just curious, why is the City Manager involved in the St. John's Water Management authority as much as she is.

Mr. Mitchum commented I would like to know that also. Actually we've tried to get St. John's to send all the paperwork and stuff concerning us to us. For some reason they seem to be sending it to the City and even though we've gone back and requested it over and over, it still goes to the City and I don't know the reason for that or how that's happening.

Commissioner Zeller confirmed we have to fill out all the papers.

Mr. Mitchum stated yes.

Commissioner Zeller added and we pay to have them filled out.

Mr. Mitchum stated yes.

Commissioner Diesen stated well, along with that, why are statements being made that St. John's has not accepted our alternative water supply. That was, that pejorative statement was made flat out, now that was not a true statement.

Mr. Mitchum answered no, it wasn't, we have just got the report back and begun going through it to see how and why, we're going to present it to St. John's so that has not been turned down by St. John's, so that is not a true statement.

Commissioner Zeller stated are we, we are in compliance with all of their regulations.

Mr. Mitchum stated yes, at this time, as far as I know. I don't know of any we're not in compliance with.

Commissioner Zeller then stated Mr. Hoover, are we in compliance with all the St. John's water regulations.

Mr. Hoover stated in my opinion we're a model example of everything they want.

Commissioner Zeller stated thank you sir.

(8) Possible Other Business – Time for Commissioners (cont.):

Commissioner Hall stated I don't want to put the gentleman on the spot, but our Assistant City Manager is here, maybe he can share some light on this issue for us as to why things are coming to the City and not to us; he may not be aware of it. He then commented to Mr. Resheidat, you can't hide from us and added welcome.

Mr. Resheidat stated thank you and added, I'm not aware of it.

Commissioner Hall stated okay.

Commissioner Zeller then stated I'm good.

Chairman Allen confirmed that was it for Commissioner Zeller.

Commissioner Hall then stated well, I'm going to give a brief report on the Economic Development Advisory Board, two meetings. One in which I defended the U.C., first confirmed all could hear him speak, and then reiterated, one which I defended the U.C. and there was actually no reason for Mr. Mitchum to be there or anybody else. I mean I'm the appointee of this Commission to be there. Mr. Preston's memo, as I said earlier, was direct, self-explanatory and I had the feeling very soon after we started discussing things that perhaps a couple of the members had not read the memo. It was an interesting evening, Commissioner Diesen you were there, I think Mr. Tolley was there, and there were a couple of members who were reasonable. The gentleman who sat next to me, Mr. Mayer, was very quiet, Jack Holcomb was very quiet, and the lady, I can't think of her name (Jill Carlton), did not have a whole lot to say, but I got teed off by a couple of others, one who is a good friend of mine. At any rate I survived, but I am going to wear a target next time I go in there just for the heck of it.

Commissioner Zeller commented bulls-eye.

Commissioner Hall stated bulls-eye I meant, it will be big and red.

Commissioner Diesen commented I'd wear a flack jacket, I might add.

Commissioner Hall stated no, I've been in tougher situations than that. However, secondly I am disappointed that a lot of the discussion that took place that evening centered around the move of the ABC store to 44. And I made the statement that philosophically I had a problem, I could have said I spiritually had a problem with it or whatever. My problem is this, ABC doesn't need a darn thing from anybody, they've got money, they make money, like raindrops falling from heaven when it rains four inches in 30 minutes. There's no reason, in my opinion, for that group or that owner of the property or whatever to be asking for the incentives from the City or anybody else. Secondly, and this has been talked about by the City Commission for years, by at least three previous Mayors, the U.S. 1 corridor is just not a beautiful corridor except for the landscaping in medians. When ABC moves out there (on

(8) Possible Other Business – Time for Commissioners (cont.):

44), I think I read they were committed to staying open for two years in the other building on U.S. 1. What happens when that thing closes down, man what a monstrosity eyesore that is going to be. The Shell, the former Shell station next to it, which sits on a prime piece of property, has never reopened, it's boarded up and it looks like, never mind. But I'm, I'm disappointed that we're spending a lot of time and I feel spinning our wheels as an Economic Advisory Board talking about the ABC lounge. But I will continue to go until you call me off. He then jokingly added to Chairman Allen, can I preach a couple Wednesday nights for you.

Commissioner Hall then stated at any rate, the second item I want to talk about was the meeting that was held on December 7th. I was not there and I will share with you that the memo that came out said that we were meeting on Wednesday, December 7th. Wednesday was December 8th, I think the 7th is Pearl Harbor Day isn't it, well, I was celebrating that.

Commissioner Diesen stated on Tuesday.

Commissioner Hall reiterated, on Tuesday. I had a 50/50 chance, I didn't think about calling anybody at City Hall and I could have called somebody at City Hall, I just didn't think about it.

Commissioner Diesen stated or they could have called you.

Commissioner Hall stated well, I did talk to the secretary and she did send an email, unfortunately, we are getting a new computer, our system was clogged up and it clogs up all the time and I could not tap into it. But I think she had directions from her boss, who I'm not sure who that is, that if this happens again she is to make phone calls to each member of the Economic Advisory Board. Now I don't want to be critical of her because she did call and talk to me. But that meeting, they teed off on us again, a statement was made that well, we don't care if Bill Hall's here or not, we're just going to say what we want to say. And there were some strong shots taken at the Utilities Commission and when we meet in January I'm going to address each one as the representative of this Commission and point out the error of their thinking. But I also need to say this, and Mr. Mitchum you said that, I thought very eloquently at the meeting last week when you were being questioned about what can we do, and you had an open mind, well, we'll have to explore but we are constrained or restrained by State law, etc.; but you did make the statement let us communicate.

Commissioner Hall stated if, and now it's a big if, if we are doing something wrong or if our attitude is overly negative towards the City, that's not going to help anybody and I, again, I'm not accusing anybody, I mean we have to be careful in what we say and how we operate. I'm madder than a wet hen right now and I could say a lot of things but I'm going to because I don't think it will help the situation. I have a forum in which I can discuss what needs to be discussed eyeball to eyeball with the board that is very intent on getting businesses to come here. Frankly I'm not as optimistic as they are, I've seen this go on for years with City Commissions, wanting to bring clean, energy efficient businesses into town and we've been

(8) Possible Other Business – Time for Commissioners (cont.):

successful in a couple of areas. But the very first meeting of the Economic Advisory Board it was pointed out that we don't have the infrastructure in place to really attract some of the larger businesses to come into town, that is buildings that they can move into quickly and we're not going to have any. I mean who's going to go out there and build the buildings, the City can't do it and we don't have developers who are going to do it for businesses to come here. One of the things that is passed out at the Economic Advisory Board meetings is really an eye opener, they are businesses who are tracked by the County's Economic Development agency and it is interesting to see that there are many companies on that list who insist they have to have the financial incentives. Well my position is man, if you've got to have the financial incentives, I'm not sure if we want you, that's a sign of, in my opinion, of a struggling company who thinks if they move to warmer weather or a different location, things are all of sudden going to be very profitable. And I, I just don't see it that way, I don't know of any business model that sees it that way. He commented it's not like trading a Vince Carter to the Phoenix or bringing in a guy named Arenas who was suspended for 50 games last year to play for the Magic.

Commissioner Hall stated you know that's a different situation, but being on the board has been very interesting, and again not everybody on that board is going to attack us. There are some honest questions that I've tried to answer. He stated to Mr. Mitchum probably I need to have somebody in the audience, Randy Walter or somebody, Mr. Hoover or somebody who can help me with some technical questions sometimes that come my way. We might even want to consider a rotating of the Directors to be there because there are going to be times that I cannot technically answer some of the things that may come up and the board knows that, but it still might be a good idea to have somebody I can, to say can you answer that for us. But I will leave that to your discretion sir.

Mr. Mitchum stated all right sir and then asked when is your next meeting.

Commissioner Hall stated it's the Wednesday after our meeting in January. What's the date in January that we meet.

Commissioner Diesen stated it will be the fourth Monday this, in January, because we don't ever meet on Martin Luther King's.

Mr. Mitchum stated right.

Commissioner Diesen stated the 24th?

Mr. Mitchum stated that's pretty late then, right.

Commissioner Diesen then stated to Commissioner Hall the 24th I think.

Commissioner Hall stated yes, they'll meet the Wednesday before that.

(8) Possible Other Business – Time for Commissioners (cont.):

Mr. Mitchum stated okay.

Commissioner Diesen stated the 19th.

Commissioner Hall stated yes.

Mr. Mitchum stated all right, I'll see what I can come up with.

Commissioner Hall then stated to the Commissioners, once again thank you for placing me on the board.

Commissioner Zeller jokingly commented you earned it.

Commissioner Hall reiterated that statement and stated yes, okay.

Commissioner Diesen stated and no, I think that you've capsulized it very well but I do believe there's been an honest effort, I mean we've all tried, we want to, we want to work with the City but then when you, you think your things are going well and then something like that comes up back at you from the P&Z wanting this study. So, somewhere we're just, you know, we're not getting together, we're just like, we're like missing each other somehow and that's what has to stop. And you have to have a level of trust and if something like this comes at you, you go right away, you cringe and go whoa. You know, I, they don't trust what we're saying, wait a minute I thought we had an understanding, so yes, I agree we need to stay positive but we also need to get, you know, the record straight once and for all because it's losing, we're losing too much time in productivity.

Commissioner Hall stated let me close by giving some credit, giving credit to the Economic Development Advisory Board. There, the Mayor had a list of economic goals that he had categorized into I think eleven or twelve different categories. One was tourism, and everybody on that board, we were asked to rank them back in October I think it was or back in September. That came up in a vote in November and tourism was ranked as the number one goal because we are a tourist town and we can't forget that. And the members of the board were very adamant about that being our number one goal, regardless of what may be number 2, 3, 4, and 5. And I think that shows that to a strong degree, in that arena, they're right on target. I'm going to suggest that we do a campaign slogan on being the "Shark Bite Capital of the World".

Commissioner Diesen commented I think we already are.

Commissioner Hall stated I think we ought to really promote it, man we'll have a lot of people come here I think.

Commissioner Zeller commented if they're land sharks.

(8) Possible Other Business – Time for Commissioners (cont.):

Commissioner Hall then commented but thank you for listening to my brief report, minus any bleepers.

Chairman Allen stated well we appreciate you serving on there and being the target.

Commissioner Hall stated to Chairman Allen, don't forget my offer to you now.

Chairman Allen stated okay, well I don't have anything to say and all I want to say is wish you all a Merry Christmas and a blessed New Year. And I do thank you, and I think from this Commission we do appreciate you as staff and the work you do and the quality that's been done over the years, greatly appreciate that. And with that, we'll adjourn the meeting.

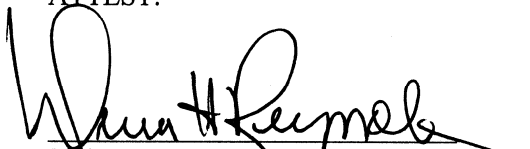
Commissioner Diesen and others in attendance then stated simultaneously Merry Christmas.

There being no further business to come before the Commission, Chairman Allen adjourned the meeting; the Regular U.C. meeting closed at 6:59 p.m.

APPROVED:

ATTEST:


CHAIRMAN


SECRETARY-TREASURER

These minutes were formally approved by the Utilities Commission at their January 24, 2011 meeting.