

MINUTES OF A REGULAR MEETING OF THE FORT PIERCE UTILITIES AUTHORITY, TUESDAY, DECEMBER 7, 2010, 4:00 P.M., CITY COMMISSION CHAMBERS.

Members Present: Chairman, Darrell Drummond; Vice Chairman, Pamela K. Cully; Secretary, Michael A. Perri, Jr.; Deputy Secretary, Robert W. Summerhays, Jr.; and Mayor Robert J. Benton III.

Others present: William G. Thiess, Director of Utilities; Rupert N. Koblegard, III, FPUA Attorney; Nina Hurtubise, Director of Finance; Evelyn I. Walker, Director of Shared Services; Timothy E. Perkins, Director of Water/Wastewater Systems; Levette Dixon, Communications Manager; Arne Taranger, IV, Acting Risk Manager; and Gelencia Carter, City of Fort Pierce Purchasing Manager.

The meeting was called to order by Chairman Drummond.

The Invocation was given by Pastor Alice Lodomirak of Pearl Ministries.

The *Pledge of Allegiance* was recited.

The roll was called and a quorum declared.

Marty Laven of 2400 South Ocean Drive, Unit 3115, Fort Pierce said he is going to break his routine because this Board will have plenty of questions coming before them this coming Monday. He said that since they are a supporter of many great events in the community, he wanted to share something that is being done in the marina these coming holidays and what the public will find of interest. Mr. Laven said this year is the 21st Annual St. Lucie County Christmas Boat Parade and since the Chamber of Commerce no longer sponsors the parade, volunteers from the Marine Industries and the Fort Pierce City Marina continue the tradition. The parade will take place Saturday evening, December 11th and will begin at 4:00 pm. He said between 4 pm and 8 pm at the basin of the South Bridge in the area of the historical museum along the Fort Pierce inlet, there will be vendors, crafters, face painting, a bounce house, and Santa. The holiday decorated boats will meet in the turning basin by 6 pm and will proceed past the judges who will be seated at the Summerlin Pier. The judges rate the boats for Christmas lighting, audio, and crew spirit. This year the theme choice was left up to the captains. The boats will then go down the inlet past all the waterfront restaurants like Chucks Seafood, On the Edge, the Pelican Yacht Club, and Mangrove Matties. There are also two hotels with viewing ability, the Dockside Inn and the Sandhurst. Mr. Laven said this would be an opportunity as the eyes are on FPUA, people would see this now and between the boat parade. He said the parade will turn back up the inlet and go to the North Bridge and then into Taylor Creek for the Habortown Marina and Harbor Cove Restaurants viewing. They will then return to the Ft. Pierce City Marina past Cobbs Landing and the Tiki bar where the winners and prizes will be announced. The judges will be Michael Howard, Director of the Navy Seal Museum; Buzzy Smyth, from the City of Ft. Pierce; Mary Henderson, Director of Avenue D Boys Choir, and

Susan Boardmann, Commodore of the Ft. Pierce Yacht Club and Master Officer of the Ft. Pierce Police PAL Organization. There will be a special "mystery judge" and the hint is it will be a local townsman and prominent official. Mr. Laven said if anyone would like to participate as a vendor or boat entry, it is not too late. They can contact Ann Marie at 772-577-0683 or access the Marine Industries' web site at Marine Industries of the Treasure Coast. Applications are also available at the Pelican Yacht Club and the Ft. Pierce City Marina. The holidays are here and he hopes that everyone will come out and join in on this.

Mr. Drummond requested that Consent Agenda Item #4 be pulled for discussion.

A motion was made by Mr. Summerhays, seconded by Mayor Benton and unanimously carried to approve the remaining items listed on the Consent Agenda:

1. Approval of the Minutes of the Regular Meeting of November 16, 2010.
2. Approval of post budgeted project request and increase the Unit Price Contract by \$125,000.00 to construct the North 29th Street Gravity Sewer Replacement Project using the Unit Price Contractor.
3. Approval of budget transfer to increase the budget by \$82,000.00 for the North 13th Street water project from Orange Avenue to 400 feet North of Canal Terrace.
5. Bid No. 6020 – Kubota L39TLB Tractor Loader/Backhoe - Approval to accept the lowest responsive responsible bid from Gulf Coast Tractor & Equipment, Land O'Lakes, Florida, in the amount not to exceed \$32,588.04.
6. Bid No. 6021 – Vehicles Fiscal Year 2011 – Approval to piggyback Florida Sheriff's Association Contract Bid #10-18-0907, for the procurement of a John Deere Mini Excavator Model #27D with an extra 18" Bucket, from Everglades Farm Equipment, Fort Pierce, Florida, in the amount of \$27,513.00.

Mr. Drummond said that he pulled Consent Agenda Item #4 – approval of payment in the amount of \$37,773.57 to the St. Lucie County Tax Collector for 2010 Non-Ad Valorem Assessments on properties owned by FPUA because it was probably more of a technical thing from his standpoint. He said he does not recall at what point the Board made the decision to take over this from the City and asked for some insight from Mr. Thiess.

Mr. Thiess said he does not believe it was a decision from the Board on the record to take this over. He said FPUA received a bill for the stormwater fees relatively recently and they increased significantly in the last year. There was some discussion with Mr. Barnes if we as a

utility were obligated to pay because a lot of these properties are technically on the books as owned by the City of Fort Pierce for the use of Fort Pierce Utilities. Mr. Koblegard weighed in on that last year when the fees first came about on the question as to whether we should pay that or the owner on the books pay it, which would amount to the City assessing fees to themselves.

Mr. Koblegard said he vaguely recalls that conversation and there has been some discussion about it. He said when John Brenner was City Attorney they decided whether or not we should pay this at all to the County. We decided that it was appropriate to do that. Mr. Koblegard said he cannot remember exactly after that if it was the City or FPUA. His thinking on it is even though some of FPUA's properties are titled City of Fort Pierce for the use of FPUA, if we sell that property, FPUA keeps the funds. It is FPUA's property, if they buy it, they pay for it. If there is a tax on it, the beneficial owner would be the one responsible for that. Mr. Koblegard said that is his thinking and there is nothing written down that says that is the way it is or is not. He said if it came up with the City, that would be their position and it would not be an unreasonable position for them to take.

Mr. Drummond said he does not have a problem with that, but of late there has been an issue regarding whether or not there is any benefit that accrues to the property whether or not it should come to us. He is wondering if there is a consistency.

Mr. Koblegard said there are issues where the City has taken a position that when they grant an easement over property, they have to sign it for FPUA for property we are using. Since it is owned by the City, the City should reap the benefit of any costs with that easement. We are now being paid on two easements that the City on one in particular that the City feels they should receive those funds. That is the issue on TECO Gas that is still up for debate. Mr. Koblegard said in following up on that, if we are using the property, although this is one the City paid for before we ever became into existence, there is a little bit of gray area there, but since we are the ones using the property and we have to deal with TECO, we are the ones that should receive the benefit of the easement, just like with the stormwater assessment. Since we are using the property, although it is for the benefit of the person, we would be responsible for it. It works in our favor taking that position on something like TECO where the money is actually coming to us instead of going away.

Mr. Drummond said that in this particular instance it does not weaken our position about us paying for it.

Mr. Koblegard said it does not and it should not.

A motion by Mr. Summerhays and seconded by Mrs. Cully to approve payment in the amount of \$37,773.57 to the St. Lucie County Tax Collector for 2010 Non-Ad Valorem Assessments on properties owned by FPUA.

A note was received from The Mustard Seed thanking FPUA customers for the amount of \$272.39 contributed through Project Care.

A card was received from SSG Matilda Ott thanking FPUA employees for the military gift package sent to her in Iraq.

Mr. Koblegard apologized for not putting more detail in his agenda item. He said that Cargill Juice owned the property off Selvitz Road. In 2005 they decide to take down the buildings there and get back what they could on the sale of the scrap and the other items that were saleable. He said they hired Allied to auction off whatever equipment that could be sold and Allied instead of being paid they salvaged, just like what was done at the King Plant that was demolished for FPUA. FPUA had five transformers and we were given notice they were going to demolish the building once all the equipment was sold off and that we should remove our transformers. They did request that of us a couple of times or more. Mr. Koblegard said we were busy at the time and even their representative at the time of his deposition said he did not think it was FPUA's fault that we were passing it off because we told them we were going to go out there and get them. We had other things at that point that were keeping us busy. They went ahead with the demolition and did not intentionally destroy the transformers, but in passing by with the big front-end loaders and track hoes, they did damage those, two substantially. Three of them were repairable, which we did repair and there was a bill for about \$21,000 and there were two that were damaged beyond repair. The replacement costs, if we were to go out and buy a new one today, came to \$93,000 for the two of them. If we added that amount to the repair cost, we are up to around \$114,000. Mr. Koblegard said he filed suit because they did not agree to pay us and he put it down as the full value. He said actually in court we are only entitled to receive the actual value of the transformer at the time of the damage. After checking with Ms. Hurtubise, we depreciate them over a 25-year stand, so Mr. Koblegard took the number of years they were there in operation and got an accrual of that over 25-years and it looked like the actual value of the transformers at the time of the damage was about \$55,800 against the \$93,000 that we had actually paid for them originally. If we add the expenses for the repairs to the \$55,800, that came to about the \$77,000. They have agreed to pay us \$67,500 and Mr. Koblegard said that in court the best shot we would have would be the \$78,000 figure. There would be an issue of contributory negligence because we did not get them out before demolition started. This case has been going on for two years now, expenses are still down, and if we were to go to trial and go ahead, we would not be able to get attorney's fees on a case like this. As a business decision, we would be making a mistake by prolonging the result. The \$67,500 is fair in light of the situation. We are asking that the Board approve that and then Mr. Thiess can sign the release, the checks will be drawn, and then we should have the money in the bank probably in about a week.

A motion was made by Mr. Perri, seconded by Mr. Summerhays and unanimously approved to authorization the Director to execute General Mutual Release and Settlement Agreement among Fort Pierce Utilities Authority, Cargill Juice North America, Inc., Allied Recycling, Inc., and South Florida Land Clearing, Inc., for settlement of Fort Pierce Utilities Authority's claim against those defendants in Case No. 562008CA009676, Circuit Court for St. Lucie County, Florida.

Ms. Nina Hurtubise, Director of Finance presented the Rate Comparison for the month of October 2010. She said the table displayed is the Florida Municipal Electric Association residential electric bill comparison for 1,000 kWh for October 2010. Fort Pierce Utilities Authority is ranked after the \$4.00 decrease we had October 2010 as 6th highest, which is one position better than we were in the month of September. Since September, seven municipal utilities increased their bills and sixteen decreased their bills. Twenty-three of the 33 municipalities shown on the chart made some sort of a change one way or the other with October being the first month of the new fiscal year. The biggest changes are Starke with an increase of \$22.36 and they are a city that makes an adjustment every single month. Fort Meade reflects a decrease of \$15.00 for the 1,000 kWh and as you see they are still \$0.72 more than FPUA. Green Cove Springs reflects a decrease of \$10.97 and they are the lowest bill on the comparison. The All-Requirements average decreased to \$127.52 and that is a \$2.60 decrease from September. FPUA is \$8.32 above the ARP average which is actually gaining ground and we are looking forward to the \$4.00 decrease that was voted on at the last meeting. On the 2,500 kWh comparison, FPUA is 6th on this comparison and we are gaining ground two positions better than we were the previous month of September. On October's comparison of our local utilities, there were quite a few changes here. Port St. Lucie's utility tax increased from 5% to 10% on their electric service and their water and wastewater rates increased 3%. There was a rate increase in Vero Beach. They decreased their PCA, which resulted in a net decrease of 3.7%. This is an information only item; no action is required of the Board.

Mr. Thiess said the joint City/FPUA workshop is next Monday, December 13th in these Commission Chambers at 6:30 p.m. to 10:00 p.m. There will be representatives from FMPA to discuss the agency, what the agency is all about, how it came about, where we have been with rates, where we are going with rates, and answering questions that the customers have submitted.

Mr. Thiess said the Strategic Planning Workshop is close to being scheduled in January. He said it will be a full day of activity and the staff will be presenting a lot of information on the Capital and O&M budgets. We are looking at a possibility of a base electric rate reduction if our budgeting process works out the way we think it will work out. We will do more of the strategic planning, thinking where we want to be, where we want to go, and what issues we want to address over the next couple of years.

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Mr. Koblegard said the purchase of the property at Abajeon is still on the table and they are trying to close it before the end of the year, but they did not get it done like they wanted to by the first of December.

Mr. Perri said the brochure that the City handed out at the City Commission meeting last night said the questions for the joint meeting have to be in by December 3rd and that has been adjusted to this coming Friday. He said there was an error in it because they put it out yesterday, which was December 6th and it says that questions have to be received by the 3rd. They adjusted that so questions will be taken in writing until Friday, December 10th.

Mr. Perri said he was going to pull Consent Agenda Item #5, the bid for the tractor loader backhoe because he noticed there was a \$1,000 difference between a local provider and a non-local provider. He said we should give consideration to the local provider, but after looking at it and talking to Mr. Thiess, it appears that the money we would save by rebidding it would be spent on rental equipment anyway and there is a need for this equipment. Mr. Perri said he would like to pattern our bidding process after the City, which would allow us an out if the bids were within 5% of an outside or non-local provider. He would like staff to look into that and change our strategy or bid process.

Mr. Thiess said he would suggest that staff would prepare an information agenda item.

Mr. Drummond asked if it would be for the strategic planning.

Mr. Thiess said we could talk about it there, too. In fact he could email the City Local Preference setup so the Board can be looking at it. It basically says if a local bidder is within 5% of the low bid, it would be cut off there and those local entities from the bottom bid within 5% up to the low bidder would submit additional bids. They would get another crack at getting below the low bid. Mr. Thiess said that is a rough approximation of what the process is. He said the City has not utilized that very often at all after his conversations with the folks in purchasing. They may have exercised it a time or two, but he does not recall any specific time. It would have applied in this case because we had two local bidders within 5% of the low bid. Maybe we will start with emailing the City's Local Preference Procedure for you to look at and we can discuss it at strategic planning. If you would like a more detailed item to come before this Board, we can do that as well.

Mr. Perri said he would like to know how the State Statute reads on that. He said at one time the County had in their language, which was many years ago, they were obliged to accept the lowest or best bid. They had an out there. Mr. Perri said he would like to know what the law says.

Mr. Thiess said he will have Mr. Koblegard check on that. He said he recalls the County was going through all that when the City was and the County's is slightly different than the City's the last time he saw it.

Mr. Perri said he was curious as to what we needed to satisfy the State Statutes on the bidding process.

Mr. Perri said last night at the City Commission meeting it was brought up about the Citizen's Budget Advisory Committee asking basically the same people to do the same thing after the holidays. He said he thinks FPUA should get on board early this time to give them enough time to give us their input. We have implemented some of their suggestions and they were very helpful.

Mr. Perri said he would like to congratulate Pam and Mike Cully for making the "Beautiful People's" list in the newspaper.

Mayor Benton said the City Commission at the request of a citizen asked the City Attorney to take a look at getting the paper work ready that would require this Board to fill out the financial disclosure forms. He said he knows we all talked about it and everybody has no problem with it, but the City is going to make it official, hopefully by the next Commission meeting. Mayor Benton said they are going to take a look at the other boards in the City that the decision by the Legislature years ago to also remove them from that requirement, maybe add them. There was some discussion by one Commissioner to take a look at the other Boards a little differently than this Board. It will probably be a requirement by January.

Mr. Perri said he has his disclosure here and was wondering who it is suppose to go to, maybe the City Clerk, Mrs. Mazzarella, or maybe Mr. Reed.

Mayor Benton said that once they are filed, they will be filed with the same people that we were required to file with the State anyway. He said he has had to fill them out for 20 years and any candidate that has run for office has to file these.

There being no further business, the meeting was adjourned.

ATTEST:

SECRETARY

CHAIRMAN