

**UTILITY ADVISORY COMMITTEE
CITY OF FORT LAUDERDALE
CITY HALL 8TH FLOOR CONFERENCE ROOM
100 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FLORIDA 33301
JULY 22, 2008 – 6:30 P.M.**

Cumulative
January 2008 - December 2008

<u>Committee Member</u>	<u>Attendance</u>	<u>Present</u>	<u>Absent</u>
Bunney Brenneman, Chair	P	7	0
Bernard Petreccia	A	4	3
Richard Barrett	A	2	5
Robert Caine	P	6	1
L. Thomas Chancey	A	4	3
Robert Cole	P	5	2
Dr. Magdalene Lewis [6:43 p.m.]	P	6	1
Terri Murru	P	6	1
Raymond Parker	P	5	2
Fred Stresau	P	6	1
Debora van Valkenburgh	P	7	0
Claire Vickery	A	4	3
Nathaniel Wilkerson	P	2	5

City Representatives

Peter Partington, City Engineer & Staff Liaison
Robert Dunckel, Assistant City Attorney
Brigitte Chiappetta, Recording Clerk, Prototype, Inc.

Guests

Lynn Shatas, FPL
Vic Beninate, AT&T

I. Call to Order

Chair Bunney Brenneman called the meeting to order at 6:32 p.m.

II. Roll Call & Announcements

Roll was called and attendance noted. A quorum was not yet present. Chair Brenneman stated that Vice Chair Lewis had not responded to the email sent to the Committee members asking for confirmation they would attend this meeting. It was also unknown if Vice Chair Lewis reads her emails as she had never responded to an email regarding quorum.

Chair Brenneman and Robert Dunckel, Assistant City Attorney, confirmed that this Committee is supposed to consist of 15 members, but there are only 14 members appointed. Chair Brenneman advised that Mr. Cooper had asked Vice Chair Rodstrom to remove him from the Committee, but she did not do so. There was a discussion as to what was considered a quorum on this Committee.

Mr. Dunckel explained that the City Commission adopted a resolution that states you are automatically off a Committee/Board after three absences in a row or four absences in a calendar year. Therefore, if the current attendance record of this Committee is correct, Mr. Dunckel stated, there are two people that currently cannot count towards a quorum and would automatically be off the Committee. He stated that the Committee may ask that they be reinstated, and routinely, that does happen. Mr. Dunckel advised that in order to make quorum on this Committee, 8 of the 15 committee members must be present.

Ms. Murru, realizing that the quorum is based on the total number of members the Committee should have, asserted that this Committee is at a disadvantage because it has always been one person short of 15.

Mr. Partington noted that the June Minutes of the Utility Advisory Committee indicated that Mr. Barrett was absent 4 times. Chair Brenneman contended that Mr. Barrett had always responded to quorum calls and that he has made her aware of his situation where his hours at work have been changed.

Mr. Dunckel suggested that the Committee make a motion to ask that Mr. Barrett and Mr. Wilkerson be reinstated and that this be communicated to the Commission so that they can take that item up on their September Agenda.

Mr. Partington noted that the second person affected is Mr. Wilkerson, who is present this evening. Ms. Murru asked Mr. Wilkerson if he wanted to continue to serve on the Committee and if he wanted to attend the meetings. Mr. Wilkerson stated that he would attempt to come and that he would like to be reinstated.

Mr. Dunckel noted that this Committee did not have a quorum to take any such action at the current time.

[Vice Chair Lewis arrived at 6:43 p.m.] A quorum was now present.

Motion by Ms. Murru, seconded by Ms. Van Valkenburgh, to request the City Commission to reinstate Nathaniel Wilkerson and Richard Barrett as Committee members, and additionally to request the City Commission to appoint the missing members of this Committee in order to fill this Committee's membership to capacity. By voice vote, the motion was passed unanimously (8-0).

Mr. Stresau informed the Committee that both Mr. Wilkerson and Mr. Barrett were part of the original Utility Advisory Committee, having served for 5-1/2 years, and that this

should be reflected upon by the City Commission. In addition, if this Committee must have 8 out of 15 members in order to make quorum, because two seats are lacking, it is very difficult to get a quorum unless the Commission does appoint people that are going to fill the two vacant seats.

Mr. Caine asked if the Committee should also ask the Commission to change the rule of 3 consecutive strikes and you're out and 4 strikes a year and you're out. He suggested that rather than that be automatic, a member could at that point be asked to be removed from the Committee.

Ms. Murru questioned how other boards handle such situations as a lot of people are gone for the summer. As an example, Mr. Dunckel stated that the Board of Adjustment has 7 members. In order to meet quorum, you must have a majority plus one. On that Board, five members would be needed to make a quorum. In addition, there are three alternates who are expected to show up at the meetings, but only two can be seated at any one time.

Mr. Dunckel recalled that there have been times when only 4 members have been present at a Board of Adjustment meeting. Mr. Stresau added that sometimes the board members have conflicts of interest, which would affect quorum. In those cases, because it is that much more difficult for an applicant to meet the burden, Mr. Dunckel said that the Board typically gives the applicant the opportunity to continue the case until the following month. Some people are in a big rush and they cannot wait and they end up going forward anyway.

Mr. Stresau admitted that he had not realized the quorum of the Committee was based upon a majority of potential seats versus actual members.

Mr. Parker asked whether it was within the Committee's power or whether it was promulgated by the Commission to determine the number of seats and the absolute quorum. Chair Brenneman responded that it was the Commission that sets this up, with each Commissioner appointing two or three each. Mr. Parker queried if there was any way to get the actual quorum number reduced because it seemed that there has never been 15 members. Chair Brenneman stated that there were 15 members in the very beginning, but that it had been two years since that 15th seat had been filled. In addition, there have been four members on this Committee with very unusual problems.

Mr. Parker stated that if it was not within this Committee's power to change the quorum numbers, it was certainly within the Committee's power to request that the Commission reduce the number of members.

Mr. Partington suggested that rather than appoint two additional members, another way to go would be to ask the Commission to change the quorum to 7 out of 13.

Mr. Stresau expressed that he was sure Caldwell Cooper was not going to set foot in this room again, and that he could not understand why Commissioner Rodstrom insisted on

not accepting his resignation. Mr. Stresau stated that this now puts a burden on all the rest of the Committee members and that he felt this is wrong. Chair Brenneman disclosed that Mr. Cooper is constantly flying to New York because of the cancer treatments, which is something he cannot control. She acknowledged that Mr. Cooper was trying to think of the rest of the Committee when he asked to be removed.

Chair Brenneman advised that, to her knowledge, only one person has applied to the City Clerk to be appointed to the Committee as a new member.

Mr. Caine suggested that this Committee should help the Commissioners find two more candidates to join the Committee. Chair Brenneman stated that the requirement is that a member either live or work within the City.

Ms. Murru emphasized that the Committee members are all adults, are all very busy people, everyone likes each other and all enjoy working together. Therefore, all should respect each other's ability to come and give their time here. Ms. Murru requested that when Betty Crews sends out her email, that everyone reply to Ms. Crews and make a commitment to be at the meeting, to be here on time, and to work diligently and to leave on time. Mr. Murru asserted that all members of this Committee should have internet access and if not available at home, should go to a library, because that is how this Committee communicates. She requested that her fellow members make such a commitment to do this, out of respect for each other.

Chair Brenneman supplemented that this Committee is on record of having approved email as the official method of communication for quite some time now. Chair Brenneman added that she would like everyone to open their emails and also to respond. It is also known that the information regarding upcoming meetings is sent out on the Wednesday or Thursday of the week prior to the scheduled meeting.

Mr. Dunckel cautioned the Committee that any reply or response should be directed to Ms. Crews only with regard to attendance, and that two-way communications via email should not be taking place. Chair Brenneman asked that she be provided with the reply emails as to attendance only. Mr. Dunckel advised that the procedure within other Boards, of which he is familiar, is that the contact be made with the Staff Liaison. In this case, it would be either Mr. Partington, or Ms. Crews for Mr. Partington. The problem with responding to the Chair is that someone may slip up and you get on the verge of a Sunshine Law violation. Mr. Partington asked that the members reply to Ms. Crews.

Mr. Stresau asked what was attempting to be accomplished by responding to the email. Chair Brenneman advised that if less than a quorum responded that they will be in attendance, she will cancel the meeting. Mr. Dunckel asserted that there were times when the meetings have started with less than a quorum and then people have filtered in. He cautioned Chair Brenneman that she would be taking action as if she were the entire Committee by canceling the meeting. Chair Brenneman stated that the City Clerk's office had advised her that technically the Committee would incur expense, such

as for the recording secretary. Mr. Dunckel offered that there can still be discussions and minutes can still be taken, but the Committee simply cannot take any official action.

Mr. Partington proposed that if by Tuesday at noon Ms. Crews has only had six replies, then she, through Mr. Partington, will call the Chair and the Chair may elect to cancel that evening's meeting. Mr. Partington asked Mr. Dunckel if that was a legal action on the part of the Chair to take that decision. Mr. Dunckel responded that he did not believe that Chair Brenneman had been vested with the authority to take action for the entire Committee, absent a Hurricane, of course.

Vice Chair Lewis asked if it simply can be assumed that everyone will be in attendance unless they specifically call to advise they are not going to attend. Mr. Partington maintained that he believed people were more likely to show up if they have hit "reply" and put their word on the line that they are going to show up. He contended that it appeared the Committee may need to meet anyway because the authority is not vested in the Chair to cancel the meeting.

Ms. Murru concurred with Vice Chair Lewis that everyone should be assumed to be coming to the meetings, unless they specifically advise they will not be. Ms. Murru requested that she be advised if it is known there will not be a quorum as she did not want to attend unless official action could be taken.

Mr. Cole commented that he believed the problem in a lack of quorum had been because there had not been 15 active members appointed to the Committee.

Mr. Caine suggested that the Agenda be rearranged so that actions requiring a quorum be placed at the bottom.

Mr. Stresau stated that every Board that he has served on has had a vacation month. Chair Brenneman advised that normally this Committee is off in November.

Mr. Partington stated that basically the way that this Board takes action is to pass motions and then those motions are in the minutes, which the Commission reads, and occasionally those motions are separated from the minutes and passed around for certain action by certain departments. A non-quorum meeting could still pose a motion and allow it to fail for lack of a quorum, and that would still be reflected in the minutes. Since the Commission reads the minutes, they would still read the prevailing sentiment of the meeting. Mr. Dunckel reiterated that the whole purpose of going forward with a meeting would be to have discussions, without having motions. By virtue of the discussion, the Committee would still be communicating with the Commissioners, assuming they read the minutes.

Chair Brenneman stated that she had sat on the Economic Development Board for a very long time, and they do not have a meeting if there is not a quorum. In addition, she stated that she served 10 years on another Board for the County and meetings were not held if it was known in advance that there would not be a quorum.

III. Self Introductions

Committee members, staff and guests introduced themselves.

IV. Minutes of June 24, 2008 Meeting

Mr. Partington advised that on page 12, in the second paragraph from the bottom, it should state “developments/redevelopments,” rather than “developments/governments.”

Motion made by Ms. Van Valkenburgh, seconded by Ms. Murru, to approve the Minutes of the June 24, 2008 Meeting of the Utility Advisory Committee, with the correction as noted above. In a voice vote, the motion passed unanimously (8-0).

V. Unfinished Business

- **RFP #3 Current Process Status**

City Staff

Peter Partington advised that four proposals had been submitted, and that the Evaluation Committee is scheduled to meet on August 14, 2008. The Committee will consist of Mr. Partington, Mr. Stresau and Tom Terrell, the City’s Facility Maintenance Manager. Mr. Partington stated that any recommendations from that meeting will then find their way to the Commission meeting in September.

Mr. Stresau indicated he wished to have a discussion about this, but that he was precluded from doing so because Mr. Partington was also on the Evaluation Committee and was present at this time. Mr. Dunckel advised Mr. Partington that he could leave the room, if he wished to do so, because he is not a member of this Committee, but that he was not asking him to do so. Thereupon, Mr. Partington left the room.

Mr. Stresau stated that Al Carbon was on the first two selection committees, Mr. Carbon is in charge of all public services for the City of Fort Lauderdale and is also Mr. Partington’s boss. Mr. Stresau voiced concern because this RFP involves a lot of undergrounding and that Mr. Carbon, the person that is in charge of everything going underground, does not sit on the selection committee. Mr. Dunckel noted that any work in the right-of-way would require Mr. Partington’s signature anyway.

Mr. Stresau admitted that he was somewhat confused as to why Mr. Terrell was on the committee, rather than Mr. Carbon, as it really is an engineering RFP. Mr. Stresau then closed the discussion on this matter, and stated that there was nothing that needed to be done about this by the Committee.

Mr. Partington was asked to come back into the meeting room.

- **Other Unfinished Business**

There was no other unfinished business to discuss.

VI. New Business

- **Line Clearing Information** **Lynn Shatas, Area Manager, FPL**

Lynn Shatas, Florida Power & Light, stated that she had sent an email out to the Committee members about the laterals, but that no one had responded. She asked if everyone had email, and Mr. Wilkerson responded that he did not. Ms. Shatas provided Mr. Wilkerson with hard copy of the materials which were emailed to the other Committee members.

Ms. Shatas apologized for not having the laterals last month. She explained that Alex Cuerva, who does the maps, now knows that he must include the laterals. In addition, Ms. Shatas stated, there was one more feeder that was identified that was not in the system which affects Harbordale, Rio Vista and Poinsettia Park Civic Associations. Ms. Shatas then distributed those new maps to the Committee.

- **Report on Meeting -- Beautification/
FPL Landscaping Solutions** **Lynn Shatas, Area Manager,**

Ms. Shatas reported that last month there was a meeting between Tom Chancey, Bill Slaymaker and Gene Dempsey. She advised that Mr. Dempsey was putting together a plan, which is currently not completed, but that it will be provided to the Committee upon completion.

- **Undergrounding Discussion Status – Peter Partington, City Engineer
Request by Committee member
Robert Caine** **& City Staff Liaison**

Chair Brenneman acknowledged that this item was requested by Mr. Caine for discussion and future placement on the Utility Advisory Committee Agenda.

Mr. Partington stated that he wanted to take this opportunity to enlarge his understanding of what Mr. Caine would like to see, and also to engage Ms. Shatas in the preparatory work. He recalled that there would be a discussion on the possibility of enacting an ordinance which, among other things, would require Florida Power & Light to underground their lines under certain circumstances, such as when "upgrading." Mr. Partington suggested that someone from FPL, who Ms. Shatas deems to be most qualified, should speak on that. Mr. Partington asked Ms. Shatas if FPL would participate in such a fashion.

One suggestion from Mr. Caine, Mr. Partington recalled, was that undergrounding be done at the time FPL was upgrading their overhead lines. Mr. Caine added that he

would not expect that FPL should pay for the undergrounding. He stated that one of the problems with such an ordinance would be how FPL would be compensated for doing the undergrounding work.

Ms. Shatas advised that when new development and redevelopment takes place, there are some ordinances that require that the developers to pay to have the facilities undergrounded. Those are existing ordinances, Ms. Shatas stated, and she offered to provide copies of those if they were desired.

Mr. Caine expressed that he was referring to situations in which FPL was upgrading overhead lines. He felt that rather than spend any additional money to upgrade overhead lines, it would be an appropriate time to put lines underground. Mr. Caine said that this was the ordinance he would like to see.

Mr. Caine stated that he was aware that if there was a new development, the developer would pay the cost of the undergrounding. Ms. Shatas confirmed this was correct. Mr. Caine suggested that the cost would then go into the price of the homes.

Mr. Dunckel said that he was glad that Mr. Caine added that he did not expect FPL to foot the entire bill for the undergrounding, as there is a Florida Supreme Court case involving a county that was widening its road and was going to require the utility to move its utilities in order to accommodate the widening of the road. The county adopted an ordinance requiring the utility to underground. It went to the Florida Supreme Court who found that the Public Service Commission has exclusive jurisdiction over that, and that if municipalities were permitted to adopt ordinances like that, it would have a tremendous impact on utility rates. Mr. Dunckel expressed that this may need to be looked into further through the Public Service Commission Regulations, as his research had not yet gone that far.

Mr. Caine explained that he was hoping that under the new program, if the City would pay FPL to underground lines, that it could be done under such a program. He agreed that a question remained as to where the money would come from. Mr. Caine said that it was just logical that if lines were going to be undergrounded, FPL would not want to upgrade overhead lines.

Mr. Parker asked if the 25% that FPL is obliged to pay was only related to certain circumstances, such as subdivisions. Ms. Shatas responded that it could be a linear project of a certain length along a main highway, within a neighborhood, or if it were a peninsula then it would cover an area. She asserted that there were criteria that needed to be met for that and it had to be a City sponsored project. The City would collect the money and then pay FPL.

Mr. Caine wondered if FPL could charge an additional penny per kilowatt hour to offset the cost. Ms. Shatas stated that anything relating to rates would have to go to the Public Service Commission.

Mr. Stresau referred to what was done along Las Olas Boulevard, and recalled that a decision was made to negotiate with FPL to put a line underground for 1-1/2 miles, after they had already installed 85-ft. concrete poles and cut trees down. Mr. Stresau believed that the Commission negotiated with FPL at that time. Importantly, Mr. Stresau said, it offered the City an opportunity to sit down with FPL to discuss the matter before the money was spent. He believed that if an ordinance were crafted, or if this Committee were going to recommend that the City Commission consider an ordinance that would require putting lines underground, that there should be a discussion before FPL initiated the construction. This would provide the Commission with the opportunity to weigh in on what the cost would be, what the credits might be, less what the overhead would be, and to be able to make an intelligent decision in a public body, rather than offer to pay for it entirely or suggest that FPL pay for it entirely. Mr. Stresau wanted to see a meeting of the minds that would request FPL and the City to discuss what the costs might be and what the benefits might be in order to come up with a solution.

Ms. Shatas recalled that with the Las Olas undergrounding, the City came to FPL and advised that they did not like the wooden poles and asked for concrete poles. The City paid the differential for those concrete poles to be placed. There was then a political drive by E. Clay Shaw concerning the undergrounding, which is how Las Olas came to be undergrounded.

Ms. Shatas agreed with Mr. Stresau that it was very important to all sit down at the table together and talk about a proposed ordinance and see how everyone could make it work best.

Mr. Cole suggested that when FPL comes to the City for a permit, it should trigger the City to review whether it makes sense to go underground at that point. He stated that he believed there was already a mechanism there, but it just needed to be implemented when it comes to permitting through the Engineering Department.

Mr. Partington explained that Engineering really only looks at what FPL wants to do. Mr. Dunckel suggested that if the dialog is going to occur, it would need to occur much sooner than when it comes to DRC or to Engineering for permitting.

Mr. Partington stated that the Commission did have a presentation, as the 25% program is a relatively new thing, and the Commission did hear directly from them within the last year on this program. If neighborhoods are interested, there are consultants on board, and when the neighborhood approaches the City, they are assigned a consultant, the consultant develops a project with FPL, it then goes through the assessment process and the City recruits funds at the end. Mr. Partington stated that there does need to be a step in the process, whereby if the project doesn't fly, prior to or at assessment, the City would recoup the cost from the neighborhood for all the engineering and related effort that has gone in. Mr. Partington stated that in having this discussion in the future, there needed to be care to not revisit the exact subject that the Commission had already considered.

Mr. Partington acknowledged that this discussion tonight had been helpful to him, and that he now had a clearer understanding of what the Committee needed.

Mr. Partington said that he would assume Ms. Shatas would bring in someone from FPL that could speak to this. He expressed that he knew that the other aspect of what Mr. Caine wanted to see were utilities being undergrounded as part and parcel of the Waterworks Program. Therefore, he would probably bring in Paul Bohlander, or someone heading up the Waterworks Program to discuss that aspect.

Mr. Caine advised that a third opportunity for undergrounding would be when major road improvements were being performed; not only when they are upgrading the sewer, but also when major roadway improvements were made.

Mr. Parker asked if anyone knew how the level of utility taxes are calculated, and whether the City sets a millage. Chair Brenneman responded that there is an existing Franchise Agreement.

Ms. Shatas explained that FPL collects a franchise fee and a utility tax. As to the utility tax, by State law all the governments can collect up to 10% of the revenues, but they do not have to collect up to 10%. Some governments collect less than that, but as they need more money, they can increase it up to a cap of 10%. Currently, the City of Fort Lauderdale collects 10%. Ms. Shatas confirmed for Ms. Murru that FPL does collect this tax and then gives it to the City.

Mr. Stresau asked Ms. Shatas if that money goes into the General Revenue Fund, and she responded that he would have to ask the City.

Mr. Caine recommended that the Committee should also look at how this will be funded. He questioned if it was decided that certain situations should be undergrounded, then how would they be funded. Mr. Stresau questioned whether the money that is collected that is directly related to FPL's charges and, therefore, is almost a utility tax, must go into the General Revenue Fund rather than a fund to do what Mr. Caine is suggesting.

Ms. Murru asked if the City could provide the Committee at their next meeting with the amount of the 10% utility tax collected.

- **Discussion on Renewable Energy Construction in Residential Zoning**

Chair Brenneman stated that the current zoning in residential areas imposes a height restriction. Windmills, as a renewable energy source, did not exist when the State Statutes and City ordinances came about. She advised that there have already been discussions about this in the City. Chair Brenneman recalled that it was recently written in the newspaper that a recent applicant requesting a windmill was turned down.

Mr. Stresau stated that two years ago an applicant came before the Board of Adjustment requesting to install a windmill in Victoria Park. It was turned down and the applicant's

immediate response was, instead of putting it up at 60 feet, he would make an application to put one up at 100 feet. Mr. Stresau recalled that this did not come to fruition, but two months ago, one of his clients and current business partner made an application to put a windmill up on a piece of property in Rio Vista that is approximately 8,500 (1/5th of an acre). It was not the same windmill, but it was the same concept as the windmill would be 60-plus feet high and it would sit in the rear yard setback on the water.

Mr. Stresau advised that this current application failed because the Board found that the applicant had not provided sufficient data to prove that he needed to have the windmill. He said that this home was built 35 feet high, basically setback to setback, the building footprint occupying perhaps 95% of the potential available footprint, and had a cost in the neighborhood of \$2.5 Million. Mr. Stresau believed the applicant to be quite a bit more educated than when the architect made his first application in Victoria Park. He expressed that the applicant may now realize that the neighborhood really does not want it, even though it appears under certain circumstances the State Statute could be challenged in Circuit Court and they could win.

Mr. Stresau advised that one of the State Statutes reads that renewable energy resources are permitted and the City cannot pass any ordinance that would prohibit it, and it specifically discusses clotheslines and solar panels. He said that there is apparently another definition somewhere in another State Statute that identifies windmills as renewable energy sources, and if the connection is made, they could probably beat the Board of Adjustment/City of Fort Lauderdale in court.

Mr. Stresau believed the City needs to have whatever representatives they have in the Legislature move to find out what their original intent is. When every development that is constructed in the City has to achieve "community compatibility," Mr. Stresau opined that it would be very difficult to show that one person's windmill at 65-ft. is compatible with the surrounding neighborhood. It was also shown that if one windmill is 65-ft. high, one next door might have to be 75-ft. high in order to be out of each other's wind stream.

Mr. Stresau advised that it appeared that the applicant and the architect represent the company that manufactures the windmill. After the meeting, Mr. Stresau suggested to the applicant that it might be more appropriate to request installing a windmill in either a park or at a school site, where it would become an educational tool. Mr. Stresau believed the applicant may have told a reporter that they would investigate that possibility.

Mr. Stresau cautioned that it is only a question of time until someone does the wind studies to show that the windmill, in fact, would work on their site, and if they can show that the windmill would be efficient, then it is only a question of time before someone will be able to place a windmill in a residential neighborhood.

Mr. Parker asked if it were built within the setback and under the maximum height level established in that community, would they need a permit to build it. Mr. Stresau

responded that they would, as long as it could withstand 140 miles per hour, however, a windmill at 35 feet will not work. Mr. Parker claimed that it might work if it were on the beach.

Mr. Dunckel advised that the manufacturer's specifications suggest that the windmill must be 20 feet higher than any structure within a 250-ft. radius.

Mr. Partington expressed that it may not be correct to say that it would not work at 35 feet – it would just work some percentage better at 75 feet – which leads people to want to make it higher. Mr. Partington stated that, from what he saw, it is not even 100% better, or twice as efficient, but is actually some percentage under that.

Mr. Cole stated that he does not believe windmills are compatible in urban areas for reasons such as aesthetics and safety. He hypothesized that if his neighbor has a 65-ft. high tower with a generator sitting on top it and we get a hurricane, one of them will blow over and it will land on a roof. The other consideration is how these windmills are wired. Occasionally, FPL has had problems with generators that get back-fed into the system. If the power goes out, the system being worked on by FPL is then energized. It is possible that this can happen, if it is improperly wired. Mr. Cole opined that if the windmills were all over the place, the problem would be compounded.

Mr. Cole expressed that they make more sense in rural areas. He asserted that in the western United States they have wind farms, and this could possibly be done in western Broward County, but it did not make sense that every individual have a windmill.

Mr. Dunckel stated his concurrence with Mr. Cole. He recalled that this manufacturer had 35 photographs where the windmills were in effect and in every one of those photographs there was no other house within the frame of the photograph. Typically, they are seen in farmlands and rural areas. Mr. Dunckel stated that when one applies this manufacturer's specifications of 20 feet higher than anything within a 250-ft. radius in an urban area, this can be overrun.

Mr. Dunckel contended that the City needed to have their lobbyist address the Legislature to more carefully craft the State Statute so that it pays homage to the urban areas. He believed the manufacturer's specifications indicated a minimum lot size of ½ acre, and that the Department of Energy (DOE) suggested a minimum lot size of 1 acre.

Mr. Stresau stated that there is a publication by the Department of Energy that lists four or five items that they recommend, one being the size of the site, and the other that it be far enough away from the electrical grid that the installation of the windmill, in fact, becomes beneficial to everyone. Mr. Stresau noted that there were two individuals who had applied to the City to build a windmill "in principle," not because they were trying to save \$50 to \$75 on their electrical bill when they had built a house that is worth \$2.5 Million. He also pointed to the fact that they represent the manufacturer of the windmill.

Mr. Stresau claimed that when he asked the applicant's expert, he could not tell of a single windmill in a residential neighborhood where there were 3 to 5 units to the acre.

Mr. Stresau suggested the fashioning of a motion to request the Commission to have the legislative bodies take a closer look at what has actually been crafted in this State Statute because it was being abused. He opined that if the applicant had been willing to put up scaffolding at 65 feet and do the wind studies to show it would have worked, they could have achieved what the Circuit Court would say was ample information that they proved it would work and the City would not have a leg to stand on.

Mr. Dunckel advised that the State Statute is 163.04, and basically states that the City shall not adopt any ordinance that would prohibit it. It then goes on to address exactly what it cannot prohibit and references solar panels, clotheslines and other renewable energy resources. Mr. Dunckel explained that there is a principle at law that when you have a series of topics in a row and when you get to the ". . ." part of it, that the ". . ." must be interpreted in the light of what preceded it. He suggested that solar panels are not very intrusive in a neighborhood; clotheslines are not very intrusive; however, 65-ft. windmills do not seem to fit within the general pattern, although it does fit a statutory definition that is found somewhere else.

Mr. Dunckel stated that the *Ormond Beach* case, circa 1983, took that Statute and held that one cannot use the ordinance to prohibit it, and one cannot require them to go to the board of adjustment and seek a variance applying the traditional criteria that one needs to apply when proving a hardship. However, the case went on to explain that one can look at the criteria for granting a variance from another perspective, and one of those traditional criteria is that the variance that is granted must be the minimum variance that would achieve the result. The case further went on to state that when applying it to a windmill, one cannot require the most stringent use, nor are they entitled to have it construed in such a manner that they get the most efficient use. He stated that there is a range in there that the board of adjustment or the city does have some control, as the law is currently structured.

Mr. Dunckel contended that the Board of Adjustment defeated the applicant because the applicant did not have the site specific data to support that there was some other location, both horizontally and vertically on the property, to achieve that result.

Mr. Parker then questioned the noise of the windmill. Mr. Dunckel stated that the applicant had data on the noise, but until it is up and running, it will probably not be known if it violated the noise control ordinance.

Chair Brenneman asked Ms. Shatas to provide any information on FPL's windmill farm. Ms. Shatas stated that FPL is the largest producer of wind in the country. In the St. Lucie area, close to the nuclear power plant, FPL has been working with St. Lucie County to put windmills on public land. Because they are so large and noisy, the County did not want them on the public land. FPL still wants to do something with the windmills, but cannot get St. Lucie to say yes or no. FPL is willing to put the windmills on their own

property by the water. These windmills would have to be connected into the transmission line and there would have to be quite a few of them. Ms. Shatas admitted they are quite noisy.

According to research done by Mr. Stresau through the Department of Energy, Mr. Dunckel advised that Florida is not a good State for wind energy, other than a thin area along the coastline.

Mr. Cole voiced a concern for safety, as he felt that blades can come loose if they are not properly maintained. Mr. Stresau advised that the recent applicant's windmill would be mounted on a mast. The windmill generator would have to be picked up by a crane to be serviced. It comes with a 5-year warranty, Mr. Stresau said, and he questioned if it were not working properly, at the end of 5 years, whether any homeowner would be willing to spend the \$3,000 or \$4,000 to have a crane come in and pick up the mast and set it in the street, take it apart, send it to the factory to have it rehabbed, and then put it back up again.

Mr. Dunckel advised that one of the questions posed during the Board of Adjustment meeting was whether there are any other residential windmills in the tri-county area and the answer was "no."

Mr. Stresau indicated that the key wording was "residential zoning." He advised that he had suggested to the applicant that he consider putting a windmill in Holiday Park. It would become a bit of a novelty, and it would show that the City of Fort Lauderdale would be progressive in that they would pursue and encourage that – but not in a residential neighborhood.

Ms. Murru suggested there should be some research into who else in the State is doing this, as our bills get passed more effectively when others in the State are also working on it. Mr. Dunckel proposed this could be determined through the League of Cities.

Mr. Dunckel asked if it would be possible to place a windmill atop a 200-ft. high building on the beach, with all the structural components that would be needed to make sure it was secured. Mr. Cole answered that it would be possible, but it could not be very big. The problem would be what you would power with it. It would be more of a novelty in a small scale like that.

Mr. Dunckel advised that the State Statute addresses that by denying the application, you prevent the applicant from being able to have the property enjoyed through a reasonable cost.

Mr. Cole expressed that he was concerned as he had seen images of these windmills that have been through a hurricane. A lot of them survive, but a lot have blades that get ripped off, even though rated for 140 mph.

Mr. Stresau believed that someone from the building department indicated that if the

windmill meets the building department's requirements for wind load, and it was certified by the manufacturer as to wind load, then they cannot be kept from being put up.

Ms. Van Valkenburgh asked whether this requires an environmental statement. Mr. Stresau stated that it did not, to the best of his knowledge, and that the threshold was whether or not it could meet the building code, and whether it met the State Statute.

Mr. Cole commented that if there were a number of these windmills, then there was a question of what kind of a problem they could be to wildlife, especially birds, as this was a problem out west.

Ms. Van Valkenburgh stated that she questioned the environmental impact statement because of what Mr. Chancey mentioned last month that Fort Lauderdale will be considered in the international fly way of migratory birds. This might be one point to push Fort Lauderdale towards a statement that would tie this up for a long time and would prevent the building of windmills while the statement was in progress.

Mr. Cole asked Ms. Shatas if she knew the bird ratio, to which she said she did not, but she did state that it was a highly sensitive issue.

Motion by Ms. Van Valkenburgh, seconded by Ms. Murru, to request the City Commission to ask the City's Tallahassee Legislative Lobbyist to address the special issue of windmills as renewable energy resources, pursuant to Florida Statute 163.04, in residential zoning and to permit the regulation of such renewable energy resources by municipalities. By voice vote, this motion was passed unanimously (8-0).

- **Budget – Green Expo**

Chair Bunney Brenneman

Chair Brenneman recalled that last years' budget for the Green Living Expo was provided to all Committee members by Mr. Partington along with their Agendas and Minutes. Mr. Partington advised that he had an updated version and provided all members present with those copies. He announced that the amount expended for the Green Living Expo was just under \$5,000.00. Mr. Partington explained that the actual amount expended for the event was thousands within the budget which the Commission had approved.

Chair Brenneman reiterated that not only was the event within the budget, but every opportunity had been taken to ensure that the maximum value was obtained for each dollar expended. Chair Brenneman expressed that the results, according to PIO, were absolutely incalculable, and that the event was a success by anyone's standards. Chair Brenneman commented that while it was the first time doing this, this Committee's educational mission to get the word out about energy and all things green was fulfilled.

Mr. Partington next conveyed to the Committee that there was no funding proposed for the Utility Advisory Committee in the proposed upcoming budget as it currently sits. He advised that the budget was presented to the Commission at a conference meeting and

would now move on to two public hearings in September that would determine the tax rates, etc. Unlike last year, Mr. Partington stated, there was currently no money in the budget for this Advisory Committee.

Ms. Murru suggested that if this would actually happen, this Committee should find a way to keep the good work of this Committee going and perhaps look towards seeking private sponsors. She asserted that there were enough vendors that benefited from the event that it could be done privately with the Committee offering support in their direction, if there is no other alternative due to a budget cut.

Mr. Stresau asked whether or not the money had been requested. Mr. Partington claimed that his understanding was that it was an above the minimum budget request that did not make it through the process into the final proposed budget. He added that the proposed budget had not yet been approved.

Mr. Stresau stated that it would be pretty easy for whoever prepared the budget to go through and strike out everything that was not required to keep the City of Fort Lauderdale running, with little concern for the benefit to the community for something that appeared to be highly successful with the general public. He wondered where one would argue that point, or whether someone could ask for an exception. Mr. Stresau suspected that the final decision was coming from the City Manager's office and that perhaps they did not feel that this event was of any benefit. Therefore, someone either had to make a case that it was, or to seek private funding, or to do without the event.

Ms. Van Valkenburgh questioned whether it would be possible to get a grant. Chair Brenneman responded that this Committee had received two for \$10,000.00 each, and that no other board or committee in the City had done this. Both grants were through the Tree Subcommittee.

Mr. Partington stated that he believed the reason that this Committee had a budget was related to the history of the development of this Committee. Ms. Murru added that she believed it was also because this Committee was tasked with education. Mr. Partington said that it was for the purpose of putting out literature.

Mr. Partington offered that because the Commission does make changes to the budget in response to the public at public hearings, it might be worthwhile to have someone from this Committee go before the Commission in September. He stated that it would also be possible to approach the administration beforehand.

Mr. Partington claimed that he believed the main thing this Committee expended money on last year was the Green Living Expo. Also, he believed, this Committee paid accommodations and travel for a speaker, possibly on one or two occasions. Mr. Partington contended that unless it is contained in the budget that is approved in the second public hearing in September, there will be no money in this Committee's budget this year. Any balance from this year remaining in the operating budget will not roll over.

Mr. Stresau conveyed that he believed it was a real plus that everyone felt the Green Expo was of benefit to the City and that it had come in well below the budget that was asked for and approved. He felt it should indicate to the Commission that this Committee is operating and doing what it was instructed to do.

Chair Brenneman added that this Committee was operating efficiently and has always had excess money in the budget that is swept out at the end.

Motion by Mr. Stresau, seconded by Vice Chair Lewis, to request Chair Brenneman to discuss with the Budget Committee and Administration to fund, at a minimum, the amount of funds that were expended last year by the Utility Advisory Committee, in order to facilitate the next Green Expo as an educational effort by this Committee. By voice vote, this motion was passed unanimously (8-0).

- **Other New Business**

Mr. Beninate handed out copies of today's Sun-Sentinel article which announced that AT&T is going to be providing cable services.

VII. Good of the Committee & Announcements

Chair Brenneman noted that there was nothing additional to discuss.

VIII. Next Meeting – UAC Regular Meeting August 26, 2008 at 6:30 p.m.

IX. Adjourn

With no further business to discuss, the meeting adjourned at 8:56 p.m.