

**UTILITY ADVISORY COMMITTEE
CITY OF FORT LAUDERDALE
CITY HALL 8TH FLOOR CONFERENCE ROOM
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA 33301
JANUARY 26, 2010 – 6:30 P.M.**

Cumulative
January 2010 -
December 2010

| <u>Committee Member</u> | <u>Attendance</u> | <u>Present</u> | <u>Absent</u> |
|--------------------------------|--------------------------|-----------------------|----------------------|
| Bunney Brenneman, Chair | P | 1 | 0 |
| Maria Canady | P | 1 | 0 |
| L. Thomas Chancey | P | 1 | 0 |
| Robert Cole | P | 1 | 0 |
| Don Larson | P | 1 | 0 |
| Dr. Magdalene Lewis | A | 0 | 1 |
| Terri Murru | A | 0 | 1 |
| Frances Smoot | P | 1 | 0 |
| Jay Weiss | P | 1 | 0 |
| | | | |

Staff

Hal Barnes, Engineering Design Manager
Bob Dunckel, Assistant City Attorney
Brigitte Chiappetta, Recording Secretary, Prototype, Inc.

Guests

Lynn Shatas, FPL
Dr. William Goetz
Vickie Eckels

Communications to the City Commission

None at this time.

I. Call to Order

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

II. Roll Call

Roll was taken and it was noted a quorum was present.

III. Self-Introductions

The Committee, Staff, and guests introduced themselves at this time. Mr. Barnes explained he was standing in for Mr. Partington, who was out of town.

IV. Minutes of August 25, 2009 Meeting Minutes of September 22, 2009 Meeting October 27, 2009: No Official Meeting Minutes of November 24, 2009 Meeting

Motion made by Mr. Larson, seconded by Mr. Weiss, to approve the minutes of the August 25, 2009 meeting. In a voice vote, the **motion** carried unanimously.

Motion made by Mr. Larson, seconded by Ms. Smoot, to approve the minutes of the September 22, 2009 meeting. In a voice vote, the **motion** carried unanimously.

Regarding October 27, 2009, Chair Brenneman explained that the Better Meetings Academy has stated meetings should not be held when “not necessary,” as determined in advance, as they are held at an expense to the City. In this case, the Chair informs the members that a quorum cannot be reached, and the meeting is cancelled.

Chair Brenneman clarified that those marked “absent” at cancelled meetings, such as October 27, 2009, should not be considered absent, as there was no official meeting.

Motion made by Mr. Larson, seconded by Ms. Smoot, to approve the minutes of the November 24, 2009 meeting. In a voice vote, the **motion** carried unanimously.

V. New Business

- **Line Clearing**

Ms. Shatas distributed copies of FPL’s line clearance schedule to the Committee members.

- **FPSC Action on FPL \$1.2 Billion Rate Increase Request**

Chair Brenneman advised that this rate increase was substantially reduced, and the \$1.2 billion amount was not granted by the Florida Public Service Commission (FPSC).

Ms. Shatas stated that scheduled projects have been suspended until the 2nd Quarter of 2010 due to the reduction of the requested increase. She added that a fuel adjustment rebate has appeared on FPL's January bill.

Regarding the \$75 million increase that was granted, she continued that it is not yet known how this will affect individual rates. This information will be available in February 2010.

- **Update on UVerse Cabinets**

As Mr. Beninate of AT&T was not present, this Item was moved to the Committee's February Agenda.

Chair Brenneman noted that there has been extensive work by the City Attorney's Office and AT&T to reduce the cabinets to "an acceptable size." There were, however, complaints from some Fort Lauderdale residents regarding this size. It also appeared that many residents did not understand that new services would be available due to the installation of the cabinets.

Mr. Chancey observed that this misunderstanding might have been avoided by sending representatives into the field to discuss the cabinets with residents. He added that in some cities, the cabinets are painted to blend in with their surroundings, which provided a creative solution to the issue. This could have addressed some complaints, perhaps without the expense of a meeting.

Attorney Dunckel pointed out that the Ordinance had required written notice to be provided to property owners within a certain distance of the cabinets. He agreed that placing volunteers in the field to discuss them with the community might have alleviated the issue to some extent.

Chair Brenneman commented that she had been contacted by five homeowners, none of whom had received notice that the cabinets were going to be installed. She pointed out that when Mr. Beninate is present, he would be able to explain the situation, and added that AT&T had attempted to cooperate with the City in regard to installation of the cabinets; however, notice had been required in order for homeowners to address the situation.

- **Draft City Undergrounding Ordinance**

Attorney Dunckel advised that Mr. Barnes and Assistant City Attorney Sharon Miller are predominantly responsible for the draft Ordinance. He explained that he would address the "mechanics" of undergrounding, and Mr. Barnes would discuss the special assessment.

He stated that FPL has applied tariffs, approved by the FPSC, that require an owner to be in a neighborhood with one of the following qualifications: three lineal miles of overhead lines in a contiguous area; 200 or more homes; or a "special circumstance," such as a "finger aisle." Most of the neighborhoods under consideration fall into one of these categories.

The process with FPL requires a request for a non-binding "ballpark" estimate, after which the special assessment process begins. The neighborhood must then pay FPL \$4000, for which the utility provides a "hard" binding estimate, including plans, specifics, and "permissible" condition. This estimate assumes that FPL will proceed with undergrounding, although the Ordinance is structured to allow for a bidding process through which a neighborhood may opt to use an outside contractor, approved by FPL, instead of the utility itself.

The program is intended to require the City to be in contractual privity with FPL, as well as to require undergrounding to occur in public rights-of-way. Attorney Dunckel observed that this plan has a higher probability of success than requiring easements on individual properties. Another benefit is a 25% contribution to aid construction: for example, if the cost of undergrounding a particular neighborhood were \$100,000, this credit would reduce the actual cost to \$75,000.

Above-grade facilities, such as transformers, will be part of the undergrounding process, he continued. A series of 10x10 easements would be placed within the public rights-of-way, and transformers would be placed on concrete paths within these easements. No landscaping within the easement would be allowed, as complete access to the transformers is required. In addition, switch cabinets would be installed in 20x20 easements.

Attorney Dunckel pointed out that some of FPL's requirements for undergrounding, such as a specific distance between a transformer and the pavement, mean "a tight squeeze" in some instances, and affected property owners may be asked to provide partial easement areas. He noted that the necessity of these easements could be a "choke point" in the undergrounding process, as some owners might resist having a transformer or switch cabinet placed on their lawns. He continued that in order for a neighborhood to be able to proceed with the special assessment process, 66% of the homeowners within a defined geographic area must give their consent.

In addition, he reiterated that although the project will be undergrounding, homeowners must understand that all equipment cannot be below grade, as there will be "transition poles" located at the points where aboveground facilities transition to underground. One question the City has asked FPL is whether the projects can be structured so transition poles are located outside the geographic

boundaries of the undergrounded area, as a homeowner who will have a transition pole near his house will more than likely vote against the project.

Mr. Larson asked for the rationale behind selecting a 66% majority of property owners to vote in the project. Mr. Barnes explained that this percentage is a directive from the City Commission, who feel this level of support is necessary due to the magnitude of the expenses involved. Mr. Larson noted that it is difficult to reach this majority. Attorney Dunckel advised that because the special assessment required is "much larger" than it would be for a "typical neighborhood improvement," the 2/3 majority is necessary, and could be a protection for some property owners.

Mr. Barnes observed that communication will be of great importance in reaching a 66% majority, which means there will be a good deal of "knocking on doors" to inform the neighborhood about the prospective program.

Attorney Dunckel stated that many of the interested communities will be finger aisles, in which case only one transition pole at the periphery of the undergrounding would be necessary.

Mr. Cole noted that in addition to the assessment, there will be a cost associated with each home, as homeowners must pay to have the wire from the transformer to their house. This involves upgrading their electric panels and changing meters.

Mr. Barnes advised that when a community decides to consider undergrounding, they submit a request to the City, which passes the request on to FPL. FPL then performs an analysis to determine if the neighborhood is eligible. No 66% majority is required for this step.

He continued that the City will send the same request to all utilities, as telephone, cable, and other lines will have costs associated with undergrounding. The existing underground facilities, such as gas and sewer lines, must also be examined to ensure no relocation of lines would be necessary, as this would involve an additional expense.

This step determines what Mr. Barnes described as a "conceptual ballpark estimate," which is then returned to the community for study. They will discuss the process, with the understanding that rights-of-way and on-site private property work will be necessary. The only facts not available to the communities at this point are design details, as these involve switch cabinets and transformers that are planned as part of a later phase.

He emphasized that as this is a coordinated effort between FPL and the City, the City will have some input on FPL's design. Homeowners' associations and

individual residents will be able to see whether equipment must be placed on their properties during the design phase, and will be able to comment.

Attorney Dunckel referred to the cost of connecting to each home, and stated that the City is exploring the possibility of having a single electrical contractor underground an entire area and “wrap” the individual homeowners’ costs into the special assessment. This means the homeowners would not face an up-front cost, but the expense would be paid over a number of years. He was not sure, however, that the City would be successful in achieving this approach. Mr. Barnes added that each individual property will have to be studied, and the individual private property assessments will vary from home to home.

Mr. Barnes explained that with a special assessment, there is a total cost for the project; an appraisal expert then determines the “benefit added” to each property, which means individual properties will not be assessed the same amount. The City Commission is seeking recommendations on financing alternatives, although the term that has most often been discussed is a 20-year term.

He concluded that the focus of the Ordinance is to establish an administrative process to assist interested neighborhoods. The City does not take a position on whether or not a neighborhood should consider undergrounding, but makes a process for undergrounding available to communities.

Mr. Weiss requested clarification regarding per-home assessments, asking if these are “really not different” from one neighborhood to the next, as they average out. Mr. Barnes clarified that this special assessment will differ from most of the ones levied by the City at present, as the current assessments are often for beautification and enhancements and every homeowner “would pay an equal share.” Undergrounding, however, requires an appraisal staff to study front footage, lot square footage, and other area considerations. He concluded that he still has some questions regarding the methodology, and could not entirely explain the process at this time. He noted that if, for example, lot square footage is a primary factor, a home with a 100x100 sq. ft. lot could theoretically be assessed twice as much as a 50x100 sq. ft. lot.

Mr. Barnes advised that this is one aspect of undergrounding that makes the process more difficult, as appraisers will not be able to tell a homeowners’ association that each homeowner will pay a specific amount: they will only be able to explain the methodology used.

Mr. Weiss asked if a bond were issued to pay for the project, each homeowner would be paying his/her individual assessment toward that bond over a specific time period. Mr. Barnes stated this was true.

Mr. Barnes continued that “a number of neighborhoods” have asked to know the cost of undergrounding; thus far, FPL has provided ballpark estimates for 19 neighborhoods.

Vickie Eckels, guest, asked if any of these 19 neighborhoods are not finger aisles. Ms. Shatas stated not all fit this criterion, citing The Landings as an example. Mr. Barnes added that in this case, other criteria are examined, such as whether the neighborhood has 200 or more homes or is “continuous.” He estimated that most neighborhood associations include between 150 and 300 homes, not including condominiums. He clarified, however, that most of the neighborhoods currently stepping forward to request a ballpark estimate are finger aisles.

Ms. Eckels asked if this particular approach has been done in other cities. Ms. Shatas replied that Jupiter Island is undergrounding, although Attorney Dunckel pointed out that this city is not acting on a special assessment basis, but through ad valorem taxes. He characterized Fort Lauderdale’s approach as “pretty unique.”

Mr. Chancey felt that, as no trees may be placed within a certain distance of undergrounding, this is “almost creating a worse condition” than a tree canopy interfering with above-ground lines would cause. Mr. Barnes noted that this is a good point to take into account during the design phase, as some neighborhoods would like to undertake beautification projects such as street- or treescapes and decorative street lighting at the same time as undergrounding. These assessments would be “tiered” onto the undergrounding assessment.

Mr. Chancey asked if there is a City Ordinance preventing trees from being planted within a certain distance of undergrounding, explaining that such a step would be “a mistake,” as trees do not reach as deep into the ground as underground lines. His concern was that widespread undergrounding would lead to the unnecessary elimination of more trees. He emphasized that this concern should be discussed before action is taken toward undergrounding.

Ms. Eckels asked what could happen if a homeowner fails to pay his or her assessment. Attorney Dunckel replied that a lien is placed on the home at the outset of the project, and if a homeowner stops payment, the City may foreclose on that house. He stressed, however, that this is “in theory,” as he was not aware of this having happened with any of the City’s existing special assessment liens.

Ms. Eckels felt that undergrounding will not occur in neighborhoods other than finger aisles, with a small number of homes. She stated that the Ordinance is inequitable to the City’s residents, as it favors the wealthy.

She concluded that the Ordinance should provide alternatives which would allow comprehensive undergrounding for all City residents, with 25% paid by all FPL rate payers rather than by FPL as a corporation.

Attorney Dunckel pointed out that the City Commission charged City Staff with the responsibility of coming up with the Ordinance. Ms. Eckels stated that it would have been more equitable to charge Staff with writing an Ordinance that would benefit the City at large instead of asking them to come up with an Ordinance that only benefits "a portion of the population."

Mr. Cole returned to the issue of the lien, asking if it differs from a tax lien. Attorney Dunckel explained that on January 1 of each year, every homeowner has a lien for his or her ad valorem taxes, although the exact amount of these taxes will not be known until November 1.

Mr. Cole asked if the lien would affect refinancing a property. Attorney Dunckel replied that it is "of equal dignity to a lien for taxes," and comes before a mortgage. It would not affect the homeowner's relationship with a lender. When the home is sold, a standard contract would require the lien to be paid off at the time of closing, although he pointed out that this is negotiable.

Mr. Chancey asked if there is a ballpark estimate for the cost of undergrounding per household. Chair Brenneman recalled that the original estimate per household was \$10,000 to connect an underground line to a home. Attorney Dunckel advised, however, that with all costs assessed, this estimate was more realistically between \$15,000 and \$30,000.

Ms. Eckels asked if a community can "back out" of undergrounding between the time it pays \$4000 for a hard estimate and the time that estimate is received. Mr. Barnes responded that after the hard estimate is received, there must be a public hearing in which final plans and specifications are discussed. Undergrounding does not proceed at this point. Any costs that have been provided up front by the City are not reimbursable by the neighborhood at this stage, and would fall upon the City, which is why neighborhoods are required to show 66% support before money is spent toward this hearing.

Mr. Cole asked what might happen if the hard estimate comes back significantly higher than the ballpark estimate. Mr. Barnes stated that the community would be surveyed a second time, based upon the higher dollar amount. He added that the ballpark estimate is often slightly higher than the hard estimate.

Mr. Weiss asked if other projects, such as neighborhood beautification efforts, might be grouped into the same assessment as undergrounding. Mr. Barnes explained that his intent is for the Ordinance to cover a special assessment

project “spearheaded by undergrounding;” however, the Ordinance would allow other projects to be billed in the same assessment.

Chair Brenneman asked if the formula for a beautification project would differ from the formula used to determine the special assessment for undergrounding, thereby creating “two different types of assessment.” Mr. Barnes reminded the Committee that homeowners’ assessments will not be equal to one another for undergrounding, although other elements that may be added are of equal cost and benefit to all the homeowners in a neighborhood.

Ms. Eckels asked if City Staff will manage the assessment process. Mr. Barnes replied that currently, the Staff Finance Department is administering billing, although having Broward County take over this function is being considered. He added that an individual beautification assessment might be billed separately through the City Treasury. The Finance Department and Treasury are presently looking into options for administering bills.

Ms. Eckels asked if administrative costs are built into the expense to homeowners. Mr. Barnes stated that when the cost of a project to the City is under consideration, Staff time and outside costs, such as consultants, are built into “the entire package.”

Ms. Eckels asked if the City has done a risk assessment for this prospective program. Attorney Dunckel explained that undergrounding would not be funded by the City, but instead by individual neighborhoods; similarly, a bond would not be secured by the City, but by the special assessments against individual homes.

Ms. Eckels commented that the Sustainability Committee, of which she is a member, had voted to make sure the UAC had sufficient opportunity to consider the Ordinance before it was presented for its first reading. Attorney Dunckel clarified that the timetable by which the UAC is operating was “dictated by the City Commission;” the Ordinance is expected to appear on the City Commission’s Conference Agenda at their second meeting in February 2010, which he described as a “philosophical discussion, as opposed to voting on an Ordinance for first reading.” The time between the Conference Agenda and the first reading would be determined by the changes the City Commission felt were necessary, based upon community response.

Mr. Weiss asked if it would be feasible for the Committee to recommend, at tonight’s meeting, that the City Commission postpone the first reading until the Committee has had a chance to recommend for or against the Ordinance. Chair Brenneman advised that the Committee could call a special meeting for the purpose of this recommendation.

Attorney Dunckel explained that an Ordinance such as this one typically goes to the City Commission as part of the Conference Agenda; the City Commission then listens to comments from “all different quarters” and instructs Staff to make appropriate changes. If a subsequent UAC meeting then comes up with additional items for consideration, Staff will still continue to take their direction from the City Commission rather than from the Committee’s recommendation. By the time the Ordinance has its first reading, the City Commission may ask Staff to make additional changes, based on the Committee’s recommendations, between the first and second readings.

Ms. Eckels stated that the Sustainability Committee had urged the City Commission not to proceed until the UAC has weighed in, and felt the UAC could ask for a similar postponement if they needed more time to vet the document.

Chair Brenneman advised that Attorney Dunckel had sent a copy of the first draft of the prospective Ordinance to the Committee members in advance, and had also sent additional emails after he had received input on the document.

Mr. Weiss asked how a special meeting of the Committee would be called, should the Conference Agenda result in “some positive moving forward” with regard to the Ordinance. Chair Brenneman replied this could be done by a motion and vote at tonight’s meeting, or it could be convened by the Chair after a conference with the Staff Liaison. Such a meeting would have only one Item on the Agenda and would not replace the regularly scheduled UAC meeting in February.

Motion made by Mr. Weiss, seconded by Mr. Cole, to have a special meeting called by the Chair following the Conference Commission meeting, if it appears likely that the first reading will be before the Committee’s next regular meeting on February 23, 2010.

Attorney Dunckel clarified that the Conference Agenda meeting is scheduled for February 16; the UAC meets on February 23; and the City Commission’s first meeting in March is on March 2. This meant the earliest possible first reading, following the Conference Agenda, would occur in March 2010.

Mr. Weiss and Mr. Cole withdrew the **motion** and **second**.

Chair Brenneman noted that the Committee would have adequate time to give their input, as the members have had an opportunity to comment on Attorney Dunckel’s and Mr. Barnes’ presentation. She added that she would attend the Conference Agenda meeting in any case, and would pass along any input the Committee wished her to give. The Committee will also have time to hear input from their neighborhoods and other residents before the February 23 meeting, at

which time this input could be communicated to the Committee at large, and they could make recommendations accordingly.

- **Other New Business**

Chair Brenneman stated that while the Chair and Vice Chair are normally elected in January, former Vice Chair Fred Stresau has resigned for reasons related to health. He had not attended tonight's meeting, as he felt it was not appropriate to give input when he would not continue as a Board member. She concluded that the Committee may proceed with elections or may postpone them until February, or if they preferred, the election could be "split."

Motion made by Mr. Cole, seconded by Mr. Larson, to re-elect Chair Brenneman to another term in this position.

Motion made by Ms. Smoot, seconded by Mr. Larson, that nominations be closed.

In a voice vote, Chair Brenneman was unanimously re-elected.

Motion made by Mr. Cole, seconded by Mr. Weiss, to postpone the election of Vice Chair until the February 23, 2010 meeting. In a voice vote, the **motion** carried unanimously.

VI. Unfinished Business

Chair Brenneman stated that the Committee must decide whether or not to proceed with the Green Expo in 2010. She pointed out that this event may or may not be scheduled for 2010, due to budget constraints; however, she asked that the members weigh in on whether or not the UAC will undertake the event. The City's Green Team may be "supportive," she counseled, but the Sustainability Committee will not take over the responsibility of the event. If the Green Expo is planned, the Committee must be the ones to hold it.

She continued that the Plantation Event is upcoming, and the City is participating with Broward County in the Water Matters event.

Motion made by Mr. Weiss, seconded by Mr. Cole, that given the state of the economy and the focus on undergrounding, the Committee would not do the Green Expo this year.

Ms. Smoot explained that the Expo involves various booths set up by businesses and agencies. The UAC has an information booth at the event.

Chair Brenneman added that the Expo highlights “the whole green effort,” involving water, power, telephone recycling, and other utilities. The intent is for the Committee to help educate the general public on environmental issues.

Should the Committee continue with the Expo, a “marketing arm” would notify all the previous year’s participants, as well as other companies and entities that have undertaken green initiatives. Information would be provided on State and Federal programs for homeowners. Sponsors assist in paying for the event. There is no charge for use of the park, as it is a City park.

Chair Brenneman clarified that the Committee may approve the event; however, this does not mean the event will definitely be held, as it may be prevented due to budget constraints.

In a show of hands, the **motion** carried 4-2 (Chair Brenneman, Mr. Cole dissenting, Mr. Chancey not present during vote).

Chair Brenneman stated the City Administration would be informed that the Committee would not hold the Green Expo in 2010.

VII. Good of the Committee

There were no issues to discuss at this time.

VIII. Announcements

The next regular UAC meeting is scheduled for February 23, 2010.

IX. Adjournment

There being no further business to come before the Committee at this time, the meeting was adjourned at 8:44 p.m.

[Minutes prepared by K. McGuire, Prototype, Inc.]