

**MINUTES
THE TOWN OF INDIAN RIVER SHORES
6001 North Highway A1A, Indian River Shores, FL 32963**

**REGULAR TOWN COUNCIL MEETING
Thursday, January 28, 2010
3:30 p.m.**

PRESENT: E. William Kenyon, Mayor
William H. Ahrens, Vice Mayor
Frances F. Atchison, Councilmember
Michael B. Ochsner, Councilman
Gerard A. Weick, Councilman

STAFF PRESENT: Robert J. Bradshaw, Town Manager
Laura Aldrich, Town Clerk
Chester Clem, Town Attorney
Bill Schauman, Director, Public Safety
Richard Jefferson, Building Official

OTHERS PRESENT: Bill Beardslee, PZV Chairman; 10 Residents; Richard Dunlop, Town of
Orchid Mayor; Brian Heady, Vero Beach Councilman; Lisa Zahner,
VB 32963; 5 other guests

1. **Call to Order**

- a. Pledge of Allegiance
- b. Invocation – Councilman Ochsner
- c. Roll Call

Mayor Kenyon called the meeting to order at 3:31, and these items were performed with the Roll Call as reflected above.

2. **Consent Agenda**

- a. Approval of December 17, 2009 Regular Town Council Meeting Minutes
- b. Approval of Invoice from Fox, Wackeen, Dungey, Beard, Sobel, Bush & McCluskey, LLP
A **motion to approve the consent agenda as presented** was made by Councilmember Atchison, seconded by Councilman Weick, which **passed unanimously** with no discussion.

3. **Mayor's Items**

- a. Electric Utility Update

(Discussed after item 3b below) Mayor Kenyon read the following from the latest edition of Vero Beach 32963: "For the first time, the City of Vero Beach seems to be engaging in the inevitability of defeat in trying to spin it into a victory for the City utility customers. A number of public meetings and statements from top city leaders of Vero appear to be reconciling itself to the idea that come 2017, it may no longer be providing electric and water service to County and Indian River Shores residents." This is the first public statement on this issue, and the Town has made no decision on this as we are still under advisement. The Mayor wanted to ensure the Council's involvement on the utilities issues, as he and the Vice Mayor will face term limits in March 2011. The Town Manager will bring the options to consider forward to the Council. The primary concern of the Council is that the residents of Indian River Shores get the best possible utility

This is a Public Meeting. The Town of Indian River Shores does not transcribe verbatim minutes. Should any interested party seek to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs any type of special accommodation for this meeting may contact the Town Clerk at 231-1771.

service for the best possible price. There were many calls this past weekend at his home, office and at Town Hall regarding the January electric bill, which reflected December usage. It was an exceptionally cold month, and those bills that were brought for Town Hall staff to review revealed extraordinary use in December, which made it difficult to see the new rates. The January service is covered by the Orlando Utilities Commission (OUC) contract, and we have been told that the rates will go down substantially. Again, dependent on usage, there may be a 25 – 30% reduction in the overall utility bill.

Councilman Weick had compared his bills between last and this month, with 16.57 cents per kilowatt hour last month versus 13.78 cents per kilowatt hour on his January bill, which is a 16.5% reduction. That made it equal to last January's utility bill, which was 13.8 cents per kilowatt hour. Councilman Heady of Vero Beach thought that the bills were prorated on usage prior to January first, so a meter that was read on January 13th only had 13 days under the OUC rates. The rates were also equalized in the City and surrounding area, Councilman Heady added.

The Mayor asked for an update on the CCNA Committee from Mr. Jefferson, who said that an RFP had been released with five companies who have responded. On February 25th the Committee will make the final selection for recommendation on the company to do the feasibility study on consolidation of water/sewer utilities.

The COVB has written to Florida Power and Light (FPL) about the possibility of taking over their power plant and delivery of electricity in their service area. The Mayor continued that he and the Town Manager had recently spent time with the County Commission Chairman Peter O'Bryan, who is also looking into options of service.

As far as the Town's activity, we have been involved with ongoing due diligence, getting as much information as we can about the current arrangements, agreements, limitations, and so forth.

Mr. Clem agreed, adding very much in the exploratory stage of what our rights are with the various franchise agreements coming due and the October 2011 timeframe to determine the course of action. We do have out-of-town counsel with expertise in utility matters, but not for litigation. As the City and County explore their options, so are we. He suggested that the Council approve additional funding to complete their due diligence to us, which should not be more than \$5,000. **A motion was made by Councilmember Atchison to approve an expenditure of not more than \$5,000 on additional legal advice on utility matters, supported by Councilman Ochsner, which passed unanimously.** Mr. Clem continued that it is way too early to begin the decision making process, and offered himself and the Town Manager as available if there were any questions along the way. If the City Of Vero Beach (COVB) gets serious about selling the utility, part of the problem changes dramatically or goes away, so it will be followed very closely with a great deal of interest, Mr. Clem concluded.

Councilman Ochsner commented on the territorial agreement, which is assigned by the PSC to the COVB. Mr. Clem said this is under consideration, and is certainly a primary part of our due diligence. We as a Town should have control of our own utility, Councilman Ochsner added.

Vice Mayor said that the first step is for the Public Service Commission (PSC) to determine the territorial question, to which several voiced agreement.

b. Evaluation Process for Town Manager

Mayor Kenyon said that the Town traditionally has a process for an annual evaluation for the Town Manager, which is kept in the personnel file. He and the Town Clerk are the only two people directly hired and managed by the Council, with the rest of the staff aligning under the Town Manager's direction. He asked the Council to provide their input for the Town Manager's performance so that a review may be given in the near future.

4. **Planning, Zoning and Variance (PZV) Board**

Chairman Bill Beardslee reported that there was no meeting this month.

5. **Town Attorney**

Nothing further to report.

6. **Town Manager**

a. Census Update (Nan Warner)

Mr. Bradshaw introduced the Council's appointee to the 2010 Complete Count Committee, Nan Warner, thanking her for coming. She thanked the Council for appointing her to this committee, and introduced Maria Resto from the County Commission office as the Recording Secretary for the Complete Count Committee, and Mayor Richard Dunlop of Orchid on the Committee. The U.S. government conducts a census every ten years with the goal to count every person residing in the United States. This includes homeless people, illegal aliens, dual-residence homeowners, and travelers. If there is a question about where one resides, it should be where one puts their head down on the night of April 1st in our County. This count is used to distribute \$400 billion dollars annually, which comes locally for hospitals, public works projects, senior centers, wildlife and environmental protection, schools, emergency services and many other material services. It is also used to determine the allowable number of representatives to the United States House of Representatives.

The census process for the general public begins in February, when every household will receive a call informing them that the Census forms will be coming. Then in March, forms will arrive in the households. There are ten questions, she continued, and it does not ask for names or Social Security Numbers. It is confidential for decades, and they are to be mailed in as soon as they are completed.

If Census does not receive a form for a certain address, they will personally come and visit that household in May. In the 32963 zip code area, with so many residents out of the area at that time, it could be a problem. The response in Indian River County for the 2000 Census was 64%, and the state average for Florida was 63%. The highest response was from Sebastian with 74%, and the lowest return rates were from Gifford, Fellsmere, and the 32963 areas. This means an approximate \$2,200 in lost revenue **per person** annually for those who do not return the form.

The Complete Count Committee (CCC) meets at least once a month. The U.S. budgeted \$300 million, and the CCC asked for \$3,000 from Indian River County, which was denied. This committee's local budget is \$0. To get the word out, they started by having booths at events such as the Sebastian Clambake Festival and the Vero Beach First Friday. These were not successful. Each committee member has now been tasked to find something they can do in their particular area. Signs will be placed inside all Go-Line busses in English and Spanish. The Press Journal agreed to run a quarter page ad twelve times between February 12 and March 31 at no charge. They are also sponsoring an essay contest in local schools, with one winner from primary, middle and high school levels. The winner receives an I-Pod courtesy of the Press Journal and their essay will be published. Signs will be on school marquees reminding everyone to mail in their forms. Fellsmere is having a special mailbox, and everyone who mails their form to this mailbox will receive a little present. Many of the city websites have information on them, and thanks to Laura, ours has a wonderful article. Pastor Buddy Tipton, a committee member, pledged up to \$500 to purchase 500 signs that will remind people to mail in forms. The Chamber of Commerce sent Census information to all of their members. Mrs. Warner continued that the reason she and Richard Dunlop were at the Council meeting today was that Vero Beach 32963 agreed to do an article if they would be part of it, telling how important the Census is. She invited the Council to join them, and Mayor Kenyon replied that they all would, with at least three nodding in agreement. He added that the residents are sensitive that real money will come back to the Town if they will return the forms, and it sounds like the Committee is doing a good job.

Councilman Weick noted that everyone should be aware that it is where they put their head on

April first is what counts. Some seasonal residents think that they should participate in the census at their northern home. Mrs. Warner said that Beachside News is also interviewing them, and invited the Council to join them in participation. She thanked the Council again for the opportunity to serve on this Committee.

The Vice Mayor thanked Mrs. Warner, adding that he knew how much effort she had invested and really appreciates her work. Councilmember Atchison added that Debbie Mackay, a School Board member on the Committee, complimented Nan Warner as the hardest working, most astute representative on the committee. There was thanks and applause at the conclusion of her presentation.

b. Resolution 10-01, Signature Authority for Town Manager / Town Treasurer

A RESOLUTION OF THE TOWN OF INDIAN RIVER SHORES IN INDIAN RIVER COUNTY, FLORIDA, INCREASING THE SIGNATURE AUTHORITY OF THE TOWN MANAGER OR TOWN TREASURER TO FIVE THOUSAND DOLLARS (\$5,000); PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Bradshaw said that this is regarding increasing the signature authority from \$500 to \$5000 for the Town Manager and the Town Treasurer, which has been discussed over the past couple of months. Councilman Ochsner, Chairman of Finance Committee, said that after the last meeting, there was a question regarding the acceptance of this by the auditors, who have no problem with this. It facilitates getting the checks signed a little easier, and it is only for ordinary budgeted items. The Town Clerk read the Resolution 10-01 by title only as written above. **A motion to approve Resolution 10-01** was made by Councilman Weick and supported by Councilmember Atchison, which **passed unanimously**.

c. City of Vero Beach Utilities Advisory Committee Appointee

There is a copy of the letter that went from Town Staff to the COVB asking to clarify some confusion on the appointment to the COVB Utilities Advisory Committee. Mr. Bradshaw suggested that the Council confirm Mr. Wiegner's appointment, and have Councilman Heady confirm that this is for a full voting member position. Councilman Heady said it was his understanding when he voted on this that it was for a full voting member, and as long as the Town of Indian River Shores remains a part of the territorial agreement, they will have a full voting member.

A motion to confirm the appointment of Mr. Edward Wiegner was made by Councilmember Atchison, seconded by Vice Mayor Ahrens, **passed unanimously**.

d. Beach Maintenance

The Town Manager turned this over to Councilman Ochsner, who volunteers on the beach patrol in the Town. Councilman Ochsner said that there is often seaweed, particularly when there is an east wind, and lots of debris on the beach. He thought our public works person using the ATV may have time to periodically clean the beach, especially during the peak season. He asked the rest of the Council their opinion. Mayor Kenyon asked if this would be a budgeted item or done by volunteers. Councilman Ochsner replied that we do pay a good bit of taxes to the County, and maybe we could work something out with them. The Vice Mayor added that it required working around the turtle nesting season. Councilman Ochsner was trying to determine if anyone shared his concerns about this. Mayor Kenyon asked the Attorney who is technically responsible, the Town or the County. Mr. Clem said the County, but there is overlapping jurisdiction, especially with the turtles, so either could undertake this task. Councilman Ochsner said that if the seaweed were pushed up to the berm area, the sand would infiltrate it and help to armor the berm. Councilmember Atchison said that Johns Island voluntarily cleans up their portion. Peter Young, JIPOA Manager, when asked for his input, replied a good deal of tonnage of man-made material is

cleaned up by utility staff. Mayor Kenyon suggested that Councilman Ochsner contact the County and see what they would do, then the Fish and Wildlife Commission. Councilman Ochsner agreed. Councilman Weick brought up the fact that twice a year there is a clean up only for man-made material on the beaches, with he and Councilman Ochsner and Laura Aldrich participating on the last one.

e. Accept FDLE Recovery Act JAG Grant for PSD Equipment (Computers, Hand Held Radios)

Mr. Bradshaw said that the Town staff is proud of this \$32,800 grant from the FDLE. He thanked Chief Schauman and his staff for applying for it, as there is no matching fund requirement. A **motion to accept the FDLE grant for capital equipment** was made by Councilman Weick, seconded by Councilman Ochsner, **passed unanimously**.

f. PSD Building Repair

The last item on Mr. Bradshaw's portion was for building repair for the Public Safety Department, on which he called their attention to a Memorandum from the Building Official outlining the issues for non-budgeted repairs estimated at \$8,600. The Mayor asked for and received clarification from Mr. Jefferson that this is for a flat concrete roof which was not included in the renovations, and which should last another 30 years after repairs. Councilman Weick supported by Councilmember Atchison **made a motion to approve the repairs on the Public Safety Building at a cost not to exceed \$8,600, which passed unanimously**.

7. **Call to Council**

a. Committee Reports

Parks and Recreation. Councilman Ochsner said the December meeting was cancelled.

Beach and Shores. Councilman Ochsner reported that he attended this committee meeting on January 18, and Bill Glenn was reelected as Chairman, with Bob Anderson as the Vice-Chairman. Sector 3 beach renourishment is scheduled to begin in February, with all trucks coming from CR 510. About 202,000 cubic yards of sand is scheduled for Phase 1. Phase 2 is from Golden Sands north and is contingent on a successful turtle nesting season. Permitting is in the publication phase, allowing 14 days for public comment. The estimated Notice to Proceed is expected around February 9. The Mayor mentioned an article on increased costs, which Councilman Ochsner addressed as a change order of \$984,502 from Ranger Construction due partly to the project being broken into two phases, and the additional quality control requirements. Mayor Kenyon asked if the new budget is equal to what it would cost to dredge, and was told that the Committee has requested this update for the next meeting. In addition, Coastal Tech is going to ask for approximately \$730,000 more to compensate for the redesign and the additional monitoring. The Mayor asked if we could not raise the question and change back to dredging, and the reply was that the bid has expired now, and it is so late in season that the mobilization would not occur this year.

Vice Mayor Ahrens asked if the U.S. Fish and Wildlife Commission had signed off on the project. Councilman Ochsner said that DEP has, and they won't sign off unless the FWC has, and the U.S. Army Corp of Engineers won't issue the Notice to Proceed without the FWC's approval; however, he has not seen any documentation. The Mayor asked if we should we write a letter, and Councilman Ochsner agreed that we should have an accounting for it.

Councilman Weick asked if his gut feeling was that this would be more expensive than offshore sand, and the Councilman affirmed. Also, Councilman Ochsner continued, the cost sharing we are relying on from the State to match with Sebastian River Inlet only applies to the unit costs of sand, which is for half of the sand, not the monitoring or administration.

The Mayor asked for any recommendations, to which Councilman Ochsner replied that it is probably too late to do anything now. The Mayor disagreed that it's not too late, as this is

for half of the restoration and we could wait until the second phase to do the entire project. Whether the Army Corp would or has signed off and other minor discussion ensued among the Council.

Dr. David Becker, 572 Sable Oak Lane, asked if the Town could object between now and February 3rd to defer the process. The Mayor asked former Councilman Becker if he would take this on, and he said he is just an observer. Councilman Ochsner said that at the time both bids were received, the offshore bid seemed more expensive, and the citizens wanted it done ASAP. It seemed worth spending a little extra money to pursue the tried and true method and get it done. Our Town's biggest concern was to have Marbrisa and Baytree, which are seriously eroded, restored. Vice Mayor Ahrens added that Sea Oaks residents are very upset that their sand is not in place. Mayor Dunlop spoke to Orchid's concerns briefly.

Parks and Recreation. Councilman Ochsner reported that there was no meeting.

Metropolitan Planning Organization (MPO). Councilmember Atchison said that the MPO met, and they are in the process of completing 5-year Long Range Plan for the State, which is due in December. Last March she and Councilman Weick attended a visioning workshop for projected needs in 2035. At the last meeting, this was reported back to the MPO as having us looking like I-95 in every sector of every road, so the decision was made to slow down on the expansion of 6 or 8-laning roads. Interconnectivity between Sebastian and Fellsmere, Sebastian to Oslo Road and St. Lucie County was not communicated well to the professionals who are designing the plan. We are also well below the 300,000 estimated population expansion. The only road in Indian River Shores that was discussed was A1A, which may only have an ingress/egress turn added to the Beachland Boulevard intersection.

Sustainability. The committee is being invited to go around to various companies and groups who need to discuss how to work with sustainability around the County.

Treasure Coast Regional League of Cities (TCRLC). Neither Councilmember Atchison nor the Mayor attended the meeting in Okeechobee last Wednesday.

Affordable Housing. Vice Mayor Ahrens said that they will meet later this month.

(TCRPC is not a committee to which the Town has a representative assigned this year; it is a shared rotating position)

Land Acquisition Advisory Committee (LAAC). Councilman Weick said that they did not meet, but the County approved the purchase of the 4.86 acre Russell Property as a St. Sebastian River greenway connector. The remaining funds will be used to maintain the properties that have been purchased.

Treasure Coast Mayors. Mayor of Sawnick of Vero Beach invited mayors from other cities to meet in order to know each others interests and work together. Mayor Gillmor of Sebastian decided to meet with Mayor Kenyon to discuss the abundance of opportunities in our community. One is the Florida Institute of Technology in Melbourne, also known as Florida Tech. He and Mayor Gillmor visited the school and came away with interesting ideas regarding processes being developed there that may be applicable to our county. We have possible sources of private funding in our county by people who want to be helpful and involved, ex-CEOs of large corporations who may be interested in economic development in our community. IRSC wants to also be involved. Substantial businesses can be moved to our area. Another visit to FL Tech is being planned to arrange for a closed meeting for listen to ideas. The school only owns 14 patents, as it costs about \$25,000 to apply for one.

Elected Officials Oversight Committee. No meeting.

Economic Development Council. The Mayor reported that he attended an EDC brainstorming session with nine ideas to be transformed into possible action.

Treasure Coast Council of Local Governments (TCCLG). Mayor Kenyon did not attend TCCLG due a schedule conflict.

8. Call to Audience

John Jandzen, Sea Forest Court, said he is a full time resident. He wanted to remind everyone that although the electric bills have been shocking, he said that this is the lightning capital of the world. The crews go out in the horrible weather and repair the transformers, and do we ever thank them for their services? The Mayor added we used to get a lot of brown-outs, and now things are working well.

Councilman Brian Heady of Vero Beach commented that the reduced frequency of brown-outs is largely due to the transmission lines being underground, which are very much above average in reliability and are less susceptible to winds, lightning, etc.

He continued with a comment about the Territorial agreements, that if Indian River Shores were in control of that agreement, the Town could be in a position of power to wheel and deal. In listening to the community at large, he is consistently hearing that the representation for the Town and the County is not present in the Vero Beach Council. Councilman Heady assured them that as long as he is on the Council, he is absolutely representing them. He is very much interested in resolving the electric rates problem, and asked anyone who is interested to watch the Vero Beach City Council meeting next Tuesday's meeting, as he spent several hours with City Attorney and questions the validity of the contract (with OUC). The City has received a letter back from FPL, who stated that they are very interested if the City could strike a deal that would appeal to ALL of the customers. Councilman Heady said he understands the anger, why the COVB has been unresponsive to serious issues, and why Debbie Mayfield is pushing for PSC involvement. He does not believe it would be helpful, as less government is generally better. He thanked the Council for allowing his comments.

Mayor Kenyon noted a common sentiment in Indian River Shores of being taken for granted because of our size, even with nearly equal ad valorem bases with Vero Beach, and that we have been working towards recognition by the City, the county and the State that our residents do contribute substantially to the museum, theater, hospitals, etc. He thanked Councilman Heady for being our voice.

Jack Mitchell, 220 Sandpiper Point, said he has been coming to meetings in Indian River Shores for 37 years. When Roland Miller was Mayor, a council member from the City would come to our meetings. Mr. Mitchell said he appreciated Mr. Heady's attendance, and thanked him for coming.

Charlie Wilson, calling himself the "ousted" councilman from the COVB, agreed with Councilman Heady that the COVB today is different than it was in November. He shares serious doubts about the current contract with Orlando Utilities Commission. He said that if it is found to be invalid, it may move up the FPL decision for possible take over. He wanted to make the point that the City will have to go to the Public Service Commission at some point to get the territorial agreement taken care of, and agreed 100% that the Town should control their own territory. He noted that he and Councilman Heady worked together to get the Town a voting seat on the Utility Committee, and there was no confusion when it was done.

Mr. Wilson has appeared before several commissions and entities to explain that the COVB utility rates are every resident in the County's problem, as they have been paying the City of Vero Beach's expenses. He said the County paid the COVB \$5.1 million for service at its facilities (the County administration building, the jail, the sheriff's facilities, the lighting districts, and the hospital). This is \$1.1 million higher than what would have been paid to FPL through taxation to the City. Mr. Wilson said that as closely as he could determine, the Town of Indian River Shores paid more than \$50,000 to indirectly support the City. One serious consideration by the COVB is if they were to sell the electric plant, there would be insufficient numbers of employees to maintain

