

MINUTES
THE TOWN OF INDIAN RIVER SHORES
6001 North Highway A1A, Indian River Shores, FL 32963
REGULAR TOWN COUNCIL MEETING
Wednesday, November 17, 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: Richard Jefferson, Town Manager
Laura Aldrich, Town Clerk
Chester Clem, Town Attorney
Bill Schauman, Director, Public Safety
Robbie Stabe, Capt., Public Safety

OTHERS PRESENT: 4 Residents; 4 Guests, VB 32963 Reporter

1. **Call to Order**

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

Mayor Kenyon called the meeting to order at 3:30, with the Pledge recited, the Invocation given and roll call taken as reflected above.

2. **Consent Agenda**

- a. Approval of October 28, 2010 Regular Town Council Meeting Minutes
- b. Approval of October 28, 2010 Workshop - Public Safety Vehicles
- c. Approval of Invoice from GAI Consultants dated September 27, 2010
- d. Approval of Invoice from GAI Consultants dated October 28, 2010
- e. Approval of Invoice from Town Attorney dated October 31, 2010

Mayor Kenyon asked for a **motion to approve the consent agenda**, which was made by Councilmember Atchison and seconded by Councilman Ochsner. There was no discussion, and the motion **passed 5-0**.

3. **Mayor's Items**

- a. Proclamation Recognizing October 2010 as National Arts and Humanities Month

Mayor Kenyon said there were a couple of interesting items he wanted to bring to their attention that did not require a vote, and proceeded to remind them that the Town has an election approaching. He has spent time with at least two people, Brian Barefoot and Dick Haverland, who are interested in running for Town Council. He asked staff to spend time with them if requested. Candidate qualities the Mayor mentioned include being willing to listen to all points of view and able to take some criticism, with a practical and pragmatic disposition.

4. **Planning, Zoning and Variance Board**

Mr. Beardslee said that there was no report as they did not meet this month.

Please Note: 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.

4. **Town Attorney**

a. Resolution 10-08, Telephonic Attendance at Council Meetings

The background of this, Mr. Clem began, is that in the past this has related to someone who has been ill and is in the hospital or someone who is out of Town and cannot get back for the meeting and desires to attend by telephone. Some rough rules have come up regarding being counted for attendance to make a quorum, especially when a 4/5 or majority vote is necessary and each person has to be there. This type of situation is rare and should not be commonplace. A written request to attend by telephone must be made in advance for the Council's action.

Mayor Kenyon said that it's important for candidates for Council to realize that there are at least two sessions a month to commit to, at least one at Town Hall and another at an offsite committee. This Resolution is an exception. Attendance at Town Council meetings is important.

Mr. Clem then read the majority of the Resolution from the whereas' portion on down. The title of Resolution 10-08 is as follows:

A RESOLUTION OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, ADOPTING A PROCEDURE TO ATTEND SPECIAL CALLED AND REGULAR MEETINGS OF THE TOWN COUNCIL BY TELEPHONIC OR OTHER ELECTRONIC MEANS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

He continued that most of the information in the Resolution is from the research he did from the Attorney General Opinions (AGO's). Councilmember Atchison asked at one point the request would be made, since the Council meets once a month. Mr. Clem said that our most critical meetings are the budget public hearings, when the dates are set by State requirements, and advance notice would be necessary. She added that getting a quorum has not been a problem during the six years she has been on the Council, and the Mayor added that there are really not that many absences.

Councilman Ochsner questioned if it was a hard rule that the telephonic attendance couldn't be used to establish a quorum, and Mr. Clem said it was not. There are several AGO's that reference "limited circumstances" and state that they could not be used to create a quorum. The Sunshine Law requires that three members being present makes a quorum, and the fourth member attending the meeting telephonically would not violate the Sunshine Law. But two members present are not enough to count a quorum with one on telephonic attendance.

Mayor Kenyon addressed qualifying candidates and their full-time residential status.

Councilman Ochsner asked about the request being in writing, if it were included in the minutes of the meeting prior to the one from which the councilmember would be absent would be sufficient. Mr. Clem said it works for him. Mayor Kenyon said it should be in writing in the form of a request. Mr. Clem said it could be in form of an e-mail, fax, or note. Mayor Kenyon said it should be something that could be kept in the file, voted on at the meeting by the Council.

Mr. Clem said that even though the elected official may be tied in to the meeting by telephone, they would not be able to vote. Councilmember Atchison said that almost all of the Town of Orchid's summer meetings are done telephonically, as only one member lives year-round at this residence.

A motion to adopt Resolution 10-08 was made by Councilman Ochsner and supported by Councilman Weick, **passing 5-0**.

Mr. Clem said that there was a request for an ordinance to clean up certain lots that are facing a code issue that he inadvertently left off the agenda that they would like to present to the Planning, Zoning and Variance Board tomorrow. If it could be added to the Agenda today for First Reading by the Council, it would speed the approval process by a month. Of course it would be published before the second reading in December. **The agenda was amended to add the First Reading of Ordinance 503** by unanimous approval of a motion made by Councilman Weick and seconded by Councilmember Atchison.

Mr. Clem continued with the reading of the Ordinance 503 by title as follows:
AN ORDINANCE RELATING TO SECTION 161.02 (G) OF THE LAND DEVELOPMENT CODE (LDC) AND CHAPTER 91 ARTICLE III, SECTIONS 96.40 – 96.99 OF THE CODE OF ORDINANCES OF THE **TOWN OF INDIAN RIVER SHORES** REGARDING LOT CLEARING; PROVIDING FOR CLEARING EXEMPTIONS IN CERTAIN CASES; PROVIDING FOR CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

Mr. Clem then read “Section 1, the Exemption for Lot Clearing. The Town Manger or designee shall have the authority to exempt from the requirements of Sections 161.02(G) and 96.40 - 96.99, parcels of undeveloped real property. The owner shall, at a minimum, maintain a five-foot wide corridor that conforms to the standards of 161.02 and 96.40 – 96.99 where the real estate parcel abuts developed property or a public or private right-of-way.”

Mr. Jefferson said that the problem we have been experiencing is that some lots are cleared once the house is removed, and then the lots are not being maintained. A lot in a natural state should be maintained 5' away from other properties.

Following minor discussion by the Council, a **motion to approve the first reading of Ordinance 503** was made by Councilman Weick, seconded by Vice Mayor Ahrens. The **motion passed unanimously 5-0.**

5. Town Manager

a. PSD Additional Vehicle Purchase

Mr. Jefferson said that the Public Safety Department has requested authority to replace four aging vehicles: a Honda ATV which is unserviceable, a Jeep Cherokee, an F-250 Ford Truck which is used daily for transporting larger items, and a 12-year old ambulance. There is \$300,000 in Infrastructure funds available for this use.

Mayor Kenyon said that this type of purchase should be handled by the new Council in March rather than this elected body. He continued that a resident had pointed out that there were 31 EMS calls for service in a month, which is fairly usual, and questioned the need for another quarter million dollar ambulance. He was agreeable to replacing the other three vehicles. It seemed like a lavish purchase in these very tough times, and we don't have money to burn. The mentioned how much respect he has for the Public Safety Department and his support for nearly all of their requests.

Councilman Weick had the opposite opinion, stating that this Council should act on it, as there is a need to replace that ambulance. We have the funds in the Infrastructure fund, which is not taxpayer money, and he added that he thinks the ambulance is more important than some of the other vehicles for reliability in case another call comes in when the primary ambulance is in use.

Vice Mayor Ahrens asked for Public Safety's input, and Chief Schauman said that although there are not a lot of ambulance runs, it is still used and is aging. It is constantly being worked on, and having utilized it prudently for twelve years, the Chief concluded that he thinks it should be replaced and both ambulances should be identical.

Councilmember Atchison voiced her opposition because there were four vehicles requested in the FY10-11 budget, and these were not included. This is not part of the budget.

Councilman Ochsner said he looked at the truck and Jeep, and yes, they are fairly old, and the requested replacements are for two 4x4's. Only one is a 4x4 now, so this seems like an upgrade. He is inclined to agree with Councilman Weick that the need for an ambulance is more important since it is one of the primary services of the Town. The Honda ATV is broken and needs replaced. This is tax money but from a different route that we are considering.

Vice Mayor said it would be less expensive to purchase the ambulance this year and it should be done.

A **motion to purchase all four requested vehicles** was made by Councilman Weick, which was seconded by Vice Mayor Ahrens. It **failed 2-3**, with the Ayes from Weick and Ahrens and

Nays from Kenyon, Atchison and Ochsner.

Another **motion to purchase the pickup truck and the ATV** was made by Councilman Ochsner, which **died for lack of a second**.

b. Final Budget Adjustments for FY 09-10

A final minor adjustment for the FY09-10 budget was briefly discussed by Chairman of the Finance Committee, Councilman Ochsner. It is a technicality, moving funds from one category to another, which does not change the budget. **A motion to approve the final budget adjustments for FY09-10** was made by Councilman Ochsner, supported by Vice Mayor Ahrens, which **passed unanimously**.

c. Treasure Coast Regional Planning Council TCRPC - Appointment (Alt.) for 2011-2013

Mr. Jefferson asked the Council for an appointment as alternate for the TCRPC, which is for next year. The Town Clerk said we are alternate to the City of Vero Beach, which will likely make all of the meetings. **A motion was made to have Vice Mayor Ahrens fill this assignment for December, January and February** by Councilmember Atchison, which was seconded by Councilman Ochsner and **passed unanimously**.

7. **Call to Council**

a. Committee Reports

Beach and Shores. Councilman Ochsner reported that he didn't attend this month's meeting but viewed it online. The turtle nesting success was discussed as the data had been gathered and analyzed, revealing that the upland sand was a successful habitat for their eggs. Phase II is expected to begin with sand placement on February 1. They are stockpiling the sand first. Phase I between Orchid and Sea Oaks will be finished in December, and our Town will not be affected by any of this. Everything should be complete by April 1

Mr. Jefferson asked if our turtle patrol would be affected by not having the secondary ATV, and Councilman Ochsner said there would be an affect when turtle patrol resumed in March.

TCRLC. Councilmember Atchison said that she and Mr. Jefferson attended this bi-monthly Treasure Coast Regional League of Cities meeting. Sebastian hosted it, and the presentation was about the Legislature working on Section 287.005, the CCNA (Consultants Competitive Negotiations Act). It says we cannot ask for the price to do the job if hiring engineers, surveyors, mappers or architects, just their qualifications. Also once the first bidder is passed up, it precludes us from going back to them if during the interview process you find out that their qualifications were superior to the others. The TCRLC supported the CCNA group's request that they may ask for price and additional qualifications when they go out for bid. There was also a very interesting talk by Dr. Shelton, who started 40 years ago in Philadelphia to have graffiti painting changed to murals. He lives in Brevard County now, and is looking for art for the public via grants to send future art teachers to college and to help the larger cities paint over graffiti.

Affordable Housing Advisory Committee. Vice Mayor Ahrens reported that the November meeting was cancelled.

Economic Development Council (EDC). Councilman Weick said they met yesterday afternoon and heard a presentation from the Chamber of Commerce with their 5-year overview, which was the same as was presented to the Town Council. The guest speaker about the Indian River Park of Commerce west of I-95 opposite CVS, which had recently changed hands, cancelled.

Councilman said awhile back he had asked Mr. Clem about having garbage pickup fee included in the tax bill, and he inquired of Dave Nolte. Mr. Nolte said it would cost about \$10,000 to change the computer program annually, which Councilman Weick did not understand. Mr. Clem said it may be more or less. The Councilman then suggested that the Town check with Treasure Coast Refuse and see if they have savings by sending one bill rather than quarterly, if they can absorb the cost. He still thinks it would be worthwhile to have this fee included in the tax bill, and asked if Mr. Clem could get with Treasure Coast Refuse. Mr. Clem said it would be more

than what meets the eye, and asked for direction from the Council. Another course may be to form a committee. Councilman Weick suggested that first we determine if Treasure Coast is interested, and if so, form a committee. Mr. Clem said he would be happy to check with Treasure Coast. Councilmember Atchison said that eventually the state will demand weekly recycling. Councilman Weick said that this is done by Orchid and some other nearby counties, as well as commonly up north.

MPO. No report.

Sustainability. Did not meet.

Elected Officials Oversight Committee. No meeting.

TCCLG. Mayor Kenyon said that he and Mr. Jefferson had attended their annual awards luncheon, and spoke about the group in general briefly.

Indian River Mayor's Meeting. The bi-monthly meeting was held in Fellsmere, with Sebastian's Mayor not in attendance. The EDC in Indian River County was discussed, with 20% of the jobless people who were working 3 years ago are not working now. The mayors agree that it's a terribly underfunded activity. Counties south of us have been successful in attracting businesses. Companies have a lot to do in order to move a multimillion dollar activity into our community. The County seems to have walked away from this responsibility.

Kay Clem's Resignation. Mayor Kenyon noted that our Attorney's wife, the Supervisor of Elections Kay Clem, had announced her resignation. Mr. Clem said that she had served over 20 years in the political sphere, starting with the State Senate, then becoming the Director of the State Republican Party of Florida, and 14 years as the Supervisor of Election. Her health over the past year has forced the necessity to resign, and the commitment as an elected official made it a difficult decision.

Water Discussion Councilman Weick said that he had attended the Council meeting at the City of Vero Beach last night, and they said they agreed to let the County talk with us regarding water and sewer, not with a waiver or negotiations, just to talk. Mr. Clem said he watched the County Commission meeting this week, and encouraged them to view that if possible.

6. **Call to Audience**

No one offered any comments.

7. **Adjournment**

There being no further comments, the Mayor adjourned the meeting at 4:25 p.m.

Respectfully submitted,

/s

Laura Aldrich, CMC, Town Clerk

(Approved by the Town Council at the 12-16-10 Meeting)