



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

REGULAR TOWN COUNCIL MEETING

Friday, December 13, 2013

9:00 a.m.

PRESENT: **Brian M. Barefoot**, Mayor
Gerard A. Weick, Vice Mayor
Thomas W. Cadden, Councilman
Thomas F. Slater, Councilman

ABSENT: **Richard M. Haverland**, Councilman (present via telephone)

STAFF PRESENT: **Robert Stabe**, Town Manager **Laura Aldrich**, Town Clerk
Chester Clem, Town Attorney **Heather Christmas**, Finance Department
Cpt. Mike Jacobs, Public Safety **Lt. Mark Shaw**, Public Safety

OTHERS PRESENT: Indian River County Commissioner **Tim Zorc & son Nicholas**; **Helene Caseltine**, IR Chamber of Commerce; **Stephen Faherty**, PhD; **Glenn Heran**; CoVB Vice Mayor **Jay Kramer**; **Andy Beindorf & Chris Bieber**, CenterState Bank; **Abigail Hoyt**; **Deborah Ecker**, IRNA Representative (+1); Reporters **Janet Begley & Lisa Zahner**

RESIDENTS: Finance Committee Chairman **Mike Ochsner** & Members **Jerry Solin and John Porta**; **Bill Beardslee** (PZV Chairman), **Barbara Palumbo** (PZV Co-Chair); **Bill Grealis** (VB Utilities Commission Rep.), **Barbara Tilney & John Brady** (Code Enforcement Board); **John & Judy Orcutt**; **Doris Brandi**

1. Call to Order

- a. Pledge of Allegiance
- b. Invocation (Councilman Slater)
- c. Roll Call

Mayor Barefoot called the meeting to order at 9:00 a.m. with the Pledge of Allegiance and Invocation performed, followed by the roll call by the Town Clerk as reflected above.

2. Proclamations / Presentations *Mayor Barefoot asked for a deviation from the agenda to move item 2c to the top at the request of Commissioner Zorc, which was acceptable to all.*

- a. City of Vero Beach/FPL Electric Sale Update (Dr. Steve Faherty) Mayor Barefoot turned this item to Councilman Cadden, who has been spearheading the topic for 6 years now. This is same as what was presented to the legislative delegation a week or so ago. Dr. Faherty had more slides which would be shown today and forwarded to the Town Clerk. He reviewed the classes of ratepayers, the municipal rates charged by the FMPA, and mentioned there are issues with several of the franchise agreements, including Vero's. The FMPA is interested in FPL because there are no municipal rates lower than those offered by FPL. Dr. Faherty reviewed the entire timeline of action from November 2007 through January 2014. Since April 4, 2011 "outside customers" have paid \$56,348,000 in extra COVB rates. He showed facts about municipal participants, which were very revealing. Dr. Faherty reported that there have been violations of 1980 State Antitrust Act, with no oversight by the State. He has requested that the County and the Shores send letters to the PSC asking that the 1981 Territorial Agreement be reopened. He asked the Shores to consider taking over his petition or file a similar one, as well as the County Commissioners taking over the PSC Petition filed on their behalf or joining with the Shores in this effort. Dr. Faherty asked if there were any questions, and Vice Mayor Weick asked how much in ad valorem taxes would be

Please Note: The Town of Indian River Shores does not routinely keep verbatim minutes. Any party interested in such an appeal relating to any decision made by the Council with respect to any matter considered at this meeting is responsible to record the meeting and include the testimony and evidence upon which the appeal is to be based.

collected from the Town. Mr. Herran said it's anywhere from a few hundred thousand to \$1.5 million in tax from FPL that is distributed, which would be about \$200,000 to the Shores.

b. City of Vero Beach Utilities Commission Update (Town Representative Bill Grealis)

Mr. Grealis said that he reported three weeks ago that they were awaiting the FMFA response to FPL, and had recommended looking into other legal options they could explore. Since then Amy Brunjes has briefed the COVB Council and remains optimistic for a good response from the FMFA. Late yesterday she said they have received a response and remains optimistic that the sale would be completed. She expressed that she hoped to come to the Indian River Shores Council in January to provide a substantive update, and recommended that we not spend money yet, but adopt a wait and see approach.

Vice Mayor Weick asked if the petition could be extended if the date is later, and was told the FMFA meeting when there will be a vote is on February 19. Mr. Heran suggested the petition may die if we miss the deadline, and the Town should keep the options open. There was more discussion, with Vice Mayor Weick stating we should follow the County's lead and join in with them. Mayor Barefoot asked if there were any audience questions, and there were not.

Vice Mayor Jay Kramer updated the Council on the City of Vero Beach's status on this. They are waiting on response from FPL. There are new opinions with a new Council, and they are looking for an equitable solution, being supportive of the Mayfield bill. He said he would love to see the Town be serviced by FPL. The City has experienced two failed referendums, a letter of intent, contracts, etc., and the repeated failures are discouraging. He said they can do territorial changes without approval of the PSC. Councilman Cadden spoke with Vice Mayor Kramer about changing the territory by mutual agreement.

c. Economic Development Positioning Initiative (IR County Commissioner Tim Zorc) (*Heard first*)

Mayor Barefoot introduced Commissioner Zorc, who had his son Nicholas with him for Dad in Government Day. The Commissioner was also accompanied by Helene Caseltine, head of Economic Development with the Indian River Chamber of Commerce. The Chairman of the Indian River County Commissioners, Peter O'Bryan, is reaching out to the municipalities more and wanted to explain a recently funded item, Economic Development Positioning Initiative. It is a balance between art and science that explores how economic development is approached in our community. It helps to identify who we are and how we are perceived, to build on strengths and identify weaknesses. They will be recruiting for new jobs in the community. There were no questions from the Council or the audience.

Mayor Barefoot thanked them all for attending.

3. **Consent Agenda**

- a. Acceptance of Planning, Zoning & Variance Minutes dated November 12, 2013
- b. Approval of Regular Town Council Meeting Minutes dated November 22, 2013
- c. Approval of Invoices from Labor Attorney Allen, Norton & Blue dated October 31, 2013

Councilman Cadden, supported by Councilman Slater, **made a motion to approve items a-c on the consent agenda.** Councilman Haverland said he had made a clarification change to the minutes of November 22, page 5 second paragraph about Bill Grealis and John McCord and the electric service, and asked the Town Clerk to read it to the Council. The motion **passed 4-0.**

4. **Discussion with Possible Action**

- a. Direction on CD Maturing January 2014 (Town Manager/Treasurer)

A memo was provided from the Treasurer regarding a CD that is coming due January 13, which recommended that the funds should be transferred to the CenterState account since the current rates offered are so low. **A motion to move the \$1,200,000 in funds from a maturing CD to the CenterState bank account until further investment recommendations are received from the Finance Committee** was made by Vice Mayor Weick with a second from Councilman Cadden, **passing 4-0.**

b. FY 2013 Ambulance Write-Off (Town Manager/Treasurer)

Mr. Stabe said this is the difference between what is billed and what is collected, since there is a maximum amount allowable to be billed by Medicare. We were told to bill at that level. There was \$156,830 charged, and \$115,039 received, which is the difference of \$41,861. Councilman Haverland asked if we recognized income before we collected, and Ms. Christmas said the auditor said we do not, but we have to write it off. Councilman Haverland asked if we are writing off an active receivable, and she said no, we don't book gross collections. Mayor Barefoot said we are only writing off what we know we are not going to collect. It will be an ongoing effort because this is the way the auditors want it handled.

A **motion to approve the \$41,861 write-off for unrealized ambulance collections** was made by Councilman Slater with a second by Vice Mayor Weick, which **passed 4-0**.

c. Line of Credit Agreement with CenterState Bank (Town Manager)

Mr. Stabe said the Line of Credit Agreement with CenterState Bank is accompanied by a Commitment letter and the loan agreement, with Andy Beindorf and Chris Bieber present for questions. The Commitment fee of \$500 was waived, for which the Mayor thanked Mr. Beindorf. A **motion** was made by Councilman Slater with support from Vice Mayor Weick **to approve the line of credit agreement with CenterState Bank**, which was **approved 4-0**. Mr. Beindorf said they appreciate the opportunity to serve the Town.

5. Town Attorney

a. Resolution 13-12, Public Input at Official Meetings

Mr. Clem read and explained Resolution 13-12, reading the title in its entirety:

A RESOLUTION OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, ADOPTING A PROCEDURE TO COMPLY WITH FLORIDA STATUTES SECTION 286.0114 REGARDING PUBLIC INPUT AT COUNCIL AND BOARD MEETINGS.

He recapped Section 1 and 2, touched on meetings that are exempt from the Sunshine Law found in section 286.011 of the Florida Statutes, and mentioned that Section 3 may be more applicable to the PZV Board. The Resolution addresses how we have been performing, and puts us in compliance with the State law. A **motion to approve Resolution 13-13** was made by Vice Mayor Weick and seconded by Councilman Cadden, **passing 4-0**.

b. Ordinance 513, 1st Reading Florida Friendly Fertilizer Use Amendment

Continuing, Mr. Clem said we have in place an ordinance for fertilizer application, and there has been some modification to fill the gaps regarding a definition of restricted application period (June 1 through September 30) which is specified. Also in 101.05 it was made more restrictive when applying fertilizer near a waterway to remove the deflector permission, limit phosphorus use (a deficiency must be proven), restricting nitrogen to at least 50% slow release, removing the golf course exemption so long as they use BMP as prescribed by DEP, and exempts vegetable gardens in 101.02 as the County and City ordinances read. Mr. Clem then read the Ordinance by title as follows:

AN ORDINANCE OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, PROVIDING FOR AMENDMENTS TO THE TOWN CODE OF ORDINANCES, CHAPTER 101 TITLED AS "FLORIDA FRIENDLY FERTILIZER USE" AS SET FORTH HEREIN; PROVIDING DEFINITIONS, LIMITATIONS ON FERTILIZER USE AND APPLICATION; PROVIDING FOR CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

Councilman Slater asked about verification testing of fertilizer containing phosphorus, and Mr. Clem said it would have to be submitted to the University of Florida. It could take awhile, Mr. Clem said, and enforcement could be an issue. Councilman Slater was concerned if there was a real deficiency. Mrs. Orcutt interjected that the local extension office could do the soil test, and the results are quickly returned by email for about \$5-8. All of the landscape people know about it, she added.

Vice Mayor Weick asked about the BMP guidelines, which Mr. Clem agreed are accessible. A **motion to approve the first reading of Ordinance 513** was made by Vice Mayor Weick with a second by Councilman Cadden.

Debra Ecker spoke on behalf of the Indian River Neighborhood Association (IRNA), suggesting that an additional provision be included for education, which she deemed to be a helpful gap the Town could fill. Mr. Clem advised that the current Ordinance does stipulate much of this in section 101.11, with training and licensing of applicators explained, and we have no public works department or staff to handle public speaking. Mr. Clem read our current ordinance about commercial applicators taking the 6-hour training program and institutional applicators. Non-commercial applicators are encouraged to follow the guidance also. Section 101.12 is about commercial applicators, and there are many paragraphs that explain the authority of the Town to enforce this.

Mrs. Aldrich said that Ms. Ecker may be referring to general public education, which has been mandated by the State through the NPDES Stormwater program for the past twelve years or so. We have published pamphlets and send them through the home owner associations. Lyndsay Bryant in the Building Department is our NPDES coordinator now, which Mrs. Aldrich said she had done for several years prior.

Mrs. Orcutt mentioned we have stepped up our requirements now, and suggested that this will not be taught as they will be following the state statute instead. Mrs. Aldrich and the Town Manager said our Building Department could provide the contractors with a one page flyer that would also be posted on the website with information and requirements specific to the Town.

The **motion passed 4-0** with no further discussion.

6. Town Manager

a. Departmental Reports (Building, Financial Balance, Public Safety)

Mr. Stabe asked if there were any questions, and there were none.

7. Committee Reports

a. Planning, Zoning & Variance (PZV) Report / Action (Chairman Beardslee)

Mr. Beardslee reported on the regular P&Z meeting last Monday, which had two issues with trees of special concern. A request to remove two laurel oaks to be mitigated by transplanting a 27" live oak tree to the front yard at a cost of \$3,500 was approved with the stipulation that if it dies after being moved, it has to be mitigated with an inch-by-inch diameter replacement tree requirement. It was approved. The other request was to move a frost-damaged Poinciana tree to the front of the property. They gave the choice to the applicant to remove or transplant it.

The second issue was to remove a tree of special concern, a perfect live oak, located 8' from the house and leaning away. As there was no visible damage, the request was denied by the Tree Protection Officer and the Board.

Mr. Beardslee expressed to the Council that Jackie Johnson had recently passed away. She had served on the PZ&V Board for 16 years, 12 as member and four as an alternate. Jackie cared deeply for the Town, and was very sympathetic to the residents. She was tough on builders and developers, and was not afraid of them. She was a valued member who will be missed, he added, and conveyed deep respect and condolences for her family.

b. Council Committee Reports (MPO, EDC, TCCLG, TCRPC, Others)

MPO. Vice Mayor Weick attended the MPO meeting this month and there was a big discussion on the Seven50 proposal. They voted 8-4 to withdraw from the Seven50, and the Vice Mayor was one of the approving eight votes.

TCCLG. Mayor Barefoot attended this meeting as Alternate for Councilman Haverland, and the three topics of discussion were the Lagoon, FPL electric, and trains. The Florida East Coast is considering fast-speed, noisy trains, which would run frequently. To turn intersections into quiet zones it is expensive at \$650,000 each. This group will be turning to the State for economic

support to assist with this.

EDC. No meeting.

Beach and Shores. No report.

TCRLC. No meeting.

c. **Affordable Care Act (ACA) Workshop (Councilman Haverland)**

Councilman Haverland said he requested this because he thought it might offer better coverage for some retirees or current employees moving dependents off our program, and provide relief for the Town by providing less expensive and possibly better coverage. This meeting with Brown and Brown wasn't as informative as he'd hoped, as our representative had changed jobs. He spoke to Theresa Peterson, our new representative, who offered to speak to any of our employees. He went on the website and found rates that did not look terrific, and could not follow what the doctor and hospital rates were. It did not look like much benefit for our retirees. Mayor Barefoot asked if we need to have Theresa Peterson come down, and Councilman Haverland said if she does it could help the retirees. There is an opt-out offer on the table for three remaining retirees who are covered, and we have an obligation to our employees and their dependents to understand much more about this program prior to the renewal date for our existing group policy on July 1.

Mayor Barefoot suggested that we extend the current offer for retirees through January 31. Mr. Stabe said the retirees were contacted again yesterday with the cut off date. Councilman Slater said in January, we will have a better idea of what is happening with the Affordable Care Act (ACA). Mayor Barefoot said this ACA is defaulting to the states, and Florida is operating independently of the ACA. We defaulted to the Federal exchange, and most have contacted the individual insurance agents. This is the best way, and two council members suggested a 60-day extension. Councilman Haverland thought 30 days was enough, since the ACA, rates, coverage and doctors aren't changing. It will only take 10 minutes to decide. Having the information is what is important, and we fulfill our obligation by providing that.

Vice Mayor Weick asked if the employer cannot force its employees to join, and Councilman Haverland said he thought the Council has an option to discontinue health insurance altogether. Mayor Barefoot said they can provide a subsidy, and we have an obligation to provide a plan or monthly stipend.

A motion to extend the opt-out period to January 31 was made by Vice Mayor Weick with a second by Councilman Slater, which **passed 4-0**.

8. Call to Audience No response.

9. Adjournment Hearing no further comments, the meeting was adjourned at 10:22 a.m.

Respectfully submitted,

/s _____

Laura Aldrich, Town Clerk

(Approved by the Town Council at the 1-24-14 meeting)