

MINUTES
THE TOWN OF INDIAN RIVER SHORES
6001 North Highway A1A, Indian River Shores, FL 32963
REGULAR TOWN COUNCIL MEETING
Thursday, December 16, 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; 3 Guests, VB 32963 Reporter (after 4:30)

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 November 10, 2010 Water Utilities Workshop Minutes
- b. Approval of November 17, 2010 Regular Town Council Meeting Minutes
- c. Acceptance of October 11, 2010 Planning, Zoning & Variance Minutes
- d. Acceptance of November 18, 2010 Planning, Zoning & Variance Minutes
- e. Approval of Invoice from Town Attorney dated November 30, 2010
- f. Approval of Request to Purchase 4 Public Safety Officer Patrol Vehicles as per FY 10-11 Budget

A **motion to approve the consent agenda**, made by Councilmember Atchison and seconded by Councilman Ochsner, **passed 5-0** with no discussion.

3. **Mayor's Items**

Mayor Kenyon mentioned the Town Christmas party that would occur Saturday for the employees of the Town as a thanks for all that they do during the year. As he would be unable to attend, the Mayor said Vice Mayor Ahrens would speak on his behalf at the function.

4. **Planning, Zoning and Variance (PZ&V) Board**

Mr. Beardslee said that they had a special meeting on November 18 and issued a side yard setback variance which was preventing title insurance from being issued. Mr. Beardslee reported that they also voted in support of Ordinance 502, which is on the agenda today. A regular meeting was held on December 13 at which a fence variance was conditionally approved at the Town's minimum 30' setback or further if required by DEP. Eventually the Town may consider conforming to the DEP requirement. For the Town to grant a variance, eight (8) Hardship Criteria given in the Town's Land Development Code must be met. Other discussion was about fence variances and placement of this fence from the dune line.

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. Ordinance 502, Landscaping Around Fences, First Reading

Mr. Clem read Ordinance 502 by Title as follows:

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF INDIAN RIVER SHORES RELATING TO LANDSCAPE OF FENCES; AMENDING SECTION 150.035(5) CHAIN LINK FENCING; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

This was approved by the PZ&V Board, originating from a suggestion by that Board. The current ordinance states that chain link fencing should be landscaped, and this ordinance says that all fences on a road or abutting an adjacent residential lot shall be landscaped. Councilmember Atchison asked if all existing fences are grandfathered from this requirement, and Mr. Clem affirmed. He then read the section with amended language from the body of the ordinance before announcing that it was the first reading, and after publication would be back for a second and final reading next month. Councilman Ochsner also received confirmation that the planting would be moved far enough into the owner's property line to avoid planting on the neighbor's land. **A motion by Councilman Weick, seconded by Vice Mayor Ahrens, to approve the first reading of Ordinance 502 passed unanimously.**

b. Ordinance 503, Exemption from Lot Clearing, Second and Final Reading

Mr. Clem announced that Ordinance 503 had been published, and read it 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.

The Town has ordinances that require lots to be maintained, and some owners do not want their vacant lots to be entirely cleared. This gives the Town Manager the opportunity via a presented petition to only require a 5' clearing around the perimeter of the lot on a case-by-case basis. Mr. Jefferson clarified that the 5' perimeter keeps trees and shrubbery off the neighbor's property, and the lot still has to be mowed. Mr. Clem then read the details in Section 1 of the Ordinance. **A motion to approve the first reading of Ordinance 503 made by Councilman Ochsner, supported by Councilmember Atchison, passed unanimously.**

c. Ordinance 504, Defined Benefit (DB) Pension Plan Amendment 175/185 Separation, First Reading

Mr. Jefferson introduced Paul Shamoun from the Florida League of Cities, our pension plan administrator, to explain this Ordinance. He said it would break out the General Employees' Defined Benefit Plan from the Public Safety Defined Benefit Plan, which were under one ordinance several years. However, the State Division of Retirement has forced the League to do separate Valuations, and although the plans have been run separately, the assets have been comingled. The initial intent was to save money for the Town by not charging \$1,000 fee for both plans. The State had okayed the initial ordinances, and then later retracted their approval and had the League do two Valuations. It was not improper to do so, but it has been decided that it's best to administer each plan in accordance with the Statutes. The Public Safety Plan will be in one trust fund, and the PSO Share money (175/185) will also be in that same trust fund. The 175/185 Board of Trustees will govern that trust fund. The Town Council will continue to oversee the General Employee Plan as they have been doing. This split can be made cleanly because they have been tracking the assets separately. After the Ordinance is adopted, the League will be able to start the next quarter with the change. Minor discussion from the Mayor, Councilman Weick, and Councilman Ochsner followed, with clarification that the Town will be paying \$1,000 for the Share Plan and \$1,000 for the other, but by combining them in their internal accounting the fees will stay exactly as they are.

Mr. Shamoun said that there is one difference in the Statutes in that they have changed the length of terms that Pension Board Members can serve from two to four years.

Mr. Clem said that the main directives are in the Attached Adoption Agreement, then read

the Ordinance by Title as follows as well as the “Whereas” statements and Sections 1-5:
AN ORDINANCE OF THE TOWN OF INDIAN RIVER SHORES, INDIAN RIVER COUNTY, FLORIDA AMENDING THE TOWN OF INDIAN RIVER SHORES’_DEFINED BENEFIT PLAN; PROVIDING FOR CONTINUITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

A motion to approve the first reading of Ordinance 504 was made by Councilmember Atchison, supported by Councilman Weick, **which passed 5-0**. Councilman Weick asked how the Pension Fund was performing, and Mr. Shamoun said it was up about 2 – 2.5% going into September, and ended the year a little bit above 9% return. This is above expectation (7.5%), so the contributions required from the Town may eventually be lowered. Using a lower rate of assumption and leveling out contributions was discussed briefly before Mr. Shamoun departed.

5. **Town Manager**

a. Extend Medical Director Agreement Through December 31, 2011

Mr. Jefferson asked for the Council’s approval to extend agreement for the Town’s Medical Director, Dr. Mattice, for another year covering January 1, 2011 through December 31. Councilman Weick noted the typographical error that noted the year was incorrectly stated in the agreement as beginning January 1, 2010 rather than 2011. The **motion** made by Councilman Ochsner, supported by Councilmember Atchison, **to approve the Amendment extending the Medical Director’s Agreement for a one year period with the beginning year corrected to 2011 passed unanimously 5-0**.

b. Update on Land at The Point

Mr. Jefferson said that this is for informational purposes only, and introduced Ralph Monticello from the Indian River Land Trust (IRLT) to explain the plans for the 111 acres west of Town Hall. Mr. Monticello introduced himself as the Land Protection Manager for the IRLT. He said he was there to assure the Council and citizens of Indian River Shores that the Land Trust is purchasing The Point Development parcel exclusively to be preserved and to be held as a natural area. The property will remain gated and locked as it is now. Eventually the plans include using the land for occasional spring and fall bird watching tours organized and run by the Land Trust staff. Over a year ago he had approached the Town Manager and Town Clerk and expressed the Land Trust’s interest at that time in acquiring and preserving this property. More recently he spoke with Mr. Jefferson about their status. They are under contract and expect to close on the purchase the first part 2011.

Councilmember Atchison said as a member of the County’s LAAC (Land Acquisition Advisory Committee), they had contemplated acquisition of this piece of land. She discussed the requirements of purchase and for recreation if public funds were involved, which caused a stir among Town residents about canoe trailers and traffic. Mr. Monticello said this parcel is to remain a natural area and has been purchased with private money through fundraising over the past year, not Florida Communities Trust money or public money, so there is no requirement for recreation. He discussed the three parcels the IRLT has purchased this year on the river. One is near the Wabasso Bridge, and another is just above the Spoonbill Marsh adjacent to the County’s spoonbill marsh, which is locked because they can’t have public access as it is also a science experiment with water treatment. The Wabasso area will have a limited 6-space parking area so that people can take a 45-minute walk. This parcel in Indian River Shores is so beautiful and wet and filled with birds at various times of the year, they just want it to be a natural area, Mr. Monticello added. Councilmember Atchison asked if it would stay that way in perpetuity, and he said that their plans for that property would not change over time. She asked if there was a way for the Town to have this assurance in writing for the Town, and Mr. Monticello said that he believes it is possible. He speculated about what guarantee anyone would have with a different set of Commissioners or Land Trust Board 15 or 20 years from now to keep them from changing their mind. On behalf of the Land Trust and with their attorney’s guidance, Mr. Monticello said he is pursuing a defined conservation easement to provide to ancillary organizations to ensure

that the lands will remain in conservation status.

Mayor Kenyon asked for the first refusal for any future sale of the land, and Mr. Monticello said he would not be objectionable to it, but would have to check with their attorney.

Vice Mayor Ahrens asked how they would access the property, and Mr. Monticello said through the chain link fence gate that currently exists just to left of the power plant at Fred Tuerk Drive. Councilman Weick said that this is Town property, and Mr. Monticello said there is an easement across the Town property, which Mr. Clem affirmed.

Councilman Weick asked if the contingencies would be included for non-development for perpetuity, and Mr. Monticello said they usually keep it in perpetuity. He has worked for several land trusts over the years, and they've never had to surplus the property. Councilman Weick continued by asking if the sale would take this property off the tax rolls, and Mr. Monticello said they are a non-profit group, but it would be up to the Tax Assessor. They will apply for a tax exemption. He asked what contingencies must be met prior to closing, and the reply was the normal due diligence, such as survey, environmental assessment to ensure no pollutants are nearby, and the removal of two plats that existed which do not meet purpose of holding the property as a natural area. The Councilman continued by asking about the Fred Tuerk Drive extension that was given away before, vacated by the State to Westinghouse/Treasure Coast. Mr. Monticello said there was some uncertainty, and they will go through the vacating of a plat process. The utilities easement that goes through the property would stay, Mr. Monticello affirmed, and said there were no intentions of building any boardwalks through the property.

The Mayor said it would be helpful if they would put these assurances on paper, along with the right of first refusal on a resale. Mr. Monticello said he would bring these to the attention of their Board and attorney.

Mr. Clem said that there were at least three things that came to light that caused the Town's concern, 1) the Town needs access to Town property across Parcel A, which is over an easement on Fred Tuerk Drive. Secondly, access to a Water/Sewer easement, and third, electric. Councilman Weick said that the Mosquito Control has access, and Mr. Monticello said that they partner with Mosquito Control District frequently for services and to be their eyes and ears. Mr. Clem said he would be happy to work with any attorney on getting these clarifications in writing.

Councilmember Atchison asked if we have assurance that someone from the Trust will accompany whoever is on the land at all times? Mr. Monticello said that is how they run their tours.

Mayor Kenyon reiterated traffic concerns for our Public Safety Department, the number of people allowed, and asked about fishing restrictions. Mr. Monticello said it is gated, and they rely on Mosquito Control and the Public Safety Department to patrol the waters for fishing. Mayor Kenyon asked if it would be posted as no fishing, to which Mr. Monticello replied that at the Western area, they would put a sign that it is a natural area, and to please tread lightly and don't litter. The Mayor said he has heard from some in the community who think it's a great idea to have this open land that people could go and look at the birds or mangroves, as you suggest, and see life as it was. Mr. Monticello said he hopes his staff will work in partnership with Town Staff.

Councilman Weick asked if there would be dog walking allowed, and he said that they are not promoting it as a dog area.

Councilman Ochsner said it sounds like the Land Trust is preserving status quo. He paddles around there, rarely seeing any fishermen. He doesn't see any problems.

Mr. Jefferson said that the three questions Mr. Clem mentioned have been brought to John McCoy at the County, which will be answered prior to the sale. Their meeting is December 22, and closing is not until early 2011. Mr. Monticello said he will keep Council abreast.

Jack Mitchell, 220 Sandpiper Point, asked if there were going to be any decisions made on Land Trust today, and Mr. Jefferson said it was an informational update only.

c. Town March 2011 Election Qualifying Period

Mr. Jefferson said that the General Election for the Town is March 8, referring them to the

requirements stating the qualifying period from 12 noon on January 17 through noon on the 21st. We have one announced candidate and at least three who have expressed interest. Making any candidates aware of the requirement to attend the meetings at Town Hall and other offsite committee meetings are what the Mayor has been emphasizing to those who are interested, and the fact that there is no pay involved.

7. Call to Council

a. Committee Reports

Beach and Shores. Councilman Ochsner reported that the Committee didn't meet this month. Phase I of the sand renourishment commenced on December 6, and should be completed by now. The Phase II activity will begin in February 2011. Mayor Kenyon asked about the turtle statistics, and the Councilman said they had a mind-numbing amount of statistics. Everything looked good overall for the turtles, with the net effect being that the refined upland sand is wholly satisfactory to the turtles and is now an approved source for beach renourishment.

MPO. Councilmember Atchison said she had to attend a funeral this month and was unable to attend this final MPO funding meeting. Mr. Jefferson attended in her stead, and said that everything was approved as presented. Mayor Kenyon asked how bad the shortfall was for funding, and she said something like \$50 million. This is a 2035 and forward plan, and 2060 is now in the planning stage. She said it is interesting to learn about the County roads at these meetings. Councilman Weick asked if they discussed increasing the excise tax on gasoline, and Mr. Jefferson said they did not.

Florida League of Cities Intergovernmental Relations Committee. Councilmember Atchison said other than lobbying against unfunded mandates, they discussed supporting legislation expanding the criteria for the use of law enforcement trust fund dollars to better enhance law enforcement and related initiatives. For example, the Town's funds for roads and bridges are restricted, and having the funds available for release would help other towns or cities. Secondly, the emphasis on "pill mills" is receiving a lot of emphasis as it is a huge statewide problem. Third, there is a bill in process that calls for everyone who serves as a lunchtime emergency communication operator (ECO) to undergo the required ECO training, which police officers already receive. The big cities believe this to be a total waste when the budgets are so strained.

TCRLC. No meeting this month.

Affordable Housing Advisory Committee (AHAC). Vice Mayor Ahrens reported that the meeting will be held quarterly. The Mayor discussed the homeless and rental property briefly with the Vice Mayor.

Treasure Coast Regional Planning Council (TCRPC). No need to attend as an alternate this month.

Legislative Luncheon. Councilman Weick said that he attended a luncheon with State Legislators Mayfield and Goodson as speakers. Representative Mayfield is reintroducing her legislation on the (City of Vero Beach) utility being under control of the Public Service Commission, he added, concluding it was an interesting meeting. Councilmember Atchison, who also attended, agreed.

Community Leaders Summit. Councilmember Weick also attended this event at Pointe West with a presentation on the Florida East Coast Railroad (Amtrak) coming through, with a planned station in Vero Beach. Vice Mayor Ahrens said that the Senate Bill called for funds to be allocated for railroad maintenance, which Councilman Weick said were to improve the tracks to handle a stop here. Councilmember Atchison noted that they are relying on Federal Funds, and the State can't afford it. It was a beautiful presentation Councilman Weick concluded.

Chamber of Commerce Building Dedication. Councilmember Atchison and the Town Clerk attended the dedication of the new building in honor of Alma Lee Loy.

Economic Development Council (EDC). Councilman Weick said this meeting was cancelled.

Sustainability. No meeting.

Elected Officials Oversight Committee. No meeting.

TCCLG. Mayor Kenyon said that he was out of the country and was unable to attend this meeting.

Indian River Mayor's Meeting. No meeting this month.

6. **Call to Audience**

Mr. Jack Mitchell, 220 Sandpiper Point, said that Mr. Monticello, the Protection Manager for Indian River Land Trust (IRLT), made a very nice presentation, although he was shocked to find out about this plan. Mr. Mitchell unofficially appointed himself as the Land Protection Manager for Indian River Shores as of this date. As the current Vice-Chair of the Indian River Shores Planning and Zoning Board, the first person (the head of) Concerned Citizens of Indian River Shores when the bridge extending Fred Tuerk Drive was planned, the second president of the Indian River Shores Resident's Association, and a 40 year resident of the Town, he is emotional and passionate about this issue. It saddened him greatly. After speaking to a number of residents in Indian River Shores, he found a consensus to fight this effort to allow a foreign (non-Indian River Shores) entity to own property in the center of our Town, particularly 111 acres. He said that the Estuary was an outstanding development, maybe one of the nicest in North America, and was sad that Mr. Doerr was not able to complete plans to build an additional 25 homes on that parcel. Mr. Mitchell said that the Town should buy this property, and others he spoke with agreed, in order to control our own destiny. This falls into the pattern that Mr. Grudens presented eight years ago with the plan to make this a hiking area, kayakers, and birdwatchers with facilities for property users. It is already a bird sanctuary. The restricted area in the Northwest portion of the 111 acres is a navigable waterway plotted on maritime charts, and he wondered if it was possible to keep people out. Mr. Mitchell said if there is a park, it should be controlled and owned by Indian River Shores, not an outside entity. He asked if the IRLT would have to follow Town ordinances, and the Mayor and Town Attorney said yes.

Mr. Mitchell said that the broad outline by Mr. Monticello today was very well done, but we have to get it in writing. He expressed concern about the small amount of land owned by the town, saying there may be funds in the form of a loan from the Florida League of Cities rather than a bond issue. Mayor Kenyon said if the IRLT lives up to what they say today, why should we put out \$6 million to buy the land that won't be any different than if the IRLT owned it?

Councilman Ochsner said that this is somewhat of an academic conversation, as the land is under contract already. Mr. Mitchell said that's true, but asked if there was any possibility to buy a portion of it.

Councilman Weick asked Mr. Monticello if it was possible to sell the Town a part of this property for a dire need, and Mr. Monticello said they were trying to keep it as conservation green space.

Mayor Kenyon asked Chief Schauman about all the break-ins people were talking about, and the reply was that there has been only one in our Town in the past nine months. Others are outside the Town. Mayor Kenyon complimented him on our Public Safety visibility being very good, which was echoed by the Council.

7. **Adjournment**

There being no further comments, the Mayor adjourned the meeting at 4:43 p.m.

Respectfully submitted,

/s _____
Laura Aldrich, CMC, Town Clerk

(Approved by the Town Council at the 1-27-11 Meeting)