



MINUTES
THE TOWN OF INDIAN RIVER SHORES
6001 North Highway A1A, Indian River Shores, FL 32963
REGULAR TOWN COUNCIL MEETING
Thursday, December 18, 2014
9:00 a.m.

- PRESENT:** **Brian M. Barefoot**, Mayor
Gerard A. Weick, Vice Mayor
Richard M. Haverland, Councilman
Thomas F. Slater, Councilman
Michael B. Ochsner, Councilman (*newly sworn in*)
- STAFF PRESENT:** **Robert Stabe**, Town Manager
Chester Clem, Town Attorney
Lt. Tony Dudley, Acting Public Safety Director
Jose Guanch, Building Official
Laura Aldrich, Town Clerk
Heather Christmas, Treasurer
Lt. Mark Shaw, Public Safety
Shawn Hoyt, Public Safety
- RESIDENTS:** Approximately 10, plus Bill Beardslee, Linda Bolton & Barbara Bunney (PZV); Bob Auerwater, Finance Committee
- GUESTS:** **Pilar Turner**, CoVB Council; Reporter **Lisa Zahner**, VB 32963

1. **Call to Order**

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

Mayor Barefoot called the meeting to order at 9:02 a.m. with the Pledge of Allegiance and Invocation repeated. Town Clerk Aldrich called the Council role as shown above.

A request was made to change the agenda due to a conflict with schedules for outgoing Councilman Cadden which precluded his presence today. The Mayor also requested to add an item to update the Council on yesterday's mediation hearing with the City of Vero Beach and Indian River County. A **motion to approve the agenda changes** made by Vice Mayor Weick with support from Councilman Slater **passed 4-0**.

2. **Proclamations / Presentations**

- a. Recognition of Outgoing Councilman Thomas Cadden (*see 1 c. above*)
- b. Dan K. Richardson Awards (5 Individuals Honored) (Brian Barefoot/Freddie Woolfork)

Mayor Barefoot noted that there are five (5) recipients this year for the subject award: Tomas Perez, William Glavin, Robert Samuel, Joan Woodhouse and Nancy Johnson. Three of these are residents of the Town. Backgrounds submitted listed a number of involvements with the Gifford Youth Activity Center, Habitat for Humanity, and many other agencies. Since they have contributed quite a number of hours to benefit the community, he thought it would be appropriate to recognize them by way of a letter from the Town. A **motion** by Vice Mayor Weick, seconded by Councilman Haverland, **to approve the five letters passed 4-0**.

- c. Economic Development Positioning Analysis Update (Helene Caseltine, IRC Chamber)

Helene Caseltine, Director of Economic Development for the Indian River County Chamber of Commerce, gave an update on the countywide economic development positioning analysis. This effort began last July, which involves analyzing how the county competes both with other Florida counties and nationwide in the business marketplace for abilities, business amenities, etc. Using consultant firm AD Voltage, over 120 Indian River County residents, key industry leaders, and elected officials were interviewed last July. Sections 2 through 6 of 7 sections in the report are available online.

Another work session is scheduled for Thursday January 8 at 8:30 in the Sebastian City Council Chambers. These are open to the public, and Ms. Caseltine encouraged the Council to attend. Consultants will be there looking for comments and input. Websites www.IRCCDD.com or the Chamber website www.indianriverchamber.com (Economic Development tab) contain about 100 pages of information right now.

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.

3. **Council Vacancy**

The Mayor said we were very fortunate to have two candidates to consider in filling the vacancy that was created by Tom Cadden's resignation, and both have served the Town well. Mike Ochsner previously served on the Council and has been the Finance Committee Chairman. Linda Bolton was Vice Mayor of Wellington, Florida, and is currently serving on the PZV Board for the Town. He and Councilman Haverland said they have spoken with her, and Councilman Slater found that she is very qualified upon reviewing her qualifications. He urged both candidates to run for election in March. Vice Mayor Weick made a **motion to fill the vacancy by appointment of Mike Ochsner**, which was seconded by Councilman Haverland. With no discussion, Vice Mayor Weick made a **motion to close nominations**. Councilman Slater seconded that motion, which **passed 4-0**. Councilman Ochsner was sworn in by the Town Clerk and seated at the dais. The Council called for his resignation from the Finance Committee, who will have to select a new chairman.

4. **Consent Agenda**

- a. Acceptance of November 10, 2014 Planning, Zoning & Variance Board Minutes
- b. Approval of November 13, 2014 Public Hearing – Trash & Recycling Services Minutes
- c. Approval of November 19, 2014 Public Hearing – Rezoning Comp Plan Amendment Minutes
- d. Approval of Regular Town Council Meeting Minutes dated November 19, 2014
- e. Approval of Invoices Associated With Electric Utility Service Issues
- f. Approval of Invoice from Labor Attorney dated November 17, 2014√
- g. Approval of Invoice from Town Attorney dated October 31, 2014
- h. Approval of Purchase of Extrication Equipment as Budgeted FY 14-15
- i. Approval of Purchase of New ATV as Budgeted FY 14-15
- j. Approval of Indian River County Traffic Signal Repair Invoice

Lieutenant Shaw explained that the PSD budget originally included the purchase of an ATV with a rebate, which the 2014 item was no longer available. The 2015 model does not have a rebate, so it is \$300 more for a total under the umbrella of the Florida Sheriff's bid of \$10,210.

Councilman Ochsner asked what they are buying, and the Town Manager said it is a Kawasaki Mule, which seats two side by side with a bed to carry equipment. They last much longer than the Hondas' we had in the past, Councilman Ochsner noted. We will auction the older ATV.

Being no further questions, a **motion to approve the consent agenda as listed** was made by Councilman Haverland with a second by Vice Mayor Weick, which **passed 5-0**.

5. **Town Attorney**

- a. Ordinance 517, Police-Firefighter's Defined Benefit Pension Plan Documents Restated – **2nd Reading**

Mr. Clem read the Ordinance 517 relating to the Police-Firefighter's Defined Benefit Pension Plan by title as printed below:

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE TOWN OF INDIAN RIVER SHORES' POLICE-FIREFIGHTER'S DEFINED BENEFIT PLAN TO ADOPT THE RESTATED AND REVISED PLAN DOCUMENT; PROVIDING FOR CONTINUITY; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

With no discussion from the Council, a **motion to approve the final reading of Ordinance 517** was made by Councilman Haverland with a second from Councilman Ochsner, **passing 5-0**.

- b. Ordinance 519, OPEB – **1st Reading**

As requested by the Council last month, the Ordinance to set up a master trust fund for Other Post-Employment Benefits with Florida Municipal Pension Trust Fund was prepared and read by title by Mr. Clem as follows:

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF AN OTHER POST- EMPLOYMENT BENEFIT TRUST FOR THE EMPLOYEES OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA; AUTHORIZING THE JOINING AS A PARTY TO THE FLORIDA MUNICIPAL PENSION TRUST FUND (FMPTF) MASTER TRUST AGREEMENT AND THE PARTICIPATION OF SAID TRUST IN THE OTHER POST-EMPLOYMENT BENEFIT PLAN TRUST UNDER THE FLORIDA MUNICIPAL PENSION TRUST FUND MASTER TRUST AGREEMENT;

PROVIDING FOR SEVERABILITY OR REPEAL OF CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE.

As there is no amount set forth in the ordinance, it can be funded as the Council so wishes. Attached to the Ordinance are Exhibits 1 -4 (mandatory material with the policy and procedure, documentation that it is part of the FMPTF, the Trust Joinder Agreement and the Investment Policy). Mayor Barefoot and Councilman Haverland said implicit, explicit, and buyouts are the three fund cost requirements described in the agreement. The document has been reviewed by Mr. Shamoun, the outside counsel, Mr. Clem and Mr. Stabe, who all concur that funds may be withdrawn from the trust fund.

Vice Mayor Weick asked if the funds are retrievable if there is no one left to draw from the fund, and was told that there is there is no commitment to contribute any amounts. The Mayor said he wanted to be sure the Trust Agreement is very specific about what is allowable. A **motion to approve the first reading** was made by Councilman Slater, supported by Councilman Haverland, which **passed 3-2** with Vice Mayor Weick and Councilman Ochsner disapproving.

Mr. Clem also informed the Council that a lawsuit, actually more of an appeal, has been served to the Town regarding the recently approved Spectrum project. The issues outlined are: 1) objection for granting a variance for parking spaces; 2) failure to put a 3' wall to shield Mrs. Kay from headlights, and 3) objection to displaying our zoning map that showed Lot 8 as residential when it had been rezoned previously as commercial.

Following minor discussion about the process, Mr. Clem said the project is on hold until this is settled, which we expect will take approximately 90 days.

6. Mayor's Items

a. Consideration for Rescheduling May 2015 Council Meeting

The Mayor asked the Council to consider rescheduling the May meeting as he will be unable to attend due to his travel schedule, which brought a **motion to move the meeting from May 28 to May 21 at 9 am** being made by Vice Mayor Weick with support from Councilman Haverland, which **passed 5-0**.

b. Town Manager Performance Evaluation

Mayor Barefoot said the evaluation has been completed, with all five inputs being compiled to an "exceeding expectations" composite score. The Council expressed appreciation for his performance and efforts with the Town business and the residents. The Mayor also proposed that Mr. Stabe be given a 3% salary increase as the other Town employees had received, which resulted in a **motion to approve a 3% raise effective January 1 for the Town Manager** being made by the Mayor with a second by Councilman Ochsner, **passing 5-0**. They agreed that the next review will be at the end of 2015 with the raise effective in January.

Mediation Update. The Mayor recapped the mediation with the City of Vero Beach, Indian River County and mediator Carlos Alvarez, who he said did a very good job with a difficult situation. They agreed to an interim settlement period via an interim agreement subject to certain sign-offs that will take place. Mayor Barefoot said our attorney, Bruce May, had summarized it as **agreeing to abate the Town's lawsuit** until Monday, March 2nd, 2015. He read the Interim Agreement in its entirety to the Council and audience.

The parties' mediation teams agreed that

1) The Town may proceed with an evaluation, which may include an RFP process of the most appropriate options of the Town to provide electric service to its citizens upon expiration of the franchise agreement, which is November 6, 2016. As part of that evaluation process, the Town agreed to invite the City to submit proposals. The County likewise will be free to conduct its own evaluation process. The City agreed not to object to the Town meeting with other potential electric utility providers, including but not limited to Florida Power and Light (FPL), to discuss the feasibility to provide electric service to the Town and its citizens after the franchise agreement expires. In addition, the City also agreed to provide the Town and the County with a formal waiver of contract interference claims similar to the agreement that the City, FPL and OUC agreed to when the City decided to amend its power purchase agreements. However, the City indicated that it would not be able to commit to provide that formal waiver of claims agreement before January 8th, primarily due to the holidays. While the City agreed not to object to the Town meeting with other potential electric providers, as part of the Town's evaluation of options available to provide electric service to the Town and its citizens after the franchise agreement expires, the City made it clear that it was not agreeing that the Town was authorized to provide electric service to its citizens after the franchise agreement expired. In other words, they were not giving up their right to claim that the territorial agreement that they have supersedes the franchise agreement that we have with the City. The City agreed to continue to explore a variety of options to lower electric rates, which option would include but not be limited to, continuing to work with FPL, OUC, FMFA, bond council, bond trustees and others to effectuate the sale of the City's electric utility.

- 2) Negotiating with OUC and FMPA on reducing the City's cost under its long term power supply arrangements;
- 3) Conducting a cost of service study; and
- 4) Continue to identify additional cost control measures that could bring rate relief to all of its customers. The City also stated that it intended to pursue conducting a referendum on the creation of an independent utility authority and agreed to work in good faith with the Town and the County on the details of that authority, including its powers, structure and composition.

The City agreed to provide the Town, the County and the mediator with a report on the status of efforts to lower rates, which would include the status of the pending sale to FPL and to create an independent utility authority. This report will be provided by the City no later than February 18, 2015. Unless the Town and the City agree otherwise to continue abatement of the lawsuit, the lawsuit would be resumed on March 2nd, 2015.

The Town is trying to be cooperative and negotiate in good faith. We were the only party to offer a settlement; neither the City nor the County did. We proposed a 5-month standstill or abatement, and part of our request was that the City would acknowledge our right to select our provider and to give that provider access to the right-of-way. They would not as it would affect their argument that we do not have that right. Therefore it was agreed to have a 2-month abatement to see what our alternatives are. The City has been talking about doing all these studies, and hired more consultants at the ratepayer's expense. When we have the signed agreements in January, we will decide how to proceed.

Shortly after the mediation session concluded, the City Council of Vero Beach met to address the interim agreement between the City, the Town and the County. The Town Manager and Vice Mayor monitored the meeting, and reported that the City approved the interim agreement in principle, and then approved the filing of a petition for a declaratory statement with the PSC to address unresolved issues raised by the County's PSC filing. Both the manager and Vice Mayor expressed concern that this could be a collateral attack on the Town's lawsuit against the City, which all of our mediation teams agreed would not be abated until March 2nd. This was not mentioned at the mediation session. It would be duplicitous for the City to agree to abate the Town's lawsuit and then collaterally attack the issues in the Town's lawsuit during the abatement period.

The Town's Attorney Mr. May immediately called the City Attorney Mr. Wright, who said the petition would be narrowly drawn to only address issues pertaining to the County, not the Town. We talked a lot about trust yesterday and negotiating in good faith. The feeling that the City is unjustly enriching themselves at the expense of outside ratepayers has been going on for a long time. If the referendum proposed by the City passes, this new utility commission will have to deal with FMPA and OUC for purchase power contracts, and may not have any more success than the City had. We are very disappointed and surprised that Mr. Wright did not give Mr. May the heads up aside from the meeting.

The Mayor mentioned that the total real estate tax in Vero Beach is \$4.1 million, the transfer from the electric utility to the GF is \$5.4 million. The Town revenues generated is 8.5% of the total revenues for the CoVB utilities. Either Mr. O'Connor or Attorney Wright said that is insignificant, so why are we still going through these discussions? No conversations with FMPA were mentioned.

Vice Mayor Weick found it ironic that the City is trying to reduce its electric rate, and the contribution from the utility to the General Fund was not reduced, but increased by over a quarter of a million dollars.

Councilman Slater said he admired the effort on the part of the Town and the mediator, and the only ones who stepped forward with an alternative option was the Town. The substation in Indian River Shores was mentioned, and as we stepped forward, they stepped backwards. The longer it takes, the more we pay higher rates. They say they don't like the high rates, but also say there is nothing they can do about it. Raising taxes is an option they will not consider, apparently.

Mayor Barefoot said they had a friend who just moved here, and suggested that they only looked at places served by FPL and not by CoVB electric. This is consistent, and businesses are even more so inclined to have FPL rather than CoVB electric. The City utility expenses transferred include \$1.8 million of staff salary in addition to the \$5.4 million funds from the utility. There is also \$18 million unrestricted cash on hand in the utility fund, Vice Mayor Weick added. The return on investment should be returned to the people, not the utility. The City is a not for profit, and they are not to make excessive profit.

A motion to approve the decision made by the mediation team was made by Vice Mayor Weick with a second from Councilman Ochsner, which **passed 5-0**.

Will McDermott, a new resident on Silver Moss Drive, asked if there are any other providers who could bid on the electric? The Mayor said FPL already serves the north end of the Shores. They have the lowest rates in the state. OUC could sell us power, but have no transmission lines. If we are successful, the infrastructure is over 30 years old and almost fully depreciated, so we could purchase the assets if needed.

Bob Auerwater attended the mediation yesterday, and noted the mediator questioned how there could be a referendum when they don't know how the potential utility commission will be structured.

7. Discussion with Possible or Probable Action

a. December 8, 2014 Meeting Report – Planning, Zoning & Variance Board (Bill Beardslee)

Mr. Beardslee said it was a normal PZV Board meeting, with a setback variance for 133 Silver Moss Drive in John's Island approved by the Board with no Council approval needed.

A request for approval to transplant oak trees was considered for 551 and 541 Sea Oak Drive, which are adjoining lots being developed by a common developer. The LDC 167.02 (h) allows the trees to be transplanted with the condition that if they die, they must be replaced. The Tree Protection Officer and PZV Board recommended approval.

Another request to remove a tree at 1620 Weybridge Circle, which the Tree Protection Officer said was justified as it is causing damage, was approved with the mitigation of a 12' tall 4" caliper oak tree.

Mr. Beardslee said he tries to cite provision of the LDC to the Council. They are in the business of enforcing the rules, which is the LDC and other ordinances. At the last Town Council meeting the motion was made and approved to allow up to 3,000 ' **retail space in the proposed rebuilt commercial building on the Spectrum property**. Tenants must be vetted as "reasonable" retail, which is not in the documents. Mr. Beardslee questioned how they are to choose what is reasonable. Mr. Guanch added now, if someone comes in for retail space, they have to be put on hold for up to four (4) weeks for PZV Board to convene, then the guidelines are not clear. The Council and Town Attorney agreed that this is a totally valid point, with Mr. Clem stating that if an application comes in, it hits Mr. Guanch's desk first, who is the Building Official and it is not his decision. The only flow we currently have in our small community is the PZV Board. He suggested that we can modify our rules somewhat and make it a quasi-judicial hearing with additional standards, and perhaps use a scoring system. If the PZV Board does the initial hearing and approves it, then the Council would hear the appeal.

Following an extended discussion, they determined to set a workshop after the first of the year to gain input and then compile the guidelines.

Mr. Beardslee said the PZV Board is also in the process of reviewing the existing Land Development Code to make it more efficient and up-to-date.

b. Municipal Elections Agreement for Calendar Year 2015 (Town Clerk)

Mrs. Aldrich asked the Council to consider the updated bi-annual agreement, which this year has an option for the voters to receive their ballot by email or US mail, and the names of candidates must be provided no later than 6 p.m. on the day of qualifying, which is January 16. Our elections are March 10, and cost the Town fifty cents per ballot. A **motion to approve the CY 2015 Municipal Election Agreement** was made by Vice Mayor Weick, seconded by Mayor Barefoot, which **passed 5-0**.

c. Council Appointee to School Planning Citizen's Oversight Committee, Dr. Harry Krause, Applicant

This position was explained by the Town Clerk as once appointed by the Council, the County Commission also accepts our appointee. A **motion to approve the appointment of Harry Krause as the Town's representative on the School Planning Citizen's Oversight Committee** was made by Vice Mayor Weick with support from Councilman Haverland, which **passed 5-0**.

d. County Committee Representatives (AHAC Alternate, Beach & Shores Primary, TCRLC Alternate)

These appointments are to replace those positions which were held by Councilman Cadden. The Council agreed that Councilman **Ochsner** would be the **primary Beach & Shores** representative and **alternate on TCRLC** (Treasure Coast Regional League of Cities), with **Mayor Barefoot** agreeing to be the **alternate** representative to the **AHAC** (Affordable Housing Advisory Committee). Mayor Barefoot requested an updated list of the Committee appointments.

e. Police & Fire DB Pension Contributions (Councilman Haverland)

Councilman Haverland said last year's report showed our plan was 86% funded. In 2007, the Pension Board made a decision to use a smoothing method for showing the investment results over a 5-year period. Because of smoothing, we are 100% funded as of the end of September 2014 and the Town's contribution is higher than it should be, as we have over \$1 million in excess funds. This year we budgeted almost \$900,000 for pension, which is dramatically over-committing to the plan. He asked the Council to recommend to the Pension Board that they eliminate smoothing, which was done for the General Employee DB Plan. Councilman Haverland and Ms. Christmas also discussed the assumptions the actuary is using for this plan.

The Mayor ascertained that the Council wants a letter written to the Pension Board to adjust the assumptions to a 6% growth and eliminate smoothing. The Annual report will be received January 15, and it will include smoothing and an annual 10% increase. The report costs \$6500, and they discussed the possibility of having the Pension Board agree that the report guidelines need to be adjusted. Councilman Ochsner said we want the pension funded at 100%,

and agreed completely with what Councilman Haverland said. A **motion that Councilman Haverland work with the Town Manager and the Town Clerk to draft a letter to the Pension Board to address smoothing, the 10% salary growth, and the aggregate versus entry age method of computation** was made by Councilman Slater with a second from Councilman Ochsner, which **passed 5-0**.

A second **motion to temporarily only pay the minimum bi-weekly Town's portion of the Police-Fire pension rather than the prepayment as agreed last month**, made by Councilman Ochsner and seconded by Councilman Slater, **passed 5-0**. The Mayor thanked Councilman Haverland for digging into this matter.

7. **Town Manager**

a. Cell Tower Update

Mr. Stabe said he is working feverishly on this, and has looked at a number of other options at this point. We are waiting on the Verizon representative, who is coordinating an RF (radio frequency) study to determine what is currently available and where it is needed the most. After general discussion about solar powered repeaters for cell phone transmission in Germany, Caroline Ervin, 80 Cowry Lane, asked if the cell tower at Public Safety site could be looked at again. The Mayor said we want Verizon to commit to a tower housing three major carriers. She offered to help any way she could.

Mr. Stabe said they also received the nutrient separating baffle box grant, and a number of related processes will begin in January.

- b. CoVB Resolutions 40 & 41 for Utility Authority & Referendum Process (FYI, related to the electric issue)
- c. Purchase of Portable Radios for PSO's as Budgeted (FYI, approved at the last meeting)
- d. Departmental Reports (Building, Financial Balances, Public Safety)

Mayor Barefoot asked for a report on Public Safety staffing, which Acting Director Dudley provided by stating that one officer completed his fire academy training, and two others are three months away from being triple certified. One more newly hired fire/paramedic will go to police academy soon. Staffing levels were discussed, with Lt. Dudley telling the Vice Mayor that we are still understaffed, as seven (7) per shift is ideal, and we are now two (2) short from being fully staffed for 6 on shift due to the training. Per diem officers are being used in the interim until triple-training is completed.

The Mayor noted that Indian River Shores was recently declared as the safest small city in Florida, and gave credit to the PSD for good performance over a period of time. He wanted to make sure the officers know they are appreciated.

8. **Council / Committee Reports or Non-Action Items**

- a. Vice Mayor Weick had reported earlier, and no other reports were offered.

Councilman Ochsner said the excavation work on Fred Tuerk has begun, and questioned the depth and width of the swale. Mr. Stabe said the Public Works Director has been keeping an eye on it, and offered to check on it today as it was nearing completion.

9. **Call to Audience**

(No comments)

10. **Adjournment**

Having no further business, the Mayor wished everyone a Merry Christmas and happy holiday, and adjourned the meeting at 11:31 a.m.

Respectfully submitted,

/s _____
Laura Aldrich, Town Clerk

(Approved by the Town Council at the **January 22, 2015** meeting)