



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

**SPECIAL CALLED TOWN COUNCIL MEETING**

**Wednesday, February 1, 2017**

**4:00 p.m.**

**PRESENT:** **Michael B. Ochsner**, Vice Mayor  
**Robert F. Auwaerter**, Councilman  
**Richard M. Haverland**, Councilman  
**Deborah H. Peniston**, Councilmember

**ABSENT:** **Brian M. Barefoot**, Mayor (Excused)

**STAFF PRESENT:** **Robert Stabe**, Town Manager  
**Chester Clem**, Town Attorney  
**Bart Crosby**, Public Safety Sergeant

**OTHERS PRESENT:** **RESIDENTS (26):** **Chris Hendricks**, PZV Board Chairman; **Gus Keramidas**, **John Papageorge**, **Marius Mavricos**, **Ralph McCrae**; **Bob Gardell**, **Bob & Joyce Carter**, **Jim & Madeline Higgins**, and **Paul & Jerri Ives** from Pebble Beach Villas; **Joanne Sardella**, Pebble Lane; **Patricia & William Gundy** Pebble Bay; **Nancy Auwaerter**, Ocean Colony; **Matt & Mary Anne Sitkowski**, **Bob Soos**, **Paul Parparian** and **Bill Kluckas** of Surf Lane; **Diana Sweeney**, Harbor Island Club; **Jeanne Manley**, John's Island; **Bill Seawright**, Bermuda Bay; **Joan Volkert**, The Estuary; **Dave Morgan**, The Shores; Guests **Wesley Davis**, **Bill Baker**, **Luke Webb** & Reporter **Janet Begley**

**Laura Aldrich**, Town Clerk  
**Heather Christmas**, Finance  
**Rick Villars**, Firefighter/Paramedic, PSD

1. **Call to Order**

- a. Pledge of Allegiance
- b. Invocation – Vice Mayor Ochsner
- c. Roll Call – Town Clerk

The meeting was called to order by Vice Mayor Ochsner at 4:02 p.m. The Pledge of Allegiance and invocation were recited and the roll call is reflected above.

2. **Town Manager Findings Regarding Disposition of 5-Acre Parcel**

Mr. Stabe reported that in anticipation of the Town Council's decision to have him investigate the marketing options of the Town's 5-acre ocean view parcel as well as their direction at the last Council meeting, he had looked into an option other than the typical real estate broker transaction. Before those details were discussed, he made Council aware of an email he had received from Bill Baker, Premier Properties Estate, that was received this morning requesting Council's consideration of their services as well. Mr. Baker, Broker Associate Premier Estate Properties, was present, and addressed the Council at Mr. Stabe's bidding.

Mr. Baker said he has been involved with real estate for 28 years, and their firm has been heavily involved in real estate development for more than a decade. He envisioned something like Old Oaks across from Rio Mar, 10 single family lots with homes in the \$2-\$3 million range on the Town's 5-acres, with gated beach access across the sliver of property that belongs to the County. He did not think an auction firm is to the Town's best advantage. He said they have dealt with buyers nationwide, and left a presentation with the Council.

The Council asked Mr. Baker several questions, including the property's value (not able to provide yet), expected compensation if they were to be retained (in the 5% range), if the property would be sold in lots or a development package (they would work with a developer who would lay out a plat plan for everyone's approval and bring in builders and buyers), maximum number of lots or residences envisioned (12), the sale price for what they considered comparable property, the Old Oaks property in Rio Mar (3.3 acres closed at \$3.6 million). The Vice Mayor asked Mr. Clem about deeded beach access, which Mr. Clem said we do not have, but rather have access through a perpetual easement from the Town's property to the County park and to the beach.

More Council questions were answered, such as a 2-4 weeks for a turnaround proposal and using a sales trailer and open listings for realtors to take a couple of months to get the property developed. Mr. Baker offered to meet with any or all the Council to provide more details, and gave each a brief presentation packet.

Town Manager Stabe continued that before the Christmas holidays last year he was approached by Mr. Wesley Davis of Indian River Auctions and Appraisals (IRAA), and found their approach to be intriguing in regards to

*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.*

marketing the property. Over the past several months, Council discussions led him to believe their desire is to have single family homes, possibly in conjunction with condominiums, or even possibly as a park if the Indian River Land Trust was interested. The Council is disinterested in having a developer intent on squeezing as many homes as possible on this property, but rather wants to maintain consistency or a complimentary atmosphere. Selling through an auction allows it to be offered in more than one configuration as well as in the form of one parcel. If we used a traditional realtor broker transaction, he opined, it eliminates selling the parcel in anything but one configuration. Upon completion of the auction, the highest bid(s) would be brought to the Council for approval or refusal. He mentioned recent news articles about double lots on the ocean sought by buyers, and IRAA has indicated that this would be heavily advertised locally, in the northeast and south Florida to attract as many interested buyers as possible. Real estate is on the upswing, and to have maximum participation, time is critical. It is recommended that the auction take place before April 8 when people go back north, which is why we called this special meeting. The Town Charter gives leeway in the RFP process, and IRAA is operating currently under an RFP for auction services that was already piggybacked on by the Indian River County School District. Our Town Attorney has advised that we would not be required to complete the RFP process.

Mr. Stabe introduced Wesley Davis whose firm specializes in government surplus auction of real estate and equipment. With transparency as a focus for elected officials, this process levels the field for all people involved as it eliminates choosing a favorite real estate firm, as the auction process essentially hiring all realtors. He mentioned the County's RFP has been renewed annually since 2013, and when the County declared the old courthouse and the Osceola Magnet site as surplus, their disposal was handled by KC Daniel of Associated auctions in Stuart. They all work together.

Mr. Davis explained the division of the parcels, which currently are divided with one close to the ocean and the other close to A1A. He recommended splitting them three (3) 1.6-acre east-west lots. He proposed to bring this to the Planning, Zoning and Variance Board on February 13 at no expense to the Town to request a variance, as they would each be 1' short of being in compliance with Town Code that requires a variance to meet the required 120'. Then pending outcome of that meeting, it could be brought to Council February 23<sup>rd</sup>. He offered a board auction, with five (5) full time auctioneers managing bids on Parcel A, Parcel B, Parcel C and Parcel D (all of A-B-&C combined). We don't know what the highest and best price and use for the property is, but the market will tell us whether it is one large family compound, three estate-sized lots, or one large lot combining two with the third going to a second buyer. The buyer they are looking for is not necessarily the developer, but the end user who wants the lot for their personal home. It will be a well-organized marketing campaign, he continued, mentioning the travel bloggers who recently came to the area and then wrote about what Mr. Davis calls "the Hamptons of the South." He said the April 8<sup>th</sup> deadline gives time to go to the PZV Board, back to the Council, address any changes on density, and then in mid-March kick off the auction campaign. He spoke about the marketing and credibility for the auction before stating that they would charge a buyer's premium, and would be refunding part of that premium to the Town. Buyers must put 10% down, and the sale would be brought to Council for confirmation or rejection in April. There will also be on-line interactive bidding, where proxy bids online often drives the price up.

Councilmember Peniston asked about the commission process, which Mr. Davis explained that in auctions it is accepted as a buyer's premium and is on top of the auction price. Councilman Auwaerter interjected that the buyer is looking at the all-in price, the maximum they will spend and didn't think it was material to the conversation. Mr. Davis addressed the end user again as one who is interested in having their choice of builders, no property owner association fees, no deed restrictions, and who wants their own little piece of paradise.

Councilman Haverland asked for Premier Real Estate Properties to give their perspective on the difference between auctioning and selling real estate. Luke Webb, Premier Real Estate Properties, said he has great respect for Mr. Davis and the auction method of disposing of property. He recognizes the parcel as being what they specialize selling, high-end real estate, and they represent developers and land buyers. The broker-buyer who purchased the Surf Club Development just south of Town paid \$7.9 million for that property, and Mr. Webb added he would not have come to an auction. Their specialty is explaining what can and cannot be done in development, since it is specialized property with the oceanfront parcel excluded. Specialized service is what sets them apart, and it will take extra time and marketing for this property. Premier has already spent \$65,000 - \$70,000 to market 8050 A1A at the north end of Indian River Shores. A Councilman ascertained that Mr. Webb has been involved with the marketing aspect of the Surf Club development, but Mr. Webb was not able to respond to a request to place a value on the Town's 5-acre property at the moment.

### 3. Council Discussion

Councilmember Peniston asked if they were mostly interested in a large number of houses, and Mr. Webb said they would work with Council to determine the desired buyers, and tailor the lot or property, determine the target buyer,

and determine the highest and best way to market the property, whether by absolute auction or take time to develop the market to find the right buyer for it. Mr. Davis replied to the comments about the auction process and the Surf Club property.

The public land issue behind the property was also addressed by Mr. Davis as County-owned property and will be fully answered in the bidder's package. Buyers or anyone else may cross the property, but it can be locked at the property line. He said the County has no plans to ever put a park on that sliver, which he said he would get in writing. They also will put a platform in the property to fully reveal where economics marketing and psychology come together and create a sensory awareness process similar to test driving a car, by showing them the view.

Councilman Haverland said the buyer is getting more than he pays for with that extra piece of public land adjacent to theirs. Vice Mayor Ochsner asked if a variance is still needed if the 5' easement is taken out, and was told it would be.

#### 4. Public Comment

**Ralph McCrae**, President of Pebble Beach Villas located immediately to the south of the property, discussed the map's representation of property lines, which Mr. Stabe assured him were not accurate. Mr. McCrae said they have had access to the beach by courtesy of the County for over 40 years through daytime unlocked gates. Several Council agreed that there would be no impact on their access. Mr. Clem had the official survey, which supersedes the Appraiser's approximate GIS aerial view of property lines. The other concern Mr. McCrae addressed was that the Pebble Beach Villas residents were also opposed to condominiums, and Councilman Haverland said that was their preference also, but not a requirement.

Mr. Davis said the 5' easement could be described on the deed and suggested dividing the total ocean view frontage by thirds, the A1A frontage by thirds, and then drawing the lines. He offered to meet with the nearby residents and encouraged them to go to the PZV Board meeting to address their concerns.

**Jim Higgins**, a seasonal resident for 23 years of Pebble Beach Villas, believes the highest and best use is as a park (*applause*). He asked if the Town would offer the property to Indian River Land Trust (IRLT), and whatever price the Town receives is secondary to the use of the property. He also asked about the title history of the property, and was told there are many documents reflecting that it is unencumbered. Mr. Clem said it was sold by the developer to the County, then the Town sold 20 acres across the river to the County as part of a trade for this land. He agreed make the deed and legal documents that describe the property available. Finally, Mr. Higgins asked that there be a 5' encumbrance on the perimeter of the 5 acres by the Town. He also asked if the County could also restrict the owners of the 5-acre parcel by locking their access gate(s) to cross over the County land as they had at Pebble Beach Villas.

Vice Mayor Ochsner observed that the Indian River Land Trust, who bought Bee Gum Point, does not allow access except on very few days. Mr. Davis said he will reach out to **Ken Grudens at IRLT** to attend. Councilman Auwaerter noted the Land Trust does not pay property taxes, and we would lose income.

**Matt Sitkowski**, Surf Lane, received applause after recounting the Pebble Beach neighborhood group's recommendation last July to the Council to maintain passive green space and then posing questions about surplus and selling the property rather than keeping the land as green space, and asked if the Council had addressed additional traffic on A1A and destruction of natural habitat.

**Jeanne Manley**, resident for 25 years, is a proponent of open space and was involved with the Land Trust in New Jersey for 10 years. However, she disagrees with the property being made into a park. She asked them to think about the number of people it attracts, relating it to Jaycee Park, the traffic, and people from all over that would be coming here looking for a beach to go to. She said it is much better to have three or four houses there, maybe 10 people, not hundreds of people (*applause*).

**Bill Kluckas**, 909 Surf Lane, said this is not surplus property akin to a used fire truck. It is open space real estate owned by citizens. He was dismayed that the Council seemed disinterested in the proposal from last July. Selling it takes the property from public to private ownership. He also was skeptical of the Council's openness, having not seen the meeting mentioned on the Town's website. Mr. Stabe said there are requirements for advertising a special called meeting, and we not only had to meet the deadline for the paper, we spent extra money to publish the unrequired display ad to make sure that the residents did see it, as an extra step so that people would be aware of it due to the amount of interest. Regarding the Council declaring it surplus, they had to do this before they could direct the Manager to look into how to market it. This was discussed for months, but there was no direction. This is the path the Council chose, deem it surplus and look into how best to market the property. As far as this not being on the website, the Town Clerk said they have redesigned the Meetings page to have a monthly calendar, and the agenda may be in a link below the calendar if they can't see it on the calendar until the technical details are fixed. Mr. Kluckas said it was such a short time, from last Thursday, not deliberately and slowly. Mr. Stabe said he had mentioned earlier that he met with Mr. Davis before Christmas last year, who has been following this topic. It was just a matter of timing.

**Bob Soos**, 905 Surf Lane, agreed it seemed sudden to him also, not slowly and deliberately. Mr. Stabe reiterated that time is of the essence, before the residents leave for the season. Mr. Soos said when he bought the house in 2002 he was concerned there was an empty lot behind him, and was told it was a park. Mr. Clem said it was zoned as public use, such as municipal land like the Town Hall complex, not as a park. Mr. Soos asked why the rush, if it was for pressing financial reasons? Councilman Haverland replied with his opinions that Town is not in the business of investing in real estate, and the property it is not of some use to the Town. We are not selling because the market is high or low, it is simply getting out of a business that we don't want to be in. Councilman Haverland said this came up about 6 or 7 years ago, when we had a request to spend thousands of dollars to clean up the property, because the neighbors complained it was a fire hazard. We shouldn't keep property we have no plans for, he said, and restated this was all his opinion. Mr. Soos asked if the rest of the Council shares that sentiment.

Councilmember Peniston agreed that the Council has a fiduciary responsibility to maximize our assets, and it is a good market now compared to 2008, '09 or '10. No one knows when a recession will occur, and this is a good time.

Councilman Auwaerter said as Council, he doesn't use this property, and he did see the Pebble Beach POA report. He was there when it was presented, as the Chairman of the Finance Committee. The property is full of invasive pepper trees and badly overgrown. The Councilman respectfully disagreed that the property's value is as a nature preserve, and agreed with Councilmember Peniston's assessment that the market is much stronger. He also agreed with Mr. Haverland that we are not in the real estate business. He mentioned the \$4.5 million in liabilities for the PSD Pension Plan, the General Employee Pension Plan and an OPEB (other post-employment benefit) liability that the Town and its residents should have been funding. He agreed that now is the right time to sell this property, as we are hoping to pay for what was unfunded with some of the proceeds from the sale to "catch us up."

Vice Mayor Ochsner agreed that we are not in the land investment business, and we also are not in the park business. Mr. Soos was concerned with what may come into his back yard, hopefully nothing like the development going up just south of Town. The Council all spoke together that none of them want to see that. Councilman Auwaerter said as a result of the desire for low density, they may be leaving money on the table, but it is worth it. Mr. Soos said he thought Mr. Davis made a very good presentation, and with using the least amount of density as possible and still making a decent profit on the sale, he couldn't ask for much more.

**Kate Parparian** 916 Surf Lane, asked to make two points, once it's done, we can't take it back, and there will be more traffic.

**Patty Gundy**, Treasurer for Pebble Bay POA, wanted to clarify that she noticed at the meeting last week the Mayor looked at the Town Manager and asked him to look into how to market the property, mentioning it could include an auction. She also recalled the Mayor mentioning public notice and an easier way to contact the residents, because who reads the paper these days. She wondered why there was no mention of the auction company conversations. Several assumed there would be a presentation at this meeting, with several real estate brokers here, and an outline of steps we could take. It would have been nice to have more notice. She is also supportive of what is best for the Town, and understands financial obligations of the Town. She just wants the development to be pleasant and have a walkway.

Councilman Auwaerter said this still has to go through the PZV Board, and the residents will have an opportunity to voice their opinion. Everything will come back through the Council at the February 23<sup>rd</sup> meeting for final approval.

**Paul Parparian**, Surf Lane, questioned why not take a year to explore this do it next year. Councilman Haverland discussed this with him, that they would have time to decide whether it will be a real estate group or auction and let the whole town know. The Councilman understood that there are two groups, one who likes the land like it is and those who see no need to hold on to it.

**Joan Faulkner**, who used to live in Estuary and now is in Pebble Bay, asked how we got so far behind in our pension liability, and what we will do to prevent it from happening again. Councilman Auwaerter answered that we are not in bad shape compared to a vast number of municipalities in the State and nation. It is still short, and he sees it as an opportunity to get the gaps filled. Councilman Haverland said we didn't even know it was underfunded until four (4) years ago. Now we are dealing with it. There is no town or city in this state other than possibly Jupiter that has gone as far as we have in trying to get funded.

**Mary Anne Sitkowski**, Surf Lane, said one of the beauties of this area is the open space, and it took incredible courage not to develop all of the land years ago. She asked that we keep it as a beautiful nature preserve.

## 5. Recommended Action

The Town Manager made a recommendation to move forward with the auction process. This allows Mr. Davis to meet with the PZV Board, who could choose to recommend to approve this and then it comes back to the Council in February for final approval. He recommended two motions, one **motion to agree to piggyback with Indian River County RFP bid 2013-025 for auction services** which was made by Councilman Haverland with a second from Councilman Auwaerter. The Councilman then said if he was selling his own property, he would have a broker. For

the Town, we have to assure the taxpayers that we have gotten the best price for the property that is available. We also have a problem from a Sunshine Law perspective, there is nothing shielded from public view during this process. We could not have any negotiation strategy behind closed doors, the only thing exempt from Sunshine Law meetings in the public is litigation strategy for an active lawsuit. We can't do a minimum price behind closed doors because no private conversations with other Council members can be made, so he wants the residents to know that is why he is in favor of the auction. It allows the best price that day, at that moment. Councilman Haverland added that he favors the auction because it produces the best result. **The motion passed 4-0.**

Mr. Stabe recommended a second **motion, that the Council approve the proposed contract with Indian River Auction and Appraisal, LLC, along with the acceptance of the addendum agreement signifying that 20% of the gross buyer's premium to the Town will be refunded on any Town Council approved final sale**, which was made by Councilman Haverland and supported by Councilmember Peniston. Councilman Auwaerter provided a spreadsheet he had prepared for an auction analysis, and Mr. Davis has had one on one discussion with each of the Council. He discussed the commission schedule he had prepared. The selling price would earn a higher commission if it was higher than marginal sales price with break points, and proposed using the alternative buyer's premium received by the Town. Councilman Auwaerter made **an amended motion to amend Schedule #1** with a second by Councilman Haverland. Mr. Davis said he followed the thought process. His goal is to have three buyers at the end of the sale, and if there are three brokers who bring buyers, what is the commission. It will be based on the total of the three offers. Councilmember Peniston asked if it would be worth it at 7.5% versus 8%, adding she liked the incentive idea, although it is very complicated for a small amount. Councilman Auwaerter said it could save \$100,000 on a \$6 million sale. **The motion failed 3-1**, with only Councilman Auwaerter voting in favor.

The **first motion passed 3-1** in favor, with Councilman Auwaerter voting against it.

6. **Adjournment.** With no further comments, the meeting was adjourned at 6:06 p.m.

Respectfully submitted,

/s \_\_\_\_\_

*(Approved by the Town Council at the February 23, 2017 meeting)*