

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

REGULAR TOWN COUNCIL MEETING
Thursday, February 25, 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: **Robert J. Bradshaw, Town Manager**
 Laura Aldrich, Town Clerk
 Chester Clem, Town Attorney
 Bill Schauman, Director, Public Safety

OTHERS PRESENT: **Bill Beardslee, PZV Chairman; Tom Cadden, Utility Liaison; 5**
 Residents; 2 Reporters; 3 other guests

1. **Call to Order**

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

Mayor Kenyon called the meeting to order at 3:31, and these items were performed with the Roll Call as reflected above.

2. **Consent Agenda**

- a. Acceptance of November 16, 2009 Finance Committee Minutes
- b. Acceptance of December 14, 2009 Planning, Zoning and Variance Board Minutes
- c. Approval of January 28, 2010 Regular Town Council Meeting Minutes
- d. Approval of February 18, 2010 Special Call Town Council Workshop for Legal Counsel
- e. Acceptance of FDLE \$1,000 Grant for Lap Top Computer
- f. Waiver for Hopping Green & Sams
- g. Authority to Proceed With Hopping Green & Sams

A **motion to approve the consent agenda as presented** was made by Councilmember Atchison, seconded by Vice Mayor Ahrens, which **passed unanimously** with no discussion.

3. **Mayor's Items**

(NOTE: With approval by the Town Council, Item 6 a. was moved ahead of items "3. a – d." The discussion is reflected under 6 a.)

- a. Proclamation Declaring March to be Indian River State College (IRSC) Month

Mayor Kenyon asked the Town Clerk to read the Proclamation, which she did in its entirety. A **motion** was made by Councilman Weick and seconded by Vice Mayor Ahrens **to approve the proclamation as read declaring March to be Indian River State College Month**. The **motion passed unanimously**. Mr. David Sullivan, Provost for IRSC Vero Beach

This is a Public Meeting. 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. Anyone who needs any type of special accommodation for this meeting may contact the Town Clerk at 231-1771.

Campus, thanked the Town Council for this proclamation on behalf of the Board of Trustees and their President, Dr. Massey. The Town Clerk agreed to mail an executed copy to him as he shook hands with each of the Council.

b. Utility Update

(NOTE: Items 3.b and 3.c were discussed in reverse at the meeting)

Mayor Kenyon said that the Utility update was done at the workshop on March 11, with the Consent Agenda items to approve the waiver for Hopping Green & Sams and authority to proceed with Hopping Green.

c. CCNA Update

Mr. Tom Cadden, the Town's utility liaison and Chairman of the CCNA Committee, reported on the Committee's status of ranking contractors for performing a consolidation study on the water/sewer/reuse water for the City of Vero Beach and Indian River County utilities. Earlier this day five (5) local companies were interviewed by the CCNA Committee. He said he was very impressed with the companies, and the five of the six committee members present (Mr. Jefferson was not able to be there) ranked the five companies based on their original presentations as follows:

1. GAI
2. PBSJ
3. Corola
4. Wade Trim
5. Keith & Schnars, P.A.

The Council is asked to approve the rankings with a resolution. The County Commissioners will review this on 16th, and the CCNA meets again on March 18th. The Town Council also has to appoint who will discuss the contract with GAI with the representatives from the County and the City of Vero Beach. Each entity will still have to approve the money, and they have no idea of how much it might be. Mr. Cadden added that he had directed his closing remarks at this meeting at the County and the City of Vero Beach, asking if they are serious about the study or if they have already made up their minds. If so, it's a sham, and Indian River Shores is not interested in being part of the charade. Mayor Kenyon affirmed, and asked when the materials would be available for the Town? Mr. Cadden said the Clerk is typing them up now, and will provide details on the rankings. Mayor Kenyon asked if they need to have a workshop before March 18, and Tom Cadden affirmed.

d. Status of Utility Advisor/Due Diligence

Electric Utility Update (covered above)

4. **Planning, Zoning and Variance (PZV) Board**

a. Variance Request for Restaurant Hours of Operation

Chairman Bill Beardslee reported that the PZV Board met on February 8, 2010 and discussed the item that was brought up at the last Town Council meeting, Chelsea's request for a variance on hours of operation. The PZV Board granted a one-year variance to allow opening at 8:00 a.m., with the provision that the Town Council could revoke this if it was necessary for any reason. Mayor Kenyon said that there were many complaints in the past, but he has not heard of any in several years. Mr. Beardslee said that no one came to the meeting, not to represent Chelsea's or any of the other stores in the Village Shops, or any members of the community. Mr. Bradshaw said that this was the same operating hours that Mike Mac's had, and there were no complaints received. Any complaints will be brought to the Council, and all were agreeable with that. Vice Mayor Ahrens said that the early opening serves all of the other shops, which was the original intent with the very first restaurant. **A motion to accept the variance as recommended by the PZV for Chelsea's to open at 8:00 a.m. with the right of the Council to revoke the variance for any reason** was made by Councilman Weick and

supported by Councilman Ochsner, which **passed unanimously**. Mr. Jack Mitchell, 220 Sandpiper Point, received clarification about the ability of the Council to revoke this variance. Mr. Clark Daugherty questioned the color of the sign that was installed for the restaurant, which was explained by Mr. Beardslee and discussed with no resulting action.

5. Town Attorney

a. Letter to Florida, Power & Light (FPL)

Mr. Clem said this letter from the Town was precipitated by a letter that was sent by Indian River County to FPL. In that letter, the situation that the County had granted a franchise to the City of Vero Beach to operate within the unincorporated area of the county was outlined, and requested that FPL furnish specific information to the County. A similar letter referring to the County's letter was prepared by Mr. Clem for the Council's consideration. The basic premise is if there is any information to be disseminated, we should be included in that distribution as our franchise agreement is almost identical.

Councilman Weick discussed whose responsibility it is to renew the franchise with Mr. Clem, who replied that either party would give notice by 2011 to continue or discontinue the franchise agreement. If the Town intends to pull out, we would give notice and the franchise would end October 31, 2016. FPL and the City of Vero Beach are talking about a sale of the utility, so we echo the County's letter as an interested party, the customer. He asked for a **motion to approve the letter to FPL**, which was made by Councilman Weick and supported by Councilmember Atchison. The **motion passed unanimously**.

6. Town Manager

(Note: Discussed after the Consent Agenda)

b. Audit Presentation FY 08/09 (Ross Whitley, CPA Firm Berman, Hopkins, Wright & LaHam)

Mr. Bradshaw introduced Ross Whitley from the CPA Firm of Berman, Hopkins, Wright & LaHam. This is the report for the year-end audit for the Town, which done in accordance with the government accounting principals. The financial statements are provided in two sets, the full and modified accrual basis, which are differentiated by the modified accrual not recognizing long-term assets or long-term liabilities. We budget on a modified accrual basis. The capital assets are capitalized over the estimated lifespan, whereas on a modified accrual basis the capital assets are expensed in the current year as budgeted.

He mentioned that the Independent Auditors' Report stated that there are no mistakes within the financial statements, which is a clean opinion. The Management Discussion and Analysis (MDA) is prepared by the Town Treasurer, which is a narrative presentation about the financial results and operations for the year.

The financial statement on page 13 shows the Town's net assets at the end of the year as \$8.3 million, with \$2.9 million in unrestricted funds and cash of \$4.2 million.

The Statement of Activities on Page 14 is as required to be presented, in full accrual basis. Any revenue dedicated to an expense is netted out in the final column. More than 95% of the Town's revenue is non-restricted revenue.

The Balance Sheet on page 15 is shown in a modified accrual basis which shows the activity by funds. The Town's major fund, the General Fund, had a balance at the end of the year of \$3.8 million of which \$735,000 is undesignated; \$60,000 is reserved for pre-pays; \$364,000 is reserved for the Building Department; \$2.5 million is designated for disasters; and \$150,000 is designated for the cemetery fund. He read the End of Year balances for each of the funds.

He continued by reviewing the Reconciliation of the Balance Sheet – Governmental Funds to the Statement of Net Assets (Page 16); the Statement of Revenues, Expenditures and

Changes in Fund Balances – Governmental Funds (Page 17), and the Reconciliation of Funds to Activities (Page 18).

In the Notes to Financial Statements, Note L (Page 36) was covered regarding prior year adjustments. This had to do with compensated absences for accrued vacation and accrued compensatory (comp) time based on policies (Page 36). The comment relates to having formalized policies in the Town's Personnel Manual, which is a recommendation on Page 74.

Note M on Page 36 relates to the new accounting GASB 45, which basically says that when governments offer Other Post Employment Benefits (OPEB), they accrue the liability as the employee works. A state law in Florida requires that retiring employees be offered health insurance at the same premium as the current employees. An actuary is required to determine the differential between the rate that would be charged for regular employees and the rate with the retirees factored in to determine the liability to carry on the books, but it is not required to be funded on a current basis. Councilman Weick noted that it is like a COBRA payment, and Mr. Whitley affirmed.

The Report on Internal Controls on Page 67 was mentioned with no significant deficiencies or material weaknesses found. Page 69's Management Letter as required by Auditor General (AG) has to express if the government entity is in a state of financial emergency, which the Town is not. The Town's financial information is sent by (the auditor) to the AG to be placed in a peer group in the state and is then compared with other similar agencies. A series of financial conditions are generated, with negative, positive or inconclusive results. The Town had no problems to emerge.

Mr. Whitley continued that the Management Recommendations begin on Page 71, with prior year comments tested and noted if corrected. Three of four were, with one recommendation for a control measure to ensure that the payroll amount as approved was the same as the final payroll being withdrawn missing the step to verify the transmittal.

The new comments for this year are on Page 74. Updating the Employee Manual, as discussed before, was recommended by the Auditor as well as the Finance Committee, Mr. Whitley noted.

Recommendation 09-2 addresses that the budget amendments should be made when expenses exceed the budget rather than adjusted at the end of the year, although they are allowable up to 60 days after year end. This happened in Road and Bridge and Planning and Zoning funds last year.

The final Recommendation 09-3, had to do with the Postal Center accountability for inventory, with a perpetual count needed. This was put in place as of the end of the year.

Mayor Kenyon asked if Mrs. Lewis had anything to add, and she said it was another great audit.

Councilman Ochsner said that the Finance Committee reviewed the Audit prior to its finalization and discussed the recommendations, and are comfortable that they have all been or are being addressed. Mr. Bradshaw added that the Finance Committee will meet again in May.

A motion to adopt the Final Audit as presented was made by Councilmember Atchison and seconded by Councilman Ochsner, which **passed unanimously**.

Mr. Whitley said that he is also responsible to give the Council, as the Audit Committee, a full disclosure. This covers any disagreements in accounting principles or uncorrected errors. A representation letter with an attachment of adjustments made was also provided. He concluded that the audit went very well and said it was a pleasure working with Town staff.

7. Call to Council

a. Committee Reports

Parks and Recreation. Councilman Ochsner said the committee met but was unable to conduct business without a quorum.

Beach and Shores. Councilman Ochsner reported that they met on February 15th, and the beach replenishment is in full swing. Both Sea Grape and Turtle Trail accesses are to be closed for some portions to facilitate access by equipment and sand trucks. The project has to be completed by the end of April, with a schedule of 5,000 cubic yards Monday through Saturday.

Metropolitan Planning Organization (MPO). Councilmember Atchison said that the MPO had a special meeting to discuss \$1.7 million of unused stimulus money and shovel-ready projects. They prioritized those projects and discussed a possible second \$5-\$6 million stimulus project. The Florida Department of Transportation receives funds, and about 45% of those are used for MPO projects. Indian River County was the first county to get their projects to the state.

Community Leaders Summit. Councilmember Atchison attended this Chamber-sponsored event last week, and a presentation by E-mindful to be headquartered in Indian River County was fascinating. Quality jobs for the County are still a priority.

Treasure Coast Regional League of Cities (TCRLC). (No meeting this month).

Land Acquisition Advisory Committee (LAAC). Councilman Weick said they did not meet.

Affordable Housing. Vice Mayor Ahrens said that they did not meet.

Planet Energy. The Vice Mayor discussed the \$50 million federal grant for the Planet Energy Corporation, which is a pilot plant close to the landfill which has a process that uses any carbon-based material (plant-life, tires, railroad ties, etc.) to produce gasses. In a patented process, one of the by-product gasses is mixed with a microbe to produce ethanol at approximately 65 cents per gallon. The grant requires matching funds, and looks positive for the economy for the County. We have plentiful material to fuel this plant.

Census. Councilmember Atchison noted that the Census is fast approaching, and encouraged the Council to be mindful of getting all residents in the County to respond. The Florida Department of Transportation's fuel tax monies and all of their roadway funds are contingent upon the census count. Mayor Kenyon asked if anything is being done on notification for our residents on the Census, and Mr. Bradshaw said that Nan Warner is our representative on the Complete Count Committee, which had planned to advertise closer to the event. This was discussed briefly among the Council with no action initiated.

Economic Development Council. The Mayor reported that he also heard a Planet Energy presentation. It sounds like an interesting company. He discussed the economic opportunities and desire for growth in the county in general.

Vice Mayor Ahrens predicted that the unemployment will increase and service providers will close if Medicare payments are cut by 20% on March 1st this year, as they have threatened to do for the past five years.

Treasure Coast Mayors. No meeting.

Elected Officials Oversight Committee. No meeting.

Treasure Coast Council of Local Governments (TCCLG). No report.

8. Call to Audience

City of Vero Beach Electric Utility. Charlie Wilson, 1057 6th Avenue, Vero Beach, said that there is a possible referendum in the City of Vero Beach to deal once and for all with the electric issue. Required papers were filed today with the Supervisor of Elections and the City Clerk in Vero Beach for Operation Clean Sweep, which gives permission to attempt a citizen's referendum. It takes approval of ten percent, or 1,060 of registered voters in the City of Vero Beach, which he plans to accomplish in a one-day petition-signing rally. A lawyer is working with City Clerk to draft the language for the referendum to ensure it can't be overturned by the City at a later date. The draft referendum has to be signed off by the City Clerk and the

Supervisor of Elections, and a copy would be provided to the Town and the County to make sure there are no negative impacts on the territorial agreements. The end result of this successful binding referendum would be that the City of Vero Beach, after a certain date of perhaps October 2011, would not be allowed to expend any public funds from any source on the distribution, transmission or supervision of an electric utility. Mr. Wilson continued it would also force the City to go to the Public Service Commission and say they cannot run the facility per our charter, and will relinquish the territory because they can't run an electric plant. Mayor Kenyon asked when the organizational meeting was for this committee, and Mr. Wilson said it is March 5th. The wording on the signature cards must be exactly right, and the signatures have to be completed 90 days before the November election. The goal is to have the referendum on the ballot at the same time as the four open City Council seats. Also, Mr. Wilson said at the Town's last Council meeting, he said he was going to ask the City to have their auditors look at the contract, and they declined. Therefore this forces the decision to go to the people.

Councilman Weick asked if this referendum is strictly for electric, and Mr. Wilson said it was. Mr. Bradshaw asked if this was not a referendum to amend the Charter, and he said it was, explaining that the last charter referendum was about sand on the beaches and it passed, and was placed under the City Council heading in the Charter.

Councilman Brian Heady, City of Vero Beach, made an analogy comparing the Town of Indian River Shores and the City of Vero Beach's financial positions, then proceeded to discuss the electric utility issue. Unless Orlando Utilities Commission (OUC) could be convinced to give them power for free to balance the numbers, it does not appear to be feasible to keep the electric utility. Councilman Heady said he has never nor will he ever come before any board and say something that was not absolutely true, and he sincerely believes that there is not a valid contract with OUC due to the changes made between what the Council reviewed and the document that was signed. He offered his documents for review if anyone wants to see them.

Councilman Weick asked if there were any substantial changes, and to name one. Councilman Heady said the \$50 million penalty was not in the original contract, that the redacted copy's text in this area does not fit. The rate per kW hour was discussed, whether 18% or 35% higher than FPL. Councilman Weick was not happy that there is no breakdown on cost structure per kW hour on the electric bills, which should be addressed. Mr. Wilson believed that FPL rates are 10.5 cents.

Commissioner Joe Flescher spoke next, with the intent to update the Council on the beach renourishment project. He said that he appreciates the opportunity to come before them to discuss matters. He recalled about four years ago when the Council asked him to not forget to continue to come to the meetings and to keep them informed, which commitment he hoped has been satisfied through relationships maintained at other committees and at Town Council meetings. He briefly touched on the discussions they had four years ago on the charter government issue that was kept in abeyance with the Interlocal Agreement, which has done its job so far. He spoke about what Councilmember Atchison had said earlier about shovel-ready projects for the MPO, one of which is Barber Street being paved with stimulus funds.

He has been monitoring the beach sand transport situation, and he has been at the base of the bridge and all of the sites. If (this Town Council) had not spoken about the Tracking Station, there would be an occasion to have three or four beaches closed at the same time rather than just two closed during the sand project. Mayor Kenyon thanked him for his help in keeping the trucks at a minimum. The Commissioner said the truckers represent 130 jobs in Indian River County, and they are operating safely. He did not observe notable bottlenecks or a traffic problem, and witnessed tarping down and the 3rd tire axle lowered on full loads. Councilman Weick and Commissioner Flescher discussed the trucks weight, lowering of the

third axle, the cost escalation in the contract and using two mines rather than three, and renegotiating the contract for using the two closer mines. Commissioner Flescher said that during any change order process this will likely be discussed again. Mayor Kenyon suggested that Councilman Weick direct the contract question to Commission Chairman Peter O'Bryan. Councilman Ochsner said that every truck will have a number on it, and if there are any questions to call Ranger. With regard to loading, the Beach and Shores Committee was told that each truck will have 18 - 19 cubic yards. Commissioner Flescher closed by stating that the suppliers have assured the County that all local employment on this effort has been exhausted, and with a shortage of vehicles, not all employees are local, and not all trucks local. They thanked Commissioner Flescher for attending and for the information that he provided.

George Katilus, 4635 Pebble Bay South, said that the Homeowners Association (HOA) will meet this Sunday and has as one topic on their agenda **reclaimed water**, which is available on their common areas. The residents have tried to get information from the City of Vero Beach on how they can tie into the water main on the property. Mr. Bradshaw said that the common area where the main is located is on A-1-A frontage extends 50', and the HOA has to approach the City and request to be hooked up at their own expense. Mr. Katilus said that the City told them there is a waiting list, and the best answer they got was from a meter reader, who said the City has stopped all future projects because they believe they will be taken over by the County. Councilman Weick said that it may be part of the answer, but there is also a shortage of available water, and some communities here have been restricted as to how much water they can use. The Mayor asked the Town Manager if there was anything we could do, and the response was that we do not control this, and their only option is to petition the City. Mr. Clem said until the water/sewer issue is resolved, no moves will be made. Mr. Katilus said he just moved to town about four months ago from New Jersey. Mayor Kenyon said that the earlier presentation by Tom Cadden was about the evaluation of the County and City's water system. Councilman Weick added that reuse water very expensive, \$1.80 per 1,000 gallons. Mayor Kenyon invited Mr. Katilus to come to more meetings, as there should be more information forthcoming. Mr. Katilus said it was enjoyable.

9. Adjournment

There being no further comments, the Mayor announced the meeting's adjournment at 5:08 p.m.

Respectfully submitted,

/s

Laura Aldrich, CMC, Town Clerk

(Approved by the Town Council at the March 25, 2010 Meeting)