



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

Thursday, March 23, 2017
9:00 a.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 Laura Aldrich, Town Clerk
Chester Clem, Town Attorney Heather Christmas, Town Treasurer
Rich Rosell, Director of Public Safety

OTHERS PRESENT: John Lewis, J.W. Sayler, Residents of JI; James & Cheryl Lazevnick, Mark & Mary Lou Morgadonna, Tom Kasher of Vera Cruz; Joanne Sardella Pebble Lane; Matt Sitkowski, Bill Kluckas, Surf Lane; Patricia & Bill Gundy, Leslie & Bob Abbott, Emily McDonough, of Pebble Bay; Charles Clogston, Jay & Susan Hansen; Bob & Joyce Carter, Pebble Beach Villas; Bill Cull, Sea Forest; Melissa Mittag, The Estuary; Matt Hutmaker, Bermuda Bay; Auctioneers Wesley Davis & Rick Baker; Reporter Lisa Zahner, Guests Debra Buff, FACC SE District Director, Ron Rennick, Ron Rennick Real Estate; JoAnne Stanley, Republic Services; Martha Lindleirg, Seasons

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 9:00 a.m. The Pledge of Allegiance was recited followed by the invocation, and the roll call is reflected above.

2. Proclamations / Presentations.

- a. Carr, Riggs, Ingram Presentation of 9-30-16 Audit Report/Financial Statement

Christine Noll Rhan presented a high-level overview to the Council, noting it was their first year doing the Town’s audit. The independent audit report revealed good news was that there was nothing of concern regarding the Town’s finances. The Government-Wide Statements on page 14 showed a large decline of \$500,000 in the net pension liability, and the deferred outflows also went down by \$500,000 largely due to Police-Fire Pension investments outperforming the assumption rate. On page 16, the General Fund unassigned fund balance and emergency fund combined are about \$2.2 million, or five months of operating funds, which is above the GFOA-recommended 2-3 months. The property taxes are up 6% as shown in the Statement of Changes & Expenditures on page 18, and we ended up with a positive net change on the fund balance of \$29,000.

New this year on page 26 is Footnote B, showing Table of Investments levels 1, 2 and 3 as required by the newly implemented GASB 72. On page 20, the Fiduciary Statement of Net Position includes a new agency fund listed which are not new funds, but a different way of showing funds that have to be remitted back to the State. It was previously categorized as a Special Revenue Fund. Page 21 has a prior period adjustment which reflects that the 401a pension plan is removed from the statements, as those funds are something that the Town does not manage or control.

Mrs. Noll-Rhan continued that there were no findings related to internal controls on pages 103 & 104. The Independent Auditor’s Management letter on page 105 is required, and there are two comments regarding the prior year that have both been corrected and cleared. The last report on page 108 is regarding investment compliance, and there were no findings.

Councilman Auwaerter recalled as Finance Committee Chairman, one of the reasons they recommended hiring them was to look at the Town’s IT system. He understands that some comments were passed along 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.

the Town Manager for potential improvements that will not be discussed in an open meeting, which she agreed that by Florida Statute it is permissible to be talked about privately. She met with the Finance Committee Chairman and went over the IT results, and welcomed the Council to also call her to review them

Mrs. Noll-Rhan reviewed the handouts with the Council as required, stating that the Town didn't receive any second opinions on transactions, there were no audit adjustments whatsoever, and there were no improperly recorded transactions. Estimates of the statement balances that may change based on actual amounts were mentioned, and she pointed out on page 12 the draft representation letter signed by the Town Manager and the Town Treasurer which affirms that they told the truth and did not hide anything from the auditors.

The graphs from the Auditor General website is populated by the AG with data from the previous four (4) years, revealing on the first page the Town's overall financial rating as "inconclusive," which is not bad. The ratings are Favorable, Unfavorable, and Inconclusive. The benchmark means that there are 10 towns including Indian River Shores that are similar in population and taxable value, and with just one more favorable rating the Town's rating would reach the required 60% or more. Inconclusive means we are going steadily, and there were no unfavorable indicators. Discussion about how the Town compared ensued, with the observation that the Town is the benchmark for Financial Indicator 17, as we are the only one funding OPEB.

A **motion to accept the audit results** was made by Councilman Auwaerter with support from Councilman Haverland which **passed 4-0**. The Council thanked Mrs. Noll-Rhan and she returned the thanks, complimenting the staff's cooperation.

b. Proclamation Recognizing April as Water Conservation Month

The Vice Mayor asked the Town Clerk to read the Proclamation by title, which she read as "A proclamation of the Town of Indian River Shores in Indian River County, Florida recognizing April as Water Conservation Month." She then introduced Abby Johnson, Intergovernmental Coordinator with the St. John's River Water Management District assigned to Indian River, Brevard, and parts of Volusia Counties. She said they absolutely appreciate the Council's recognition of water conservation month, which has been ongoing for 17 years. It is vital in our state, especially in years like this one with very low rainfall. She expressed appreciation to the Council for setting the model for others to follow.

Ms. Johnson also shared that they have \$25 million in cost-share funds ready to fund projects related to water conservation, water supply, flood protection, etc. They fund up to 33% of construction-ready projects. The Vice Mayor asked about assisting with a reuse water issue, and she agreed it is a potential project, offering to connect staff with the appropriate technical staff. Mr. Stabe said he has already arranged for a meeting with SFRWMD staff next Thursday regarding the cost-share program.

A **motion to approve the Proclamation recognizing April as Water Conservation Month** was made by Councilman Haverland and seconded by Councilman Auwaerter, which **passed 4-0**. The Vice Mayor presented the Proclamation to Abby Johnson and thanked her, which was echoed by the Town Manager.

c. Proclamation Recognizing FACC's (Florida Association of City Clerk's) 45th Anniversary

Vice Mayor Ochsner said this Proclamation is of the Town of Indian River Shores Commending the Florida Association of City Clerks for its 45th Anniversary, adding that our Town Clerk has been a member of this organization for many years. Councilman Auwaerter, supported by Councilmember Peniston, made a **motion to approve the Proclamation commending the FACC on its 45th anniversary**, which **passed 4-0**. Mrs. Aldrich introduced Debbie Buff who was there to accept the proclamation on behalf of the Florida Association of City Clerks, who said she was honored to accept this. If it wasn't for this Association, municipal clerks would have a very difficult time fulfilling all the requirements of their position. She expressed appreciation and gratitude for the Proclamation. Vice Mayor Ochsner said they appreciate the organization at large, and specifically appreciate our clerk, who "does a stellar job." Councilman Auwaerter echoed that comment, and added that "they say in the Army that generals supposedly lead it, but the sergeants run it," saying he believes this is true of our Town Clerk. Mr. Stabe and the Council agreed, and they thanked her.

3. **Consent Agenda**

- a. Acceptance of October 24, 2016 Finance Committee Minutes
- b. Acceptance of February 13, 2017 PZV Board Minutes
- c. Approval of February 23, 2017 Regular Town Council Meeting Minutes
- d. Approval of March 9, 2017 Special Called Council Meeting Reconsider 5-Acre Property Minutes
- e. Approve 2017 General Employees' DB Actuarial Valuation & GASB 68 Report (presented 2-23-17)
- f. Approval of Town Attorney Invoice Dated February 28, 2017

- g. Approval of MBV Engineering Progress Payment for Master Drainage Mapping
With no discussion, a **motion** from Councilman Haverland with support from Councilman Auwaerter to **approve the consent agenda as presented passed 4-0.**

4. **Town Attorney** Nothing to discuss.

5. **Mayor's Items** Not present, no discussion.

6. **Discussion with Possible or Probable Action**

- a. Boat Grant Acceptance (Public Safety Director)

Chief Rosell said this agreement between the Florida Inland Navigation District (FIND) states that they will fund 50% up to \$60,000 to spend on a patrol boat and is open until September 2018. The Town would not be locked into anything by accepting the agreement. Vice Mayor Ochsner asked how long we have had the current boat, and Mr. Stabe said in 2000 he and a volunteer wrote the grant and were successful in obtaining the 75% matching funds at the time from FIND. It's been repowered once or twice, and the current engine is over 10 years old. Vice Mayor Ochsner liked the idea of patrolling waterways, but thought the boat sat idle more than it is out. Chief said he has had to rescue officers with his personal boat because of our boat's engine failure, and they have also had residents come rescue them as it keeps breaking down. Mr. Stabe reiterated that the boat could not be purchased without the Council's approval at a future date, and the cutoff date for the application is March 31st.

A **motion to approve the agreement between FIND and the Town** was made by Councilmember Peniston with support from Councilman Haverland, **passing 4-0.** The Chief said they will have a demo boat to ride tomorrow morning, not necessarily the one they would be purchasing if successful with the grant, and invited the Council to view or ride on it.

- b. Termination of Auction Contract (Councilman Haverland)

Councilman Haverland said he was embarrassed that the Council had made a hasty decision without following a proper, thorough or transparent process, and asked that they make amends to the auctioneer with whom we have signed a contract. They could have considered selling it themselves, hiring a broker, or hiring an auctioneer, and instead chose the auction process and an auctioneer without considering other auction companies. He discussed other methods of selling the property, noting that at the time the Council was asked to approve the auction, time was deemed to be of the essence, and this is no longer the case, adding he believes it would cost \$200,000 more than other methods. Councilman Haverland said since they failed to consider alternative methods and alternative vendors, they go back to square 1 and have a Town workshop, and avail themselves to expert assistance from Finance Committee members and others in Town. He is not ruling out an auction, but wanted to have vendors bid for our business and offer a termination payment to the auction company. This would not preclude them from being our vendor. He believed the Council should negotiate their way out of current contract.

Vice Mayor Ochsner questioned the \$200,000 difference, which Councilman Haverland explained was the buyer's premium, 3 percentage points of \$7 million, whereby if it were sold by using a broker he believes would be even better. The Councilman referred to it as a "classic case of haste makes waste" and encouraged them to take advantage of an opportunity for "a stitch in time saves 9."

Asking for Council input, Councilmember Peniston said they are a little far down the road, communications have been sent and a lot of work has been done. If he had come a month ago, that would have been better for reconsideration. They each met with the auctioneer beforehand, and had agreed that it was reasonable.

Councilman Auwaerter said before they committed to this he had come up with an alternative option, and was voted down 3-1. Councilman Haverland said he had proposed a percentage of buyer's premium at various sales levels, but it did not have anything to do with the method of sale. He said the Council never gave any consideration to the traditional method of selling because they were under pressure. Councilman Auwaerter said in a normal circumstance, he would prefer to broker it, but under the Sunshine Law, they are not allowed to have a closed door negotiation session, and the first rule of negotiation is don't give your strategy to someone else. We don't have the ability to conduct business as normal with the Sunshine Law. We do have a contract with Mr. Davis' firm, Councilman Auwaerter concluded.

Vice Mayor Ochsner read Mayor Barefoot's statement as requested that was sent to the Town Manager by email, which questioned why they are receiving a proposal from Mr. Rennick now, when they've had over a month to offer an alternative? We are committed to proceed, and believed it would be very poor form to

change firms after we have a contract and have held two special meetings. The Mayor concluded they stay the course as planned.

Vice Mayor Ochsner agreed with Councilman Haverland that we went too quickly on this, but as Councilmember Peniston said, we are down the line. Changing now becomes problematic. He invited auctioneer Wesley Davis to speak.

Mr. Davis said it was never his attention to make anyone uncomfortable. He reviewed why he believed the Council had made the right decision. The Council listened to his advice to market three (3) parcels, then an article appeared in 32963 about how this is the trend. Their firm talked about highest and best use and marketing it in two different ways at the same time. A typical broker cannot do this. The Council has established the density, protected the community with the ability to cross the property for beach access, and on April 4 will have the County's answer on crossover access to the beach from the property. Unanswered questions are going away quickly. In addition, there is an auction today on property in the Town with a 12% buyer's premium, and the Council has shrewdly negotiated the commission with him. They have essentially hired four brokers, and other auction firms are invited to participate. Transparency is clearly the right way to go, as the Council has leveled the playing field, offering the same terms. The price is the only thing being negotiated. The timing of the auction was discussed, as in season, more people make a better auction, and it is also not during hurricane season. He commended the Council for hiring expertise, determining the method of sale, what product they would offer, and the timing of the sale.

Councilman Haverland said Mr. Davis mentioned there is a 12% buyer's premium, opining it is a nominal buyer's premium that is offset by the pre-offer, so if someone sets the base at the first \$5 million offer, that amount is not subject to the buyer's premium. Mr. Davis said he doesn't want to give away the Town's money, this comes out of the proceeds of the sale. Councilman Haverland argued the net fee to the auctioneer is 6% period. He added they have stationed two (2) people at the location for six weeks, all day, to assist in showing the property for the auction. Mr. Davis respected the Councilman's opinion, and said they have been working on this for 6 months.

Two residents spoke, *John Lewis* of Llywds Lane who related his experience as a purchasing manager for a large company that participated in competitive bidding, and was appalled that the Council made a decision to go with this firm without any competition. *Bob Abbott*, Pebble Bay, agreed that he was disappointed in the lack of competition, and performed a lengthy one-man skit whereby he played the role of a developer gaining funds from a wealthy community in Town.

Councilman Auwaerter responded to Mr. Abbott's implication that someone came to them to change the density by stating it was only the Building Official and Town Manager who recommended this. He does everything above board, and added Mr. Abbott is entitled to his own opinion but not his own set of facts.

Vice Mayor Ochsner agreed, his decision to increase density was based solely on the memo provided by the Building Official's assessment of our Code, which if provided earlier would have likely prompted them all to leave the density alone.

Mr. Clem said Mr. Davis had had a presentation ready for them to view. Mr. Davis thanked him, and said they have established a dedicated website, as an informed bidder will pay more than uninformed bidder. The Phase 1 Environmental Study has been completed with no issues found, and he showed them the promotional video that is on the website. The terms are rigorous, with a bid acknowledgement and 10% down required. A cashier's check for \$25,000 must be displayed prior to the auction, payable to themselves and endorsed upon having the successful bid. The auction is set for Saturday, May 6th. Plans are for the Indian River County Board of County Commissioners to have the first right of refusal at their meeting on May 9th. The property will be advertised in the Wall Street Journal Friday.

Councilman Haverland made a **motion to attempt to terminate the contract and work a proper compensation for the efforts and expense the auctioneer has made to date, and begin a process including a workshop to determine a best way to sell this property.** The motion died for lack of second.

c. Resolution 17-01 Opposing HB17/SB 1158 Business Regulations (Councilman Auwaerter)

Councilman Auwaerter said he had attended a Treasure Coast Regional League of Cities (TCRLC) meeting recently, and the State legislature now in session is hearing a push to restrict Home Rule Power on municipalities. It seems to be driven by the Tampa area, where local government bodies were raising taxes while carrying large cash balances in General Fund. A telecommunications statute is also in process that allows equipment to be put in any right-of-way for small cell signals, and it's a big battle.

He suggested that they discuss Resolutions 17-01 and 17-02 together, items 6.c. and 6.d., which the first addresses House Bill (HB) 17 and Senate Bill (SB) 1158 that prohibit counties and municipalities from adopting or imposing new regulations on a business profession or occupation.

The second Resolution, 17-02, relates to HB 487 and SB 330, limiting the Town's ability to raise any local business taxes. Both of these limit the Council's ability to run our Town.

Councilman Haverland agreed that it is very clear they are not in our best interest, and asked why this couldn't be handled by a letter of opposition sent by the Town to the head of the Senate, the House Speaker and local representatives. Mr. Clem said that a Resolution read by title and adopted carries the weight of the Council.

Councilman Auwaerter made a **motion to approve Resolution 2017-01, A Resolution of the Town Council of the Town of Indian River Shores, Florida urging members of the Florida Legislature to oppose HB 17 and SB 1158 which preempt home rule power to take certain actions in the best interest of the residents of the Town unless expressly authorized by the legislature; authorizes transmission of the Resolution to the Indian River County legislative delegation, the Florida League of Cities, and other interested parties.** This was the title of the Resolution that he read, and was seconded as a **motion** by Councilman Haverland that **passed 4-0.**

- d. Resolution 17-02 Opposing HB 487/SB 330 Business Tax (Councilman Auwaerter)

Continuing, Councilman Auwaerter read Resolution 17-02 by title as follows in the form of a motion to approve, which was seconded by Councilmember Peniston: **A Resolution of the Town Council of the Town of Indian River Shores, Florida; urging members of the Florida legislature to oppose HB 487 and SB 330 pertaining to business tax; authorizes transmission of the Resolution to the Florida League of Cities and other interested parties.** The **motion passed 4-0.**

- e. Discussion of TCRLC – Lake Okeechobee Regional Compact (Councilman Auwaerter)

Another resolution regarding the Lake Okeechobee Compact was proposed by the TCRLC, in which they are trying to address the problems with the water issues coming from the Lake. The TCRLC passed the resolution. The Lake Okeechobee Compact will have no staff or budget. Councilman Auwaerter put it forth for the Council to determine if they want to be a part of this at some point in the future. There were no comments.

- f. Cell Tower Memo to File for Approval (Town Manager)

Mr. Stabe said that after speaking with the Attorney, he created a memo for file in anticipation of DataPath appearing any day now for permits to construct the tower. If the Council approved the memo, it would be ready to file at that time as an attachment to the building permit.

A **motion to approve the cell tower memo citing Ordinance 524** was made by Councilmember Peniston with a second from Councilman Auwaerter. Councilmember Peniston asked why this was progressing so slowly, when we thought we would have the cell tower by spring. This seems like it is moving it back several months. Mr. Stabe said in an update email from DataPath, they advised that they are at the mercy of the architect for the drawings, which are required before a permit can be issued. A determination of the base structure engineering based on a soil bore sample and other complex technical issues are being resolved. The drawings are in process, then they will come for the permit. The carrier will sign a lease agreement once the permit is in hand. There will be no other formal meetings for approval because of this memo, Mr. Stabe said. Construction will take 2-3 months after the permit is issued and ground-breaking has commenced. He agreed to let each Council member know as soon as the drawings are in hand and the permit is issued.

The Vice Mayor discussed the tower manufacturer (Larsen) and the delay with engineering, which is attributed to the density of the foliage driving the size of the base. The **motion passed 4-0.**

7. Town Manager

- a. Traffic Camera Statistics (Chief Rosell/Lt. Shaw)

Chief Rosell said the numbers are not incorrect, the traffic has increased significantly from 313,014 to 356,576 this past month. For some reason the number of sex offenders passing through also was higher, and there was a violent sexual assault in Satellite Beach at one of the beach accesses. Our officers are well aware of this and are keeping a close eye on our area.

- b. Workshop on Septic/Sewer Improvements Status (Town Manager)

The Town Manager said he has been diligently searching for scientists who have a scientific approach to the effects of septic and on sewer systems on the lagoon, and checked into a couple of leads from Councilman Haverland, but cannot find any studies to contrast with Dr. LaPointe's research. He is checking with County Commissioner Tim Zorc, who is heavily involved with Lagoon issues in the County for further leads. There is no need to have a one-sided workshop at this point. Vice Mayor Ochsner opined that it may be beneficial

to have a workshop even with the lack of evidence to determine what the Town could or would do. We have no control of what Brevard or others do, with oceans of discharge from sewer spills.

Councilman Haverland found the data the Town Manager provided really disturbing in that the last three (3) years Indian River County has dumped 38,000 gallons of raw sewage into the Lagoon. If you stop the septic, what impact does this have? Someone else has much bigger problems. Councilman Auwaerter said the City of Vero Beach's Utility Commission has discussed their implementation of the STEP system, which is relatively unobtrusive. Mr. Stabe said he has requested and will be receiving information on the STEP system, in particular the cost to implement the STEP system, and the two Councilmen discussed if the Town would be involved in providing the main line to get past the person's system to the house. Mr. Stabe said he will be meeting with City of Vero Beach Director of Water & Sewer Administration, Rob Bolton, in the next few weeks about this.

c. Departmental Reports (Building, Financial Balance, Public Safety). No comments.

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

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

TCRLC – Reported earlier by Councilman Auwaerter.

CoVB Utilities – No report.

EDC – No report.

Beach & Shores - Vice Mayor Ochsner said they met with nothing consequential to report

MPO - Councilman Haverland had no report.

TCCLG –No report.

9. **Call to Audience**

No comments.

10. **Adjournment.** With no further comments, the meeting was adjourned at 10:24 a.m.

Respectfully submitted,

/s _____

(Approved by the Town Council at the April 20, 2017 meeting)