



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

REGULAR TOWN COUNCIL MEETING

Thursday, March 27, 2014
9:00 a.m.

- PRESENT:** **Brian M. Barefoot**, Mayor
Gerard A. Weick, Vice Mayor
Thomas W. Cadden, Councilman
Thomas F. Slater, Councilman
Richard M. Haverland, Councilman
- STAFF PRESENT:** **Robert Stabe**, Town Manager
Chester Clem, Town Attorney
Darlene Wiltzius, Finance Dept.
Lt. Mark Shaw, Public Safety
Laura Aldrich, Town Clerk
Heather Christmas, Finance Department
Jose Guanch, Building Official
Sgt. Shawn Hoyt, Public Safety
- OTHERS PRESENT:** **Steve Moler, Rich Weisman, Chris Marine, & David Bauer**, Palm Island Plantation; **JIPOA Jim Moller**, VB 32963 Reporter **Lisa Zahner & PJ Reporter Janet Begley**
- RESIDENTS:** PZV Members **Bill Beardslee** (Chairman) and **Barbara Bunney** (Alternate); **Mike Ochsner**, Chairman, & **Hap Schroeder**, Finance Committee; **John McCord**, DB Police-Fire Pension Board; **Tom Peschio**, Code Enforcement Board; Other Residents **Caroline Ervin, Susan Mehiel, Nick Schaus, Carol Critchel, David Haynes**

1. Call to Order

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

Mayor Barefoot called the meeting to order at 9:00 a.m. with the Pledge of Allegiance and Invocation performed, followed by the Council roll call by the Town Clerk as reflected above.

2. Proclamations / Presentations

- a. FPL Update (Amy Brunjes)

Mayor Barefoot introduced Amy Brunjes, who asked for the Council's support in getting FPL "across the finish line." She recapped the historical procession of the 3-year power purchase agreement between FPL and OUC, and FMPA's role in delaying the transaction. There are 65 pages of emails and documents that record FPL's and the City's attempt to assure the FMPA that an IRS ruling is not needed. Further efforts to close the deal have been hampered by a blogger with inaccurate facts and/or interpretations of documents. Phone calls and emails to FMPA by FPL have not been returned for one month. City staff is working to get all parties to the negotiating table. To assist with this critical juncture, she requested that the Town send a letter mayor-to-mayor to ensure they are aware of the Town's strong recommendation that they bring FMPA back to the negotiating table in good faith, and openly support the sale of the City's electric to FPL.

The Council engaged in lengthy discussion, agreeing that their obligation is to its residents in obtaining the most reasonable electric rates available as soon as possible. Consulting with a specialized engineering firm and/or legal counsel were agreed by the Council as immediate action(s) to pursue, as well as publicly stating at the City of Vero Beach's April 1 Council meeting the Town's intention to investigate options to protect its residents and businesses. The Town Manager was instructed to provide a letter to the City prior to their meeting as requested by Mrs. Brunjes.

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. Consent Agenda

- a. Acceptance of Finance Committee Minutes dated February 11, 2014
- b. Acceptance of Planning, Zoning & Variance Minutes dated February 10 **and** February 24, 2014
- c. Approval of Regular Town Council Meeting Minutes dated February 27, 2014
- d. Acceptance of Defined Benefit Pension Board (General Employees) Minutes dated February 27, 2014
- e. Approval of Special Call Town Council Meeting Minutes dated March 13, 2014

Councilman Haverland noted that the February 27th Council minutes reflect that he had requested that the Council set aside \$100,000 for Post Employment Benefits for segregated investment purposes, and asked if the Finance Committee addressed this. Chairman Ochsner was present, and said they did address it. Councilman Haverland asked if there was any reason not to go forward with this, or should they wait for the Finance Committee to address it. Mayor Barefoot noted that the Council was in agreement in February to pursue this, to which Mr. Ochsner replied he also agreed with that decision.

The Town Clerk pointed out that this was not part of the consent agenda, and they determined to discuss it later. A **motion to approve the consent agenda as presented** was made by Councilman Haverland and seconded by Councilman Slater, which **passed 5-0**.

4. Discussion with Possible or Probable Action

- a. PZV Action: Beachcomber Lane 6' Rear Yard Setback Variance (Bill Beardslee)

Mr. Beardslee reported that the Citron Bistro item from the last PZV meeting was handled at a special called Council meeting on March 13.

The item before the Council today is a request for a variance at 955 Beachcomber Lane, which is a trapezoidal shape. Thirty foot front and rear yard setbacks are required, which is a problem with this shape of lot. All of the other setback requirements are met but the rear yard, which they are requesting to be six feet. Variances appear to have been done in the past many years ago on most of the houses on this street. The Land Development Code (LDC) section 168.09 allows a variance by administrative appeal. The PZV Board is allowed to grant variances of three feet or less, with the Council to approve anything greater. With seven specific criteria to meet in granting a variance, the hardship factor is most difficult. Denial of the variance would deny the property owner the same rights as other owners have been granted; therefore the PZV Board recommended that the variance be approved.

Following minor discussion between Vice Mayor Weick and the contractor regarding a pool, a **motion was made** by Vice Mayor Weick, seconded by Councilman Haverland, **to approve the requested 6' setback variance at 655 Beachcomber Lane**, which **passed 5-0**.

- b. PZV Action: Palm Island Plantation Variance (Bill Beardslee or Chris Marine/Dave Bauer)

Mr. Beardslee continued by stating the initial plans included a complex with 48 condominiums, which was modified several years ago reducing that number to 32 townhomes. This request to modify the site plan changes some roads and further reduces the density to 31 townhomes. The original plans also involved reducing the size of the retention pond, which was approved by St. Johns Water Management District (SJRWMD). Our engineer at TetraTech reviewed the current requested change in site plans, and found eight (8) minor issues that have since been resolved. The developer has also obtained environmental permits. Mr. Beardslee apologized to the developer for the amount of time it took (October to the Engineer in November, back in January, and to the PZV Board in February).

The Board recommended approval of the site plan with one qualification, which is to include a littoral zone around the lake, which requires 10 square feet of specialized planting for one linear foot of retention pond. Mr. Beardslee read the definition of a littoral zone from the LDC that requires retention ponds to further stormwater management. When there was a change from condominiums to town houses, it was overlooked. The developer argued that SJRWMD already approved the plans. The Town is allowed to have a higher standard than SJRWMD requires, but not lower. Advice given by Dr. David Cox, an ecologist in Town, was that the intent is as the water runs off the property to the retention pond, the nitrogen gets in the lake, through the ponds and ultimately to the Lagoon. The recent fertilizer ordinance the Town passed supports this, with plants around the pond that eat the nitrogen to keep the pollutants out. The developer said there is more cost and they are unsightly.

Councilman Haverland said new ordinance also restricts when you can fertilize, which didn't exist

in the past. Mr. Beardslee said the developers typically install sod down to the waterline. Littoral zones are not new, and this pond is far away from the Lagoon. However, they are all interconnected.

Steve Moler displayed a plan to show the northeast corner, the smallest lake, which leads to a bigger lake, and then a huge lake. Councilman Haverland asked if all of the bodies of water have littoral zones, and Mr. Moler said none of them do. The engineering was approved by SJRWMD said they could do littoral zones or have a larger lake to create more detention time (21 instead of 14 days) to filter the water. Mayor Barefoot said from an aesthetic aspect, this would be a different look for the development, as the other lakes do not have a littoral zone. Mr. Moler explained that to affect the changes to this 80-100' wide lake taking 24' for a littoral zone, it would make it look like wetlands. This lake has been in there 12 years now.

Christopher Marine, Attorney with Gould Cooksey Bunnell, said he has represented them since they bought the property from Corrigan Family. There are six homeowners who live around this lake and have been promised lakefront property. This is actually a stormwater management area that has been approved by the Town and Water Management District. The littoral zones are designed to create habitat, and if there were to be new plantings it could be inviting to snakes, mice and possibly alligators. There is not a requirement to have a littoral zone if it is less than a lake. Indian River County would not require a littoral zone in this case because they would not have it close to homes, and would never require a developer to redevelop a property. Our LDC 167.08 says the same thing, prior to construction of any new lakes, and this has been there 12 years. This is totally permitted, and they are asking for relief from that part of the decision.

Mayor Barefoot asked Mr. Beardslee to summarize, which he said although it has all been previously approved, do we comply with the ordinance or with what was done before. Mr. Clem said this could be approved, and Counsel makes an excellent point.

A motion to allow the property to remain as it is was made by Vice Mayor Weick, seconded by Councilman Haverland, and **passed unanimously 5-0.**

- c. PZV Board – Regular Member (Bunney) and Alternate (Ervin) Appointment (Town Manager)

Mr. Stabe said that PZV Board member Nancy Raftery is term limited, and the Council will recognize her in April for her service. **A motion to appoint current alternate member Barbara Bunney as a regular member** was made by Vice Mayor Weick with support from Councilman Cadden, which **passed 5-0.** A second **motion to appoint Caroline Ervin as an alternate to the PZV Board** was made by Councilman Slater, seconded by Councilman Haverland, which **passed 5-0.**

Mayor Barefoot congratulated both, and said the PZV Board did good work with this complicated issue.

- d. Approval of Employee Handbook Revision 2014

The Mayor noted that the Finance Committee completely rewrote the book, and received some suggestions from Vice Mayor Weick that had been discussed with the Town Manager prior to the meeting. The Vice Mayor asked for clarification on item II. n. 2, Outside Employment, “Town property shall not be used in any outside employment” add “or for personal use.” Adding #3. “Outside employment shall not be allowed in conjunction with paid time off (e.g. sick leave or vacation).” He clarified that one could not take paid time off to go work somewhere else for a day. At the bottom of that page, III. 2. e) it should read that “an employee may request compensatory time off in lieu of holiday pay” rather than using an entire day at once in lieu of holiday pay. Two pages over, under #6. a), Maternity Leave, “An employee who will miss work due to a pregnancy may be granted a leave of absence without pay after the use of all available vacation, sick leave, ...” change “personal” time to “compensatory” time. Finally, III. b. 10., the second sentence would read “Sixty percent (60%) of the income is payable for up to a maximum of 3 ½ years or to **social security disability eligibility** or Medicare eligibility at age 65, whichever comes first.” He said the rewrite took a couple of years, and it was well done.

Councilman Haverland questioned mandatory participation in a retirement plan for all employees on page 14, III. 13. b). He did not think the Town should tell employees how to live their life. Ensuing discussion led to a consensus that it **be reworded to be mandatory for fulltime Public Safety**

Officers and available to non-union employees.

Councilman Haverland also noted on page 12, III. b. 3., Longevity should be clarified that it was a cumulative total of 9%. He continued that they have an obligation to make sure the employees are compensated properly based on performance, not for time employed. For current employees, he would not take away the presumption, but for new hires, he would eliminate this. Vice Mayor Weick disagreed, suggesting it could require supervisor approval for the increase. Councilman Haverland was agreeable to that because that was not a mandatory raise. Vice Mayor Weick said a longevity incentive is a good incentive for performance. Councilman Slater, Councilman Cadden and Mayor Barefoot all said it was reasonable.

The Clerk was directed to redraft the handbook with redline changes for the next meeting.

- e. Accept Oct. 1 2012 & 2013 Actuarial Valuations for DB Gen'l. Employee Pension Plan (Town Manager)

A motion to approve the 2012 and 2013 Actuarial Valuations for the Defined Benefit General Employee Pension Plan was made by Councilman Haverland, seconded by Councilman Slater, which **passed 5-0**.

- f. Ordinance 514, General Employees DB Plan Clarification to Final Calculation (Town Manager)

Town Attorney Clem performed the first reading of the ordinance by title as written below:

AN ORDINANCE OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, AMENDING ORDINANCE 512 AND PREVIOUS RELATED ORDINANCES REGARDING THE TOWN'S DEFINED BENEFIT PENSION PLAN FOR GENERAL EMPLOYEES; CLARIFYING THE CALCULATION OF THE FINAL MONTHLY COMPENSATION IN THE ADOPTION AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

Councilman Haverland with support of Councilman Slater made a **motion to approve the first reading of Ordinance 514**, which **passed 5-0**.

- g. General Employees DB Plan Adoption Agreement (Town Manager)

The General Employees Defined Benefit Plan Adoption Agreement was forwarded with a recommendation to the Council to **approve the minor clarification on F. Final Monthly Compensation**, which **motion was made to approve as recommended** by Councilman Haverland, supported by Vice Mayor Weick, which **passed 5-0**.

- h. General Employees DB Plan Summary Plan Description Update (Town Manager)

Also discussed by the Pension Board with recommendation to the Council to approve was the **Summary Plan Description Update**, which was made by Vice Mayor Weick and seconded by Councilman Haverland, **passing 5-0**.

5. Town Attorney

Mr. Clem had nothing to report.

6. Town Manager

- a. Update on Non-Profit Request for Community Center Use (Sea Turtle Walks)

Mr. Stabe said he relayed the Council's decision to charge non-profit rates to Mr. Herran for using the Community Center for a base from which to conduct turtle walks, which was acceptable to him and he has already made several reservations.

- b. Update on Cell Phone Tower

Indian River County is anxious to begin process of building the cell phone tower within the Tracking Station Park on County property. Mr. Cabo, Director of Communications for the County, said the cell phone tower company has had a change in employees which caused a delay. They are forging ahead now, and we should have an update within the next few weeks. They hope to break ground soon.

Mr. Stabe also mentioned that the Council had directed him to draft a letter to the **Police and Fire Pension Board requesting that they change some of the assumptions** in their plan, as the Town had done. They agreed to reduce their rate of return from 6.5% to 6.25%, rather than the 5.9% as suggested by the Council. In response to the request to use the same mortality table that is used by the General Employees, the actuary and the plan administrator both advised against it, agreeing that the one they are using is the second most conservative table available, while the requested table is *the* most conservative. A request made to change their portfolio balance to 70-30 equity to fixed income

from 60-40 split was also declined by the Board after a very lengthy discussion. The rationale is that the fund manager very aggressively manages their fixed income portfolios in a different manner. Councilman Haverland added that management prefers not to have a fixed ratio but a range to work within. He spoke in detail about the management of the plan and the Town's responsibility for its success. Mr. Stabe said Manning and Napier, their fund manager, has a separate investment plan with even more latitude to move between the two types of investments. The Police-Fire Pension Board asked for more information on that. More discussion without resultant action transpired among the Council.

Also requested by the Mayor was an update on the **residential fire last night** in the Town, to which Mr. Stabe said the entire garage was engulfed **in the Indian Trails home**, having already burned through the roof and the fire had spread into the home when our Department arrived. Lt. Mark Shaw, Incident Commander at the scene, said they got the call at 4:43 p.m. and cleared the scene around midnight. It took two hours to get it under control, and they were able to send crews inside and saved some family photos and some personal items. It will probably be a total loss to the residents. Six County stations also responded, about twenty firefighters. There was a great deal of teamwork, and the fire had been burning for awhile before the neighbors noticed, as the owners were out of town. No one was injured. Speculation is that it was a fire caused by faulty electric.

- c. Departmental Reports (Building, Finance, Public Safety)
No comments.

7. Council / Committee Reports or Non-Action Items

- a. Land Use Restrictions (Councilman Haverland)

Councilman Haverland said it occurred to him one day as he drove past the Town's five-acre tract north of the CVS that it is a valuable asset. He asked if the Council has the right to sell it, develop it, or is it just there. He was told by Mr. Clem that the Council has latitude with the property, and the Councilman stressed that he is not at all suggesting that anything be done with it. Holding it increases its value, and we do have an understatement on our balance sheet of the Town's assets.

- b. Town Manager Evaluation Criteria (Councilman Haverland)

Councilman Haverland said he provided some fine tuning for the Town Manager's evaluation. Mayor Barefoot noted that if the Council each provided such a list of things, they would all be somewhat different. Mayor Barefoot suggested that they review the percentage of allocations for the four broad categories. The Town Manager had sent out a revised set of goals and objectives, which could be adjusted. Councilman Haverland said there could be something really important to the Town and if the manager does a really good job with it, it could become 50% of the evaluation. His concern was about setting a standard for response times, or determining if exceeding a benchmark is good or great performance. Mayor Barefoot said the person doing their job is what is expected, and should be rated as a 3, but someone could feel shortchanged versus being rated at a 4 or 5. More discussion ensued, with Mayor Barefoot agreeing to work with Robbie and be very specific for the next meeting. He asked if they agreed to continue to weight the categories as 40, 30, 20, and 10, which none were in favor. Rating 1-5 on all categories was suggested by the Vice Mayor. The Council was instructed to provide any ideas to the Town Manager.

- c. Council Committee Reports (MPO, EDC, TCCLG, TCRPC, Others)

EDC. The Vice Mayor reported three things: a request for proposals was issued for companies that will market the county with an identity and advice on how to market the area. A maximum of \$75,000 is allowed. On May 7 at 10:30 there will be an open house at the Aquaculture (shrimp farm) in Fellsmere. And effective today, the Chamber of Commerce has an app for cell phones to find restaurants, current events, etc. in the County. Enter the words "Vero Beach" to find information.

MPO. Councilman Haverland said bike paths, sidewalks and safety were mentioned at the meeting. Throughout Florida, Indian River Shores has the second best record among small cities for fatality and injury ranking in the state out of 121 in the category. He believed good bike paths and public safety were contributing factors. Sebastian was second in its category, Vero Beach was 29th in its category,

and Indian River County was third of 18 in its category.

TCCLG. Councilman Haverland said at this meeting in Ft. Pierce, Rob Bolton from Vero Beach Water/Sewer Department spoke about septic systems and his proposal for a hybrid step system to convert to sewer from septic over a period of time. It would be mandatory if approved, and would be implemented as a septic system needs to be replaced. This is supposed to eliminate septic tanks being a contributing factor to the Lagoon's problems. Mr. Bolton will be at the Town's meeting next month to discuss this.

Beach and Shores. No report.

Courtyard Updated. Mayor Barefoot acknowledged the John's Island Garden Group's vast improvement to the Courtyard landscaping. A plaque will be installed recognizing the Group, the landscape architect and the installing company.

9. Call to Audience.

Mayor Barefoot allowed **Nick Shaus**, Sable Oak Drive, to discuss All Aboard Florida. He said the County, Vero Beach, and Sebastian have asked for 90 days to review the 300 page proposal rather than 30 days. The County's planning staff is reviewing the 21-mile right of way for environmental and wetland impact statements. The biggest problem he sees for the Town is noise, with 110 mph trains from 7 am until 8 pm, twice an hour about 1.5 miles away as the crow flies on the west side of the Lagoon. More freight trains will be scheduled that are 50% longer and significantly faster on the tracks. Our 350 homes on the western shore of the Town may be most impacted with the potential for a substantial loss of value. Mr. Shaus recommend that several real estate firms be asked to study the effect on the home values, and provide reports as a service to the community that would then be reported at the public hearings. Golfers at Hawks Nest, Redstick and John's Island West will have interruptions eight times during a golf round, and could be blown over by the turbulence of the train. He asked for proactive response from the Council, such as a motion that we are against All Aboard Florida.

Susan Mehiel, also a Bermuda Bay resident, added to Mr. Shaus' comments. There are a number of people are willing to join forces against this for three reasons: the general nature of our community at large, the monumental hit to our taxes, and opposing the Seven50 organization. The Treasure Coast Regional Planning Council (TCRPC) represents the four counties, and there are two people who have supported All Aboard Florida, Mike Busha and Peter O'Bryan. In a letter Mr. Busha wrote to Governor Scott in support of All Aboard Florida, he said the reintroduction of passenger rail service along the East coast of Florida has been a long standing regional priority, and she questioned whose priority. He is suggesting that rail stations be added as this train is otherwise of no benefit to cities north of West Palm Beach, but we don't want them here. He is also suggesting that it will be beneficial for Amtrak to come through here to support All Aboard Florida. A 15-page TCRPC memo shows the magnitude of the project, but not the cost. Florida East Coast Industries (FECD) has applied for a federal railroad grant of \$4.6 billion, and she has asked for supporting documents for that grant under the Freedom of Information Act. There are plans to move roads around, add triple tracks in some places, and have train companies meet with local communities. The Marine Industries Association is preparing a legal battle, as there will be problems to go over the bridges that open and close, such as the Loxahatchee River. With the belief that Mr. Busha will be asking to put a station here, she mentioned a February 27th New York Times article about the heroin epidemic believed to be caused by the trains traveling between New York and Rutland, VT. Crime is up 300% in that area. She fears the drug trade will be moving north from the south Florida's large cities to our area. There are 352 crossings that would be impacted along the Treasure Coast, while a route of tracks through the center of the state owned by CSX, not CSI, could be used.

Mayor Barefoot said he lives near Rutland Vermont, and that NY Times story has taken a lot of liberties. The reasons are more employment related.

9. Adjournment

Hearing no further comments, the meeting was adjourned at 11:33 a.m.

Respectfully submitted,

/s _____

Laura Aldrich, Town Clerk

(Approved by the Town Council at the 4-24-14 meeting)