



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

**SPECIAL CALLED TOWN COUNCIL MEETING**

**Wednesday, March 9, 2017**

**9:08 a.m.**

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

**STAFF PRESENT:** **Robert Stabe**, Town Manager **Laura Aldrich**, Town Clerk  
**Chester Clem**, Town Attorney **Bart Crosby**, Public Safety Sergeant  
**Jose Guanch**, Building Official

**OTHERS PRESENT:** **RESIDENTS (64):** **Chris Hendricks**, PZV Board Chairman; **16 Residents** from Pebble Beach Villas; **5** from Surf/Pebble Lane; **13** from Vera Cruz; **4** from Harbor Island Club; **7** from John's Island; **8** from Pebble Bay; **11** from 7 neighborhoods; Guests Engineer **Scott McGuire**, Commissioner **Peter O'Bryan**, Auctioneers **Wesley Davis & Rick Baker**; Realtors **Bill Baker & Luke Webb & Reporters Janet Begley & Lisa Zahner**

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 the Mayor at 9:08 a.m. The Pledge of Allegiance and invocation were recited and the roll call is reflected above.

2. **Council Discussion Regarding Deed Restrictions on 5-Acre Parcel**

Mayor Barefoot explained that the meeting was called due to the density and restrictions on the property, and to have discussion on the 5' right-of-way.

The density was arbitrarily determined to be set at 15 doors maximum on the acreage. The Town has a fairly restrictive Land Development Code (LDC), and for a variance to deviate from that code would engage the Planning, Zoning & Variance (PZV) Board. The Council has two choices, to leave it at the arbitrary number set at the last meeting, or let the LDC determine what can be built. Whether it is a developer or three individuals who ultimately purchase the parcel, interaction with the PZV Board and Council would have to approve the plans. The Mayor made a **motion that the former Council decision to reduce the density of the Town-owned 5.38 acres to 15 units be cancelled and rescinded and that the sale of the property be subject to the Town's current Land Development Code for R2A zoning as established**, which was seconded by Vice Mayor Ochsner. The floor was opened to comments from the Council.

Councilman Auwaerter provided three handouts addressing 1) an article that a judge had awarded a developer \$16 million for a County Planning Board decision to wrongfully deny developers bid to build an apartment complex, ruling that they had applied arbitrarily and capriciously applied a non-existent criteria; 2) Another development company suing the City of Doral for refusing to increase density, and 3) a proposed Senate bill in FL legislature (SB 996) that could cost a local government up to \$50,000 for opposing a development. He provided this in case one or more Council wants to rely solely on the LDC. The Town's situation is unique in that we own the property and can determine how its sold. The Councilman's concern is that we run the risk without a deed restriction, since the LDC allows x number of units, and we decide to do x - 10 or whatever, and with deed restrictions, we could avoid this situation.

Mayor Barefoot mentioned the memo to Mr. Stabe from Mr. Guanch, which was done at the Council's prompting at the February 23<sup>rd</sup> meeting to ensure there was nothing overlooked. Vice Mayor Ochsner added this memo is what prompted him to revisit their decision, the analysis is valid, which was echoed by Councilmember Peniston and Councilman Haverland.

Mr. Guanch and Scott McGuire were there to answer any question, with Mr. Guanch stating that he was instructed to go back and review their decision and look for any loopholes. He analyzed the LDC against the discussion,

*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.*

comparing this property to the nearly completed Surf Club property. He used AutoCAD to superimpose the Surf Club property on our property. Our LDC allows 30-32 units, and we could put 21 on our property and still have a huge 300' setback from A1A to the buildings. There is room for another building (e.g. clubhouse) with 30 units and still have a distance of 300' to A1A. The Surf Club development in Vero Beach is only set back 42' from A1A. Mr. Guanch invited Scott McGuire, a local civil engineer who has been involved with projects in the Town such as the River Club, Carlton, other beautiful developments.

Councilman Haverland guessed that Pebble Beach Villas are on a comparable size parcel and there are 72 housing units there. Mr. Clem said it was built to County standards, and annexed in later. Councilman Haverland pointed out that as an adjacent development, it has more than twice the density we are discussing. Mr. Guanch added that a PRD, planned residential district, allows property to be detached and separate from the LDC requirements, and it is up to PZV Board to allow the exception. Mr. McGuire agreed, stating that this property is subject to parameters. Surf Club is extremely jammed in, and grade had to be built in. This cannot happen on this property in Town, he assured them, the grade is completely different here.

3. **Public Comment on Deed Restrictions**

Mayor Barefoot allowed everyone who desired to comment the opportunity. In total, 13 residents spoke as follows: four (4) in favor of lower density than the LDC, three (3) in favor of letting the LDC do its job, and two (2) asked that it not be sold. The other four just had questions or comments.

4. **Council Decision on Deed Restrictions**

With the Mayor noting that they were not there to discuss whether to not to sell the property, the **motion** made in **item 2 above passed 4-1**, with Councilman Auwaerter dissenting.

5. **Council Discussion Regarding 5' Right of Way**

Mayor Barefoot said last time, the vote was 3-2 in favor of the right of way, and he has since found that the support for the right of way in the general neighborhood is not what he thought it was. The Town has received letters that it is not to everyone's pleasing, with concerns about trespassers, parking on the grass, and other issues that have been raised. He offered an opportunity for the Council to respond.

Vice Mayor Ochsner said Commissioner O'Bryan was present, and he understood from the County Commission meeting an unofficial consensus that if we don't agree to a right-of-way, they may not agree to access for the new land owners. He said we have not only a moral obligation to keep the access to the beach for those West of A1A, and a practical one as well. Councilman Haverland added that representatives from the County have consistently said they will cooperate with the Town in every possible way related to this. Vice Mayor Ochsner continued that there is at least one of the County Commissioners who has taken an opposite view, and suggested that they leave it as is. (*applause*)

Councilmember Peniston was surprised to get letters and emails from people very much against the walkway and who were worried about it.

Councilman Haverland said he met with 15 residents of Pebble Beach Villas, all of whom were concerned and angry and who had not attended prior meetings. The fence between the Villas and the lot is on the lot property about 2' on average. Concerns are that the fence would come down and the Town would reclaim the 2', and most of the hedging would disappear. The people in the Villas want to protect their privacy and would have to erect their own fence and protection. In general, they are very much against having a public pathway adjacent to their property. He also mentioned that he had polled his list of people that he corresponds with before and after meetings who are residents of Indian River Shores. These 79 subscribers live (predominantly) in John's Island, but there are also some who live in Sea Forest, The Estuary, River Club, Baytree, or the Shores. He asked if they favor the Town pathway, 41 responded, none of whom were in favor of path. Thirty-five (35) of 36 heads of household who responded were in favor of maximum zoning. Those who live immediately nearby want the path, those who live abutting the property don't want it, and those who live nowhere near the property are against a pathway and for maximum density.

The HOA President of Pebble Beach Villas, in earlier meetings, had spoken in favor of a walkway, Councilman Auwaerter noted, stating that if the Town provided a path it would stop people from cutting through their property. He suggested to Mr. Haverland's concern that the Town give the fence property to the Pebble Beach Villas and solve that problem, and agreed with Vice Mayor Ochsner that it is important to have access. On A1A there is actually little access, just Beachcomber and Tracking Station. The Councilman said he was more persuaded to keep the path, and the residents away from the traffic at the 7-Eleven and CVS. It is difficult to cross A1A, but it's simply necessary to have access to the beach. John's Island has a traffic light, others don't. The Florida Department of Transportation said we have to wait to have a death certificate in order to get another traffic light to cross A1A. (*applause*).

Mayor Barefoot read one email they had received opposing the right-of-way from Pebble Beach Villas.

6. **Public Comment on 5' Right-of-Way**

Eleven (11) residents spoke about the right-of-way for the path, with five (5) in favor of it, two (2) against it, and two (2) who didn't mind if it those who wanted it paid the Town for it, and two (2) others just had questions. Indian River County Commissioner Peter O'Bryan addressed that the oceanfront triangular piece of land the County owns has a Federal requirement to provide public access. Having private access by the three lots would not qualify, and speaking for himself, not the Board, he assured the Council that he would do his best to encourage other Commissioners to support public access. It totally hinges on the Town having access via the 5' public path. A **motion to rescind the prior action allowing a 5' right of way** was made by Councilman Haverland with support from Councilmember Peniston, which **failed 3-2**. The Mayor announced that the **previous decision to have a 5' pathway stands**.

7. **Adjourn**

With no further comments, the meeting was adjourned at 11:22 a.m.

Respectfully submitted,

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

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