



**AN ORDINANCE OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, REVISING AND UPDATING THE LAND DEVELOPMENT CODE (LDC), CHAPTER 169, TABLE 160; CLARIFYING AND AMENDING THE DEFINITIONS; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.**

Discussion that this applies to the Town's 5.38 acre parcel zoned R2A multifamily since it is not oceanfront, which would have different restrictions. The building will not be any higher than what is currently built in Town, and for comparison, the 50' maximum with roof is significantly less than the 120' Spires, which have a height that has been long outlawed by the City and County. The 18-minute discussion ended with a **motion to approve the first reading of Ordinance 534** made by Councilman Haverland with support from Councilmember Peniston, which **passed 5-0**.

- b. Ordinance 535, St. John's River Water Management District (SJRWMD) Landscape Irrigation Continuing, Mr. Clem read Ordinance 535 by title as follows:

**ORDINANCE NO. 535**

**AN ORDINANCE OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, PROVIDING FOR LOCAL IMPLEMENTATION OF THE WATER CONSERVATION RULE FOR LANDSCAPE IRRIGATION OF THE ST. JOHN'S RIVER WATER MANAGEMENT DISTRICT (SJRWMD); PROVIDING DEFINITIONS; PROVIDING LANDSCAPE IRRIGATION SCHEDULES; PROVIDING EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULES; PROVIDING FOR VARIANCES FROM THE SPECIFIC DAY OF THE WEEK LIMITATIONS; PROVIDING FOR APPLICABILITY OF THE ORDINANCE; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR CONFLICT & SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

This Ordinance was presented for consideration as requested by the St. John's River Water Management District, who asked that we adopt it to further the grant applications that we submit. It is already adopted by 64 municipalities within this water management district. This ordinance includes enforcement with penalties as proposed in their model ordinance, and its adoption would not impact any additional residents as it only applies to watering restrictions when using potable water. The brief discussion concluded with a **motion to approve the first reading of Ordinance 535** made by Councilman Haverland and seconded by Vice Mayor Ochsner, which **passed 5-0**.

- c. Utility Easement for Lift Station of 5+ Acre Parcel – City of Vero Beach

A lift station on the northwest corner of the 5.38 acre tract has been there for many years, but an easement was never requested or granted. This is essential to be recorded in the property records giving the City the right to have this equipment there. It is in the 60' setback portion of the land, which is unusable for other purposes. A **motion** by Vice Mayor Ochsner supported by Councilmember Peniston **to approve the utility easement for the lift station passed 5-0**.

**5. Mayor's Items**

- a. Compressed Natural Gas Expansion – Workshop Discussion

Discussions about Florida City Gas having compressed natural gas lines run under the river to the Old Winter Beach Road area resulted in a request by them to further address the residents by way of a workshop to determine cost effectiveness for them to pay to install this gas line. The Mayor said the presidents of the home owner associations and interested residents would be invited. The Council agreed it seemed like a good idea to provide the opportunity as educational to the residents and informational to the company. The Mayor asked the Town Manager to arrange this meeting.

Mayor Barefoot also led a 20-minute discussion about the current status of the City of Vero Beach electric issue, in particular the anticipated May 9 Letter of Intent and its potential outcome.

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

- a. Approval of Boat Purchase (Public Safety Director) *removed from the agenda in 1.c.*
- b. Budget Workshop & Public Hearing Dates (Town Clerk)

Mrs. Aldrich asked for the Council's availability to have the Budget Workshop prior to the Regular Town Council meeting on June 22. Councilman Auwaerter is not able to attend on that date, so Councilman Haverland suggested that both meetings be set for June 29 with the Budget meeting preceding the Regular Town Council meeting. Councilman Auwaerter thanked them for accommodating his schedule.

The Council also agreed on the dates for the Budget Public Hearings, with Councilman Haverland supported by Vice Mayor Ochsner in a **motion to move the June 22<sup>nd</sup> Regular Council meeting to June 29 preceded by the Budget Workshop at 9 a.m., setting the First Budget Public Hearing for 5:01 p.m. on September 14, and the Final Budget Public Hearing for 5:01 after the 3:30 Regular Town Council meeting on September 28<sup>th</sup>, which passed 5-0.**

c. 5' Right of Way/Fence (Town Manager/Town Attorney)

In order to notify the County in a timely manner to be on the agenda for their Commission meeting on May 16 to discuss the right of first refusal, Mr. Stabe asked the Council to set a Special Called meeting at 8 a.m. on the Monday morning, May 8 following the auction that is set for May 6 at 9 a.m. The **motion to set a Special Called meeting for Monday, May 8 at 8 a.m.** was made by Councilman Haverland with support from Councilmember Peniston, which **passed 5-0.**

Mr. Stabe also requested Council direction on the expense of \$8,000 - \$10,000 to remove the cabbage palms within the 5' right of way. This discussion encompassed more than 20 minutes and resulted in a Councilman Auwaerter making a **motion subject to the potential sale and approval of the auction price that the Town will commit to remove the 56 cabbage palms, haul the debris, grind the stumps below ground level in the 5' right-of-way path.** The **motion died for lack of a second,** given the rationale that the Town is required to clear it if the sale is approved.

d. PZV Board Update from 4-10-17

Chairman Chris Hendricks reported that an accessory structure (dock) at 86 Sago Palm Road was approved for exclusive use for Lot 2, having been tabled from a previous meeting. It prohibits parking at the dock, which was a condition by JIPOA as well as the PZV Board.

1) Consideration of Request to Split Lot at 531 Indian Harbor Road

This 90-minute discussion began with an explanation by chairman that the request is to split 531 Indian Harbor Road, which is a large parcel that supports two lots and contains an easement for an access. The Board recommended approval subject to zoning remaining R1A, that they comply with the LDC requirements and John's Island Architectural Control Standards and review, and abandon the access easement immediately adjacent to the north, specifically Block 14 Lot 1. The Board agreed it was in the best interest of John's Island (JI).

Two members of the Council discussed the easement as something to resolve between the two property owners. It was also noted that this unique property is physically in JI but is not JI property, nor is it governed by JI. The Board's recommendation that it follow JI architecture was questioned, with a statement that it should follow Indian River Shores only. Mr. Hendricks said the PZV Board recommendation was that they follow both, although Town Attorney Clem noted that wasn't agreed to by the parties. Mr. Guanch added the staff recommendation was that they follow the architectural guidelines, but not that they would necessarily fall under the JI governing board. The purchaser of the property will follow the JI guidelines. One councilman noted that the JI Architectural Review Board can be challenging with more cost and aggravation. Another noted that the owner has been paying JIPOA dues without being part of the association nor required to do so, so any purchaser of this property would now be required to be part of JIPOA. He was not sure this is the purview of the Town's building code. Mr. Guanch noted that a "glass box" home could be constructed under the Town's code, which would not blend within JI.

Casey Walker, representing Ted and Debbie Berghorst, addressed the Council about his client's property rights, who want the property to be free from JIPOA regulations as it has been for more than 40 years since it was at one time a citrus grove. He asked them to keep in mind that JIPOA holds the cards, the prior owner had granted them the right of first refusal, written by Mr. O'Haire, that it could be subordinated by requirement to belong and go through ARC process (Architectural

Review Committee) when the Berghorsts' purchased it. He believes the division of this large, unique lot will help, as it could prevent it from reverting to citrus or having something built that is out of concert with JI. They are grateful for the positive recommendation of staff and the board, to reach across the line for public concern; there are no variances needed on the lot split, but other requests, including the requirement to subject themselves to the ARC and the abandonment of the easement that has been there 40 years are private legal matters. Mr. Walker concluded that the remedy is to approve the lot split without conditions of 1) extinguishing the easement, or 2) any requirements subjecting the Berghorsts' to JIPOA, its requirements or its rules, or the Declarations of Lost Tree.

Michael O'Haire, represents property owners to the north that is adjacent to and abutting this property, Byron and Nancy Sugahara, spoke about the easement history as all of John's Island was owned by Fred Tuerk, who gave this property to John Morrison's wife, Bobbi. Mr. Morrison had a citrus grove on the property that was accessed by Old Winter Beach Road before there was a John's Island, and built a house on the property. The easement, a dirt road, was his access. The proposed split involves the Town in that it divides the property into two (2) lots, and the Town's Code state that you can't reduce the size of a lot without first plotting it, and both lots border on Indian Harbor Road. The inconvenience and annoyance to the Sugahara's is the easement that was on the lot before he bought it, put on it by Lost Tree Village Corporation. Mr. O'Haire represented Mr. Morrison, owner, and prepared the right of first refusal which was given to JIPOA. The intent was that it would eventually become part of JI and subject to its rules and regulations. It is subject to the Town's rules with access from Indian Harbor Road.

Mr. Sugahara stated that he has a driveway now, not a road. His concern is that he has granted the right of access over his property, but he is responsible for maintenance of driveway. Grandchildren play on the driveway, and he worries about increased traffic. Particularly disturbed about three (3) mailboxes on his driveway (road). He didn't pay that much for the property to see a bunch of mailboxes. The access should be separate to Indian Harbor Road, not to his driveway. He also questioned liability for two additional households if the property is split.

The Council discussed the easement with Mr. Sugahara. Mr. Clem said the drawing is the proposal to be platted, and both lots have access to the street. In addition, by recorded easement, Mr. Sugahara's property would still have his own access. The easement is across Mr. Sugahara's property. The Mayor asked why this is before them and not a civil matter. Mr. Clem said there is no right granted that this can be subdivided any more than it is already. The Council has the right to object to this, building a house on one lot versus the requested two houses on two lots. It does have some effect on the right of first refusal. If the lot sale is executed now it is one lot, one price, whereas two lots bring a higher price.

Councilman Auwaerter asked if the Town has the right to limit access by determining that both of the lots would have to have driveways on Indian Harbor Road, and Mr. Clem said he believes so, and reiterated that the Council does not have to grant the lot division. Councilman Auwaerter thought driveways to Indian Harbor Road would seem to eliminate the problem.

Mr. Ted Berghorst, owner of the property, said that while there is not a right to subdivision of the property, he has paid a lot of taxes for 17 years. He is asking for a reasonable request to divide this into significantly larger than many of the properties. He reviewed the history of purchase from John Morrison 17 years ago, who pointed out two unique features of the property: 1) it faces Indian Harbor Road, and he has a right to build a driveway to that road; and 2) the property has an easement to access that may have value in the future. Mr. Morrison also had ownership of the property before JI and JIPOA, so it is grandfathered separately and that has value in that down the road, if he wanted to develop it, he wouldn't have to go through JI architectural review (time, risk, etc.). All of this was wrapped into the price paid for the property. He has another house at 130 Southshore Circle (also in John's Island), and has held this property as investment. Shortly after he purchased from Mr. Morrison, Mr. Rose from JIPOA called him and asked if he would agree to put the property into JIPOA. He talked to his real estate broker, Bob Gibb, and said they want to be part of the community. He said you don't have to be part of JIPOA but you can. He has paid the dues for 17 years

nonetheless. He has served on the board of JI Club, president of JI Club, been involved in the community. He put the property on the market a couple of years ago, and had one St. Louis developer developer/JI member who signed an agreement with him to subdivide the property into 5 units similar to Paget Court, and then decided not to follow through. Mr. Berghorst said he is a friend of Byron Sugahara – they won the first Redstick Christmas Cup together. The issue with the easement is it is on Mr. Berghorst's property, and Mr. Sugahara said he would support (the split) if the easement would be removed. There has never been an issue about mailboxes. Mr. Berghorst continued with an extended discourse about the easement before appealing to the Council, assuring them that he will do the right thing. It's on the market for \$6 million for both lots, \$3-4 million for one. It's a unique property with a southwest view and deep water access. Mr. Berghorst doesn't want it sold with a condition of JIPOA membership as a requirement.

Mr. Sugahara said that what Mr. Morrison told him about the right to access Indian Harbor Road isn't necessarily true. Mr. Sugahara said he hopes that it is, but believes that the lot split would double the easement, and Mr. Berghorst bought it with an easement for one lot, not two. He shouldn't have an economic negative of increased traffic, wear and tear, and liability.

Mr. Moller, JIPOA General Manager, said for 45 years JI has been controlling the standards of the property. The concern is that the requirements of architectural would not be followed, noting that the 5-6 home project brought an uproar from Indian River Harbor residents.

Councilman Haverland said JIPOA has the right of first refusal and could buy the property and have total control, but they don't want to be in real estate business. Mr. O'Haire discussed the easement to access Indian Harbor Road with Councilman Haverland. Mr. O'Haire noted Indian Harbor Road is under the jurisdiction of John's Island.

Mayor Barefoot suggested with the Council's concurrence that the parties resolve this between themselves, as the driveway access isn't the Council's decision.

Mr. Berghorst asked the Council to take action about splitting the properties today, and they will address the other issues privately. Councilman Haverland asked if the properties north are comparable in size to the split properties or to the single property without split. Scott McGuire showed a photo illustrating that the property has 3.4 acres currently, more than double the size of area properties, and if it were to be split it would be more consistent.

With more discussion about the split, a **motion to approve the lot split with none of the conditions as recommended by the PZV Board** was made by Mayor Barefoot with support from Councilman Haverland. The conditions to remove included the easement, having to follow JI ARC guidelines, and no membership requirement.

Vice Mayor Ochsner asked Mr. Clem if splitting the lot in two is something the Council has to approve, and he replied there is no right to anything with this. If it is in the best interest of the Town, the Council would use that as a determination. The **motion passed 3-2 with** Vice Mayor Ochsner and Councilman Auwaerter opposing.

Chairman Hendricks also reported that a variance to raise the minimum floor elevation at 221 Sago Palm Road in John's Island from 8.5' to 11' was approved by the PZV Board with two conditions relating to fill around the foundation and water storage compliance.

## 2) Consideration of Request for 4.25' & 3.09') Garage Encroachment at 156 Island Creek Drive

Chairman Hendricks reported there was also a variance request for 156 Island Creek Drive in John's Island for 4.25' and 3.09' for the south garage that encroaches on west front yard setback. It's been built for a while. A **motion to approve the garage encroachment variance at 156 Island Creek Drive of 4.25' and 3.09'** was made by Mayor Barefoot with a second from Councilmember Peniston, which **passed 5-0**. Smaller variances within the purview of the PZV Board were approved for a second (north)garage on this property.

The Chairman said they reviewed the clarification of the LDC table, which was approved by Council and is appreciated.

## 7. Town Manager

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

Chief Rosell pointed out there are new graphics as requested by Councilman Auwaerter. There have been some burglaries South of Town happening later in the afternoon, and he encouraged residents to lock their doors. Councilman Auwaerter reminded everyone to also set their home alarms, even during the day.

b. Cell Tower Update

The Town Manager reported that DataPath has obtained the Antennae Structure Registration (ASR) from the Public Service Commission, and the lease agreement is in process between the initial carrier and DataPath. A second carrier has now applied, giving pressure to the first carrier to move on it or the second will have the top spot. Negotiations are underway with both carriers.

c. Old Winter Beach Road / SJRWMD Grant

Mr. Stabe thanked the Council for approving first reading of Ordinance 535, which will help with the application for this grant. Grant writer Amy Adams, who has 98% success rate in obtaining grants, will come to address the Council in the future. We applied for \$395,000 for fixing Old Winter Beach Road and installing stormwater drain treatment. Senator Mayfield is staunchly supportive of our grant.

d. Departmental Reports (Building, Financial Balance, Public Safety).

- A new set of graphs with PSD response times were provided per Councilman Auwaerter.
- Vice Mayor asked about a bicycle accident in front of CVS, which the Chief said the gentleman fell off his bike, he was not hit by a car. Also the Call was dispatched to Vero Beach, not the Town, so we were later responding than they were.
- A cost differential analysis of the Community Center was provided, with Councilman Haverland asking if we were waiting for design. He was told that it is in process, and these are real cost estimates annually based on the new size. Plans are in the architect stage now.

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

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

**TCRLC** – Councilman Auwaerter reported there is a continued push to limit home rule mostly in the House, less in the Senate. We are hopeful it won't be that bad when it's over.

**CoVB Utilities** – No meeting.

**EDC** – No report.

**Beach & Shores** - Vice Mayor Ochsner said there was a net loss of sand associated with Hurricane Matthew. Councilman Auwaerter questioned Sector 4 being short-shipped, which the Vice Mayor said it is because the Town does not have critically eroded beaches.

**MPO** - Councilman Auwaerter said he and his wife attended the Florida MPO Governing Board meeting in Cocoa Beach. The pedestrian crossway in front of Town Hall is meeting resistance from FDOT, so their purpose was to put them on the spot.

**TCCLG** –Vice Mayor said there was nothing to report.

Mayor Barefoot recognized Mr. Clem's 40<sup>th</sup> year of service as the Town's Attorney. The audience had largely departed by this time, so the Council expressed their appreciation. The Mayor noted that he had done a wonderful job, and encouraged him to continue to do so.

9. **Call to Audience**

Marianna Greer, a member of The Shores Board of Directors, thanked them for addressing the needs of OWB Road.

10. **Adjournment.** With no further comments, the meeting was adjourned at 11:52 a.m.

Respectfully submitted,

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

Laura Aldrich, Town Clerk

(Approved by the Town Council at the May 25, 2017 meeting)