



MINUTES
THE TOWN OF INDIAN RIVER SHORES
6001 North Highway A1A, Indian River Shores, FL 32963
SPECIAL CALLED TOWN COUNCIL MEETING
Friday, May 1, 2015
1:00 p.m.

PRESENT: **Brian M. Barefoot**, Mayor
Gerard A. Weick, Vice Mayor
Michael B. Ochsner, Councilman

ABSENT: **Thomas F. Slater**, Councilman (attended by telephone)
Richard M. Haverland, Councilman (excused)

STAFF PRESENT: **Robert Stabe**, Town Manager **Laura Aldrich**, Town Clerk
Chester Clem, Town Attorney

RESIDENTS: Bob (& Nancy) Auwaerter, Finance Committee; Bill Grealis, John McCord, Milt Benjamin

GUESTS: **Bruce May, Terry Deason, Dan Ward**; IRC Manager **Joe Baird**; IRC Attorney **Dylan Reingold**; VB Resident **Charlie Wilson**; VB 32963 Reporter **Lisa Zahner**; PJ Reporter **Janet Begley**

1. **Call to Order**

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

Mayor Barefoot called the meeting to order at 1:03 p.m. with the Pledge of Allegiance and Invocation repeated. Town Clerk Aldrich called the Council role as shown above.

2. **Discussion Following Mediation**

Mayor Barefoot opened by stating City offered nothing new, and they do not appear to be in a position to produce any real rate reductions. Our rate consultant believes there is potential for a partial sale. This assumes the terms are reasonable. FPL made it clear that they do not see any insurmountable obstacles, and we do not either. The substation in the Shores is not a problem, the stranded costs are part of any negotiation. As members of the County, all rates will go down if the City invests the funds. FPL made it clear that there will be a more detailed offer to purchase the system in the Shores within a couple of weeks, which was requested to be made sooner rather than later by Schef Wright and Mayor Winger. FPL came forward as part of the solution, which is very much appreciated. He hope the City considers the significant benefits of a partial sale.

Meanwhile, the cooling off period expires on May 15 and we need to provide Counsel with direction for the next step. Early in the mediation Carlos Alvarez made a point of stating that there are risks associated with litigation. In this particular situation, any offer FPL would make would assume they take over the system sooner rather than later, and the value of the offer is that the sooner, the better. If we go to litigation and the court rules in our favor, there is the possibility that the City will receive nothing other than reasonable costs of transitioning the infrastructure. The risk to the Shores are really none. It can't be any worse than it is now, with the spread for rates wider than 30%. This is funded with taxpayer dollars, but we have not had one resident of the Town complain about the process, even knowing the costs, as there are both long and near term benefits to them. Reductions reasonably close to what FPL offers will more than offset the cost of funding this litigation.

Since December we have received nothing from the City in terms of rate relief, the disparity has gotten wider, and all parties agreed today at the mediation that all options are exhausted. He recommends advising Counsel to take whatever steps are necessary to re institute our lawsuit. This includes filing an amended complaint at the appropriate time.

At their request, we agreed today to give the City time to respond to our lawsuit and to negotiate in earnest with FPL. We are recommending to provide the City an additional 30 days to respond in addition to the 20 days they are entitled to. The Mayor said he sincerely hopes the City will take advantage of this opportunity,

even though the economic scenario presented this morning, as prepared by rate expert Terry Deason, was offensive to Mayor Winger. We have told the City that if at any point in time they believe a partial sale appears fruitful, to let us know.

Mayor Barefoot opened for questions or comments, and two of the three councilmen were initially reluctant to offer the additional delay. All were very frustrated.

Mayor Barefoot asked Mr. May for the benefit of delaying for both parties, and he said we agreed that we would reinstate the lawsuit and file an amended complaint on or around the 16th of May. The mediation team recommended to the Council that the mediation is over, and we are in litigation now. By extending another 30 days to respond to the lawsuit, they would have a total of 50 days. He recommends this because we have made a formal request of FPL to make a formal offer, and they have agreed, but it will take a couple of weeks. The City needs additional time to assimilate that offer. We are not agreeing to stay the lawsuit, only to give them an additional 30 days to respond to that lawsuit. This is typical and reasonable. This also gives an opportunity for the Town Council to have a shade meeting to discuss strategies and cost of litigation.

Discussion about the extended period offered to the City ensued between the Council and Mr. May, with Mr. Clem agreeing with Mr. May, that ten days won't make a difference one way or the other, but this new offer needs to be looked at by FPL who has a lot of work to do before they can have an intelligent conversation with the City. The 15 remaining days is too short to give them an opportunity to understand what the offer really entails. Once the case gets started, it will move faster.

Mayor Barefoot said the additional 30 days is to allow the City to view real numbers and terms, and it will have to be negotiated between the City and FPL. If they are making the time and effort to review everything based on FPL's offer, it is difficult to do this while responding to our lawsuit. There was more minor discussion, and it was noted that if we go to court, there is evidence that we have made every attempt to accommodate them.

3. **Proposed Action for Consideration**

A **motion** was made by Councilman Ochsner with support from Vice Mayor Weick to **reinstate the lawsuit and grant them a 30 day extension beyond the 20 days they are entitled to**. The floor was opened for questions.

Bob Auwaerter, Finance Committee Chairman, and Vero Beach resident Charlie Wilson had minor comment before the **motion was put to a vote, which passed 3-0**.

Mayor Barefoot continued that now, because we are in litigation, the Council can meet "in the shade." Mr. Clem said that it cannot be before May 16. On behalf of Mr. May and himself, Mr. Clem requested that the Council schedule a shade meeting to discuss pending litigation, cost of litigation and strategy, and other matters as are permitted under the Sunshine Law. This meeting is required to have to have a court reporter to take a verbatim record and that remains sealed during pending litigation. This meeting could be before or after the next Council meeting would be better, on May 21st, and FPL would have already had the chance to meet with the City.

There was a **shade meeting scheduled for May 21st at 7:30 a.m.** which would last 90 minutes to two hours. Issues of this lawsuit, issues of fact and jury trial issues and then discussion as allowed by the law.

4. **Adjournment**

Having no further comments or business, the Mayor adjourned the meeting at 1:47 p.m.

Respectfully submitted,

/s _____
Laura Aldrich, Town Clerk

(Approved by the Town Council at the **May 21, 2015** meeting)