

MINUTES
THE TOWN OF INDIAN RIVER SHORES
6001 North Highway A1A, Indian River Shores, FL 32963
REGULAR TOWN COUNCIL MEETING
Thursday, May 27, 2010
3:30 p.m.

PRESENT: E. William Kenyon, Mayor
Frances F. Atchison, Councilmember
Michael B. Ochsner, Councilman
Gerard A. Weick, Councilman

STAFF PRESENT: Richard Jefferson, Town Manager
Laura Aldrich, Town Clerk
Chester Clem, Town Attorney
Bill Schauman, Director, Public Safety
Robert Stabe, Public Safety Captain

OTHERS PRESENT: Tom Cadden, Utility Liaison; 6 Residents; 9 other guests

ABSENT: William H. Ahrens, Vice Mayor (excused)

1. **Call to Order**

- a. Pledge of Allegiance
- b. Invocation – Councilman Ochsner
- c. Roll Call

Mayor Kenyon called the meeting to order at 3:30, and these items were performed with the Roll Call as reflected above.

2. **Consent Agenda**

- a. Approval of April 22, 2010 Regular Town Council Meeting Minutes
- b. Approval of April 30, 2010 Special Call Town Council – Personnel Matter Minutes
- c. Approval of May 7, 2010 Special Call Town Council – Town Manager Transition & CCNA
- d. Acceptance of February 16, 2010 Finance Committee Minutes
- e. Approval of Ten-8 Fire Equipment Invoice dated 4/24/10, Pumper Repairs
- f. Approval of Fox, Wackeen, et al Invoice dated May 12, 2010, Utilities Counsel

A **motion to approve the consent agenda as presented** was made by Councilmember Atchison and seconded by Councilman Ochsner. It **passed 4-0** with no discussion.

3. **Mayor's Items**

- a. Water, Sewer & Reuse Water (Irrigation) Issues (Dr. Stephen Faherty & Mr. Glenn Heran)

Mayor Kenyon introduced Dr. Stephen Faherty and Mr. Glenn Heran. Dr. Faherty began a slide presentation with a water bill calculator that compared rates for two actual residents of Indian River Shores using City of Vero Beach water rates and Indian River County water rates. Comparing rates and revenues from three jurisdictions (County, South Beach, and Indian River Shores) for the City water was reviewed in detail.

Mr. Glenn Heran explained that 38% of the customers are outside the City, with 24% of the revenue coming from these service addresses. A model devised by Mr. Heran can compare any City water bill, regardless of meter size, consumption rate, or jurisdiction, with the County rates.

The majority of meters in Indian River Shores are ¾" or 1", which are more expensive in base charges than 60% of the common 5/8" meter. Mr. Heran explained several scenarios

This is a Public Meeting. The Town of Indian River Shores does not transcribe verbatim minutes. Should any interested party seek to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs any type of special accommodation for this meeting may contact the Town Clerk at 231-1771.

depicting the City charges versus the County for water and sewer, with City rates always higher. It is currently 31% more expensive for City water and 38% higher for sewer than the County rates would be. He mentioned that there is a 10% surcharge included for non-residents on their water/sewer, which is about \$800,000 in “unearned revenue” a year for the City of Vero Beach.

Mr. Heran explained the rate disparities, and showed savings the Town would realize if it had County water today and in the future years.

Councilman Weick asked how much of the City water is distributed on the mainland outside of the City limits, and Dr. Faherty said about 1%. Mr. Heran said that if the Town stays with the City of Vero Beach (for water supply and distribution), we will lose a lot of money. The City will lose 44% of their revenue - \$7.5 million - if the Shores and South Beach allow the County to provide the water service, and if the City cannot shed an equal amount of cost.

The Mayor asked if any resident of Indian River Shores had any questions, and none responded. Dr. Faherty noted that in our contract with the City, there is a section about unreasonable rates that may be considered as an option if the Town were interested in getting out of contract prior to 2016 (water only).

Mr. Jack Mitchell, 220 Sandpiper Point, spoke with the Mayor briefly about the time lines for a decision. The Mayor stressed that it is up to the major service providers who are interested in the Town’s business to come forward with their proposal that demonstrates the quality of the product they desire to deliver, the cost for delivery, and the availability of the product. The Mayor and Council thanked Dr, Faherty and Mr. Heran for the presentation.

b. Water Utility Discussion – Indian River County Commission Chairman Peter O’Bryan

Commission Chairman Peter O’Bryan thanked the Council for the opportunity to discuss the County’s point of view on the consultant proposal. At the October joint workshop with the Town and the City of Vero Beach, all three entities unanimously approved to hire a consultant to look at consolidation of the water/wastewater and reuse systems. Three anticipated options based on the report received were to keep the status quo, have the County provide the water/wastewater/reuse water, or a combined regional system that would be incorporated to serve the entire County. Part of the study the consultant provided, Phase I, was just under \$40,000 and Phase II was just under \$130,000. The County's point of view regarding accepting Phase I, which is just to get everyone's opinion again and copies of materials, was that it is an unnecessary expenditure of taxpayer funds. They preferred expending funds to explore the three options, as it is seven months later and there is still no information to use in making any decisions.

Councilmember Atchison said it was her understanding at the October meeting that the consultant would come to the individual members and provide options so that when data was received, they would be able to better understand it and interpret the data on our own. Commissioner O’Bryan said his understanding was that the Phase I doesn't provide any data, just asking which of the three options is preferred.

Councilman Ochsner agreed with Commissioner O'Bryan, he thought there would be a real analysis to enable a choice to be made. However, he questioned the Shores spending funds in a partnering effort with the City and the County, who are the sellers, since we are the buyers. Commissioner O’Bryan said he could take that back to the Board, and with three votes they could present the cost for service as an option.

Councilman Weick asked at what price the County would be able to supply the Town with water. Commissioner O’Bryan said that the staff would have to know the length of the desired agreement, retaining ownership of infrastructure, etc. They could work with the Town Manager and find out the details. There is enough excess capacity that they could supply all of the committed demand, the current county demand, and reuse water as well. This week a reuse water line was opened up to 58th Avenue that could be brought to the John’s Island line.

Councilmember Atchison asked about the County’s frequent boiled water notices, and

Commissioner O'Bryan replied that anytime there is a line open, they are required to give notice by DEP, and are very careful to make sure they follow the law 100% of the time.

Mayor Kenyon said that documented proof of supply would be required.

UPDATE ON PIPER: An update from the Commissioner was requested, and he replied that the word from Piper is that they are cautiously optimistic, being excited about the new ownership in the Far East. The company has publicly projected a 50%, maybe up to 75% increase in sales. They are back up over 800 employees now, which at one point were down to 550, and have projections for more hiring. New sales executives and a fleet sales gentleman of world-wide renown have been hired. They are at full production, and are close to getting significant hurdle cleared by the FAA for working prototypes of the Piper Jet. They are hiring full-time employees rather than contract engineers who will work on the next project. Commissioner said that he is very pleased with what they are doing.

Councilman Weick asked where we stand on contributions to the Piper program, and Commissioner O'Bryan said that no more incentive payments will be made until they meet the target goals, for which they have until December 31, 2011.

c. CCNA Update (Tom Cadden)

Mr. Tom Cadden, Chairman of CCNA, reported on Committee results from a special meeting, which was called partly so that the County Commissioners could hear and vote on the recommendation at their upcoming meeting. The two County representatives voted against proceeding with the Phase I at the CCNA meeting, stating that they were not comfortable with spending the funds on that. At a subsequent Committee meeting, Chairman Cadden asked them to go to the consultants again and see if they could "get comfortable" with Phase I. Since they couldn't get comfortable, there is not much point going forward with this Committee. Mr. Cadden said he spoke with the consultant (GAI) this morning, and the County has been speaking with them. The County wants the consultant to do an engineering study with the County supplying South County and the Town of Indian River Shores. That wasn't the original objective, and it certainly was not what the CCNA had decided. There is no purpose in this Town spending one dime when the County has an engineering staff that could provide those numbers. Therefore, Mr. Cadden requested a motion for the Town to resign from the CCNA as they are in a deadlock. The City agrees with the Town, the County disagrees on how to proceed.

A **motion to withdraw from the CCNA committee** was made by Councilman Weick, seconded by Councilmember Atchison. Councilman Ochsner asked what Phase I would do for us, and Chairman Cadden said it was to be a cursory engineering study for combining the systems, and they can talk to every elected official about different ways to proceed. Once a consistent opinion is formed, the Committee could go forward with it. Now there is no purpose to stay with the Committee, as the Town can spend its own money on its own engineering study to see what infrastructure we have and it's value. The County has come up with its own study and has asked the consultants for the costs to supply the two areas, which does not totally affect us. Councilman Ochsner asked if the \$40,000 will give us the information to make an informed decision, and Mr. Cadden said no, it just allows us to proceed with the study, which will get into the detail that the County wants. Mr. Cadden said we are at an impasse. Councilman Ochsner agreed if the County was trying to point the study in one direction, which is what Mr. Cadden said appears has happened.

Councilman Weick agreed with Councilman Ochsner's earlier statement, that we are a customer. Mr. Cadden reminded them that Vice Mayor Ahrens had said at a special meeting that we need to know what we have in the ground before we could make a decision. This was discussed in general between the two briefly, with Councilman Ochsner stating we are the consumer, and the notion of regionalization makes sense with one provider, not two, with the County and the City analyzing this. Eventually, Mr. Cadden said, a workshop for the Town to advise what can and what cannot be done will be called. Mayor Kenyon said that with the constant changing, this is a "dead dog" Committee. **The motion passed 4-0.**

- d. Letter RE: Federal Sustainable Communities Initiative and Memorandum of Understanding
Mayor Kenyon said this is a fairly complex issue, and asked unless everyone had reviewed it and fully understood it, to table it to the next meeting. **A motion to table this item to the next meeting passed 4-0.**

- e. Resolution 10-02 Opposing Amendment 4 to Florida Constitution

Councilmember Atchison said that at the Treasure Coast Regional League of Cities, a presentation was made by the regional chairman of the "Vote No on Amendment 4" campaign, relating to a ballot question on the November General Election. Since the Council can not give their opinion as a full body on this type of matter, this resolution is encouraged to support opposition to this amendment regarding all changes to comprehensive plans being approved by the voters. It impacts jobs, and promotes a weaker economy and higher taxes. The example cited is St. Pete Beach, which tried an amendment a few years ago and has been in total litigation since. She recommended that the Town consider passing this resolution, which is printed by title below:

Resolution No. 2010-02

A RESOLUTION OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA OPPOSING AN AMENDMENT TO THE FLORIDA CONSTITUTION THAT WOULD FORCE VOTERS TO DECIDE ALL CHANGES TO A CITY OR COUNTY'S COMPREHENSIVE PLAN, AND URGING VOTERS TO VOTE "NO" ON AMENDMENT 4 IN NOVEMBER.

The Town Clerk also read Sections 1, 2 and 3 as follows:

Section 1. The Town of Indian River Shores hereby strongly opposes the proposed Constitutional Amendment 4 that poses a grave threat to Florida's unique quality of life, the stability of its communities, and the prosperity of its economy.

Section 2. The Town of Indian River Shores recommends defeat of Constitutional Amendment 4.

Section 3. The Town of Indian River Shores does not concur with the "one size fits all" approach of Amendment 4, and believes in opening a broad-based community dialogue that addresses the unique growth management concerns of our community.

A **motion** by Councilman Ochsner **to approve the Resolution 2010-02**, supported by Councilman Weick, **passed 4-0.**

4. **Planning, Zoning and Variance (PZV) Board**

(After Item 6a) Mr. Bill Beardslee, Chairman, said that there was nothing to report.

5. **Town Attorney**

- a. Town Manager's Employment Contract

Mr. Clem said that he would discuss this now if the Council was ready, and with Vice Mayor Ahrens not here, Councilmember Atchison asked to move it forward to a special called meeting to talk through some of the details. A **motion was made** by Councilmember Atchison, supported by Councilman Ochsner, **to move the Town Manager's Employment Contract to a Special Called meeting.** Councilmember Atchison said they just needed time to discuss it with all five elected officials present. **The motion passed 3-1, with Mayor Kenyon opposing.**

At Mr. Clem's suggestion, it was determined to set the time for when Vice Mayor returns after June 14th, possibly at 2:30 on the 24th prior to the regular Town Council meeting.

6. **Town Manager**

- a. Annual NPDES Stormwater Presentation (Bo Reardon, TetraTech HAI)

Mr. Jefferson introduced Bo Reardon, Engineer with TetraTech to provide the presentation. Mr. Reardon began the annual Stormwater Pollution Prevention presentation by explaining that it is part of the public outreach requirement of the NPDES permit process for the State of Florida. National Pollution Discharge Elimination System (NPDES) was

enacted to protect the waters in the State from pollution, and evolved from the Clean Water Act of 1972. The Department of Environmental Protection (DEP) granted the Town's permit in 2003. Not only are we federally mandated to care about it, it is essential to protect our water system from contaminants.

We encourage the average homeowner to keep non-stormwater items (used oil, paint, etc.) from the stormwater system. Using environmentally friendly products help the system, as does keeping yard waste away from the stormwater collection areas. There are resources available in the Town and at Indian River County to assist with information on what is acceptable and what is not, as well as from the DEP. Recycling reduces the volume of trash in the landfills, and placing the container at the curb away from danger of spilling into the stormwater system is necessary.

Over-fertilizing and over-watering also contribute to stormwater pollution. The St. John's River Water Management District allows watering twice per week, except between the hours of 10 a.m. and 4 p.m. Using xeriscape plants and avoiding or minimizing the amount of phosphorus in fertilizers helps our drinking water to stay healthy and sufficient.

Mr. Reardon also mentioned using a bilge sock in the boat to keep its oils out of the waterways, regular maintenance of boat engines to keep it running properly so gasses will not spill out into the water, and keeping toxic chemicals used when cleaning the boat from entering the water by thoroughly rinsing the boat before launching as other measures to protect our water sources.

There doesn't seem to be a need, after the utility discussions, to discuss septic systems in depth, Mr. Reardon continued, offering pamphlets to anyone who did use one and encouraging that they are regularly pumped. He then opened the floor to comments or questions.

Councilman Ochsner commented that the watering restrictions do not apply to many residents who are on reuse water.

Mr. Jack Mitchell, 220 Sandpiper Lane, said he has heard that it is not advisable to put pharmaceutical products down the drain. Mr. Reardon said he has heard similar information, but was not very familiar with this. Councilman Weick said that the Public Safety Department will take the unwanted or expired prescription drugs or other pharmaceuticals and safely dispose of them. Chief Schauman said it is a county-wide program, affirming that flushing the pharmaceuticals down the toilet is definitely discouraged.

The Council thanked him for his presentation.

7. **Call to Council**

Committee Reports

Parks and Recreation. Councilman Ochsner said that the Parks and Recreation Committee elected him as Vice Chairman, and then the County disbanded this committee.

Beach and Shores. Councilman Ochsner continued by reporting that the Beach & Shores met May 17, with the primary focus a recap of the sand renourishment program. Our Town got all the sand that we were supposed to get in Phase I, even though the plan was not completed for all placements. They will begin again in November, depending on the analysis and results of the reproductive success of the turtles. A "Lessons Learned" committee was formed to review the beach renourishment process.

Finance Committee. This Committee met yesterday, Councilman Ochsner said, with the personnel manual as one issue discussed. There is an existing manual that has certain aspects which are not being followed to the letter. He advised that the Council should commit to following the manual as written until such time as another one is brought before the Council for approval. Mayor Kenyon said he wants to make sure there is documentation available that tracks the manual revisions, and that Mr. Clem is part of it. The Mayor thanked Councilman Ochsner for doing this.

Treasure Coast Regional League of Cities (TCRLC). Councilmember Atchison said that she attended this meeting at the St. Lucie nuclear plant as guests of Amy Brunjes and Nick Blount. Several resolutions were passed, including one to support the Space Coast League of Cities urging State legislature to stop sweeping the transportation funds to cover general fund expenditures. There was also an interesting presentation from Nick Blount of FPL, who said that Next Era Energy is now their parent company. Their mission is to deliver affordable, reliable and clean energy now and in the future. They will be converting the two oldest plants and converting them to natural gas, which will pick up 200 Mega Watts. Miami (Turkey Point) and St. Lucie are the two largest plants. Next Era Energy just received “The Most Admired Company in the Country” recognition with relation to electric and gas providers from Fortune Magazine. The fuel mix is 50% natural gas, 20% nuclear, 11% purchased power (e.g., sugar cane), 4 % oil, 8% coal, and 2% renewable energy (e.g. solar panels).

Census: The Town of Okeechobee challenged the TCRLC to see who could get the greatest number of Census questionnaire ballots back, and there was a tie between Sewell’s Point and Sebastian, which each received 82% return. Our Town was third with 78% response, and she said she was very proud of our increase from 2000 Census returns of about 62%.

Metropolitan Planning Organization (MPO). Councilman Weick said he attended the MPO meeting for Frannie. Worthy of noting is that they are now on a 2-year budget cycle instead of 1-year cycle as part of the paper reduction act of the State. There was also approval to install a sidewalk on the east side of A1A from Coquina Lane south to St. Edwards School as part of a repaving project at a cost of \$285,000 - \$385,000 in 2011.

Economic Development Council. In his opinion, the County isn't doing much for industrial development, as evidenced by the movement for Charter government the past two years (which is against growth). The distribution centers and digital animation companies are good industries to attract.

Treasure Coast Council of Local Governments (TCCLG). The July meeting will be held in Okeechobee, with the usual BBQ. All of the Council members are invited.

8. Call to Audience

Bob Cooney, Vice President of the Carlton of Vero Beach Board of Directors, introduced Doug Distl, their Manager, and Ted Davies, the Board President, who came collectively to request that the Council consider supporting them in their mission to eliminate shark fishing from Indian River Shores. He quoted that “The Space Coast and Treasure Coast has the highest incidents of shark attacks in the world” according to Greg Gilmore, who testified before the Indian River Board of County Commissioners a couple of weeks ago. It is not only dangerous to human life, but to our tourism and potentially to real estate values and the real estate tax base. Doug Distl, who has been managing property in Vero Beach and Indian River Shores for 22 years, said he has never seen this type of fishing until about three years ago. An internet tournament, <http://www.boatlessfishing.com>, encompasses the entire state of Florida and promotes bull and tiger shark fishing between July 1 and August 6. He showed slides of an 11’ tiger shark being pulled from the water and photographed, with families and children visible in the background. Councilmen Ochsner asked how they fish, and Mr. Distl said they chum the waters with bait tossed from kayaks near the reefs, and it washes towards the shore luring the sharks in. When a shark is caught and reeled in, it is photographed and those photos are submitted via e-mail for the tournament. Mr. Distl spoke briefly about his conversations with visiting shark tournament fishermen, and mentioned a Delray Beach ordinance that was passed prohibiting fishing within 300' of a municipal beach.

Mayor Kenyon said he didn’t think anyone would argue with Mr. Distl’s point, but instead on how it can be enforced. They discussed State versus County enforcement briefly. Mr. Distl said that a letter was circulated to the realtors, homeowners associations, condominium associations, the Beachside Business Association, and all are supporting it. The Mayor asked

what he was asking for the Town to do in support, and individual or a group letter of support was requested.

Mr. Clem asked Chief Schauman, if this has not been discussed many times over the years, which was affirmed, but there was not an ordinance drafted. Councilmember Atchison asked if we can support it, and Mr. Clem said that they could. **A motion for a letter of support was made by Councilman Weick, supported by Councilmember Atchison, to discourage this type of tournament participation in Indian River Shores, which passed 4-0.**

Councilmember Atchison asked if the Town could prepare an ordinance at some juncture, and the Mayor said he would like to have comments from the people who have to try to enforce it. Chief Schauman said that violation of an ordinance is a misdemeanor, and unless the Public Safety Officer (or Sheriff) witnesses the violation, they cannot enforce it. The Chief said if they see a legitimate hazard, such as chumming or schools of bait fish near swimmers, they will get the swimmers out of the water. It is perfectly legal to fish for sharks. Mr. Clem said a sign can be posted that “No Shark Fishing is Allowed” and certain terminology can be written into the ordinance. Giving the ordinance to a potential shark fisherman and telling him that he may be committing a misdemeanor may be a deterrent for this in the Town. Mr. Davies asked if we could put up a sign that says “No Shark Fishing.”

Commissioner O’Bryan spoke about the State’s jurisdiction up to the mean high water line of the Atlantic Ocean. We cannot overrule that jurisdiction, and have no authority to set fishing regulations in the State waters, including the Indian River Lagoon. The County did send a letter to the Florida Fish and Wildlife Conservation Commission asking them to help out on this issue.

The Mayor thanked them all for their comments.

Brian Heady, City of Vero Beach Councilman, said this is the first time he has seen the water/sewer presentation. He used his bill to help build the model, which was off by 1 cent for 15,000 gallons. He also commented about the City's profit of \$800,000, which is the approximate number of dollars that the Water/Sewer transfers to the General Fund.

9. **Adjournment**

There being no further comments, the Mayor adjourned the meeting at 5:19 p.m.

Respectfully submitted,

/s

Laura Aldrich, CMC, Town Clerk

(Approved by the Town Council at the June 24, 2010 Meeting)