

MINUTES
TOWN COUNCIL OF THE TOWN OF INDIAN RIVER SHORES
WORKSHOP MEETING – CHARTER GOVERNMENT
Thursday, June 19, 2008
3:00 p.m.

PRESENT: Thomas W. Cadden, Mayor
E. William Kenyon, Vice Mayor
Frances F. Atchison, Councilmember
William H. Ahrens, Councilman
David J. Becker Councilman

STAFF PRESENT: Robert J. Bradshaw, Town Manager
Laura Aldrich, Town Clerk
Anthony Garganese, Town Attorney

1. **Call to Order**

a. Roll Call

Mayor Cadden called the meeting to order at 3:00 p.m. The Town Clerk called the roll as reflected above.

2. **General Overview**

Mayor Cadden introduced the subject by stating that the Council has agreed that they are against the County having a Charter form of government. They are happy with their beautiful little town just the way it is, and do not want to lose municipal authority to anybody. This workshop is to get Mr. Garganese's legal opinion on proper procedures for the Council to follow individually and as a group.

At the request of the Council, Mr. Garganese provided a general overview, stating that, depending on how the Charter would be written, it could preempt some municipal authority. A benign initial charter could evolve to erode the municipal authority over time. One big issue that causes concern with Indian River Shores Town Council is that of municipal services. Mr. Garganese said that two or three years ago he was involved in a case on this issue, whereby the County was able to preempt municipal Comprehensive Planning authority and thereby dictate how services would be provided. They may not be taken away, but restrictions on county-wide services could be imposed. Mr. Bradshaw asked if this would include Public Safety, and Mr. Garganese said that all municipal services which are addressed in a Comprehensive Plan could potentially be impacted if a Charter County has authority to preempt the municipality's Comprehensive Plan.

3. **Questions and Answers**

Councilman Becker said that proponents for the County charter argue that none of these changes could take place without a referendum in the Town, and the reply from Mr. Garganese was that if there was a complete transfer from one local government agency to another, it would require a dual referendum. In the Seminole County case, conditions and restrictions on service levels could be imposed. Examples given to Vice Mayor Kenyon was such that a response time was dictated (different from the current agency's level), or that equipment requirements were changed to more or less of a current standard. Comprehensive Planning is so broad, Mr. Garganese continued, that it could be any service – public safety, water/sewer, street maintenance, etc. Councilman Becker said that the County would not have to seek the Town's approval on any change they make, and Mr. Garganese agreed – the municipality loses control. A Comprehensive Plan amendment can be done anytime without a referendum (it is an ordinance).

Mayor Cadden said that the consultants who drafted the Charter for the County Commission refused to include a dual referendum clause. The State Constitution prohibits even a Charter county from summarily taking over a Public Safety Department without a dual referendum. This is confusing to the voters, he added.

Councilman Ahrens said that he gets comments from residents all the time that they don't understand what Charter government is, and they request that the message be broadly disseminated. The IRNA is being very proactive with this, telling people how wonderful Charter County government is, the Mayor added.

Vice Mayor Kenyon asked what our primary vulnerability is with Charter, and Mr. Garganese replied that it is that the Town could lose its Home Rule authority under a Charter County government. It becomes the vehicle to preempt the municipal authority by putting the issues to the voters. In a non-charter county, municipal ordinances prevail over county ordinances. A County Charter could say that "the County preempts municipal authority to . . ." and then fill in the blank.

Councilman Becker said that what Mr. Garganese just said is the key distinction that should be repeated whenever anyone asks what is the difference. Without Charter, municipal authority prevails, and with Charter, it depends on the Charter, which could be changed.

Councilmember Atchison said that in one of the recent IRNA letters, they indicated that we would have dual referendum. Mayor Cadden said that they just need to argue that the Town would lose municipal authority once it is established. Just one simple point, and the second point is that however benign it is written to begin with, a Charter is always drafted because of a single issue. The IRNA residents firmly believe it will not hurt our Town, which the Mayor said is misleading because the next Commissioners and the ones after those can change the charter again and again. It is so bad in Palm Beach County that they have put (a charter amendment) on the ballot for dual referendum for the November '08 election. It took all 22 cities in the County to agree that they need dual referendum protection, and cost a lot of money to put this on the ballot, he concluded.

Vice Mayor Kenyon asked if Town money could be used to fight charter, and Mr. Garganese said that under the 1991 Florida Supreme Court case, the conclusion was that it was the right thing to do for the local government to keep their local constituents informed. The Council in a municipality can take a position on an issue – that is why the people elected you. This is a right not to be abused, Mr. Garganese concluded. Vice Mayor Kenyon asked if the Council put together an informational letter to be mailed if Mr. Garganese would review it. Mr. Garganese said the Council could state their personal opinions in whatever medium they wished. Spending taxpayer dollars is still allowable on the issues.

Councilman Ahrens said that the Council had to get out the message as to why the Town Council is against Charter government, which should be simply stated so they can understand it. Vice Mayor Kenyon said they could take the position that the Town's Public Safety Department could possibly be in jeopardy. Citing facts is what he concluded was important. Councilmember Atchison said that Charter government is not on the ballot, so it is not issue-driven but rather people-driven. The Vice Mayor recommended that they enlighten the constituents without taking a side and just state the facts.

Mayor Cadden said that he spoke to very educated people who did not know that it was "over" in the Primary, thinking that the General Election was the important election in our County. Also, many seemed to be unaware that they may vote for someone who is not in their district, which is the result of a county-wide voting system in Indian River County. He recommended putting out

an informational letter to all registered voters in our Town to say that the August 26th Primary is extremely important, with County Commissioners in each district eligible to be voted on by our residents. It would also include a statement that their Town Council adamantly opposes Charter County government, and give a couple of reasons.

Councilmember Atchison said that the ballot will not have anything about Charter on it, and the Mayor agreed, adding that the candidates are debating Charter everyday. Mr. Garganese said they could inform the residents to get out and vote in the Primary for County Commission seats, and that the candidates are debating the issue of County Charter government, which the Town Council opposes and here is why. Vice Mayor Kenyon asked if they could indicate which candidate has indicated their stance as pro-Charter, and that was advised against.

Councilmember Atchison asked about sending out a neighborhood letter where they live. Sending e-mails from their home computer was agreed to be fine, Mr. Bradshaw interjected. It was also discussed that the Public Safety Department has a large e-mail address database, which Mr. Garganese said could be construed to be a public record and subject to disclosure. Using voter registration and property taxpayer's addresses were also discussed as public records.

Whether to send a mailer or a letter was discussed. Vice Mayor Kenyon said it should look professional, be printed on letterhead sent in Town envelopes, and personalized "Dear Mr. and Mrs. so-and-so" to enhance the likelihood of being read. Mr. Garganese agreed to proof a letter, which Councilman Becker agreed to draft.

Councilmember Atchison suggested that the letter be timed to coincide with the mailing of absentee ballots, which is scheduled for the end of July.

4. Council Direction

The Council agreed that Councilman Becker would write the letter including the date of the primary and reminding them to vote for a commissioner in each district. Urging caution in the choice of candidates, with mention of the Town Council's adamant opposition to Charter government, was recommended by the Mayor. How to get an absentee ballot should also be included, Councilmember Atchison urged, and Vice Mayor Kenyon said it was important to not use labels on envelopes. Mr. Garganese said the letter should be drafted and sent to him and Mr. Bradshaw for him to put into final form, and then have this on the agenda next week.

Mr. Garganese said the Council could create a PAC (Political Action Committee) if they wanted to accept contributions, and simply follow political committee guidelines. It is not necessary to do that to mail a letter, he added. Mayor Cadden said that to name candidates and strongly state their stance against Charter, a PAC would be good. Getting people involved in one is another story.

5. Adjournment

The meeting adjourned at 3:49 p.m.

_____/s
Laura Aldrich, Town Clerk

(Approved by the Town Council at the 7-24-08 meeting)