

MAYOR
THOMAS F. SLATER
VICE MAYOR
MICHAEL B. OCHSNER
COUNCIL:
ROBERT F. AUWAERTER
RICHARD M. HAVERLAND
DEBORAH H. PENISTON



TOWN MANAGER
ROBERT H. STABE, JR.
TOWN CLERK
LAURA ALDRICH
TOWN ATTORNEY
CHESTER CLEM

**MINUTES
REGULAR TOWN COUNCIL MEETING**

Thursday, June 28, 2018

Approximately 10 a.m. immediately following 9:00 a.m. Budget Workshop

1. **Call to Order** (10:44)
 - a. Invocation – Vice Mayor Ochsner
 - b. Pledge of Allegiance
 - c. Roll Call – All present as listed above. STAFF present: **Heather Christmas**, Treasurer; **Darlene Wiltzius**, HR/Finance; **Mark Shaw**, Public Safety Capt.; **Al Iovino**, Public Safety Officer; **Shawn Hoyt & Rick Villars** (9:48), Public Safety; **Rob Perry**, Building Official; **Adam Brobst**, Public Works Director. RESIDENTS present: **Ralph McCrae**, Pebble Beach Villas; **Brian Foley & Patty Gundy** (9:48 PG), Pebble Bay; **Joanne Sardella**, Pebble Lane; **Nancy Auwaerter**, Ocean Colony; **Tom Ether**, The Shores; OTHERS present: **Melanie Stegall**, Brown & Brown Insurance; **Janet Begley**, TC Palm/PJ; **Tim Zorc** (9:15), IRC Commissioner; **Lisa Zahner** (9:15), VB 32963; **Michael Hoyt & Howard Gutman** (9:50), Lutgert; **Bruce & Brannan Howard** (9:50), Bruce Howard & Associates; **Megan Raasveldt** (9:50), VB Realtor; **Mike Korpar & Sam Nelson** (9:55), JI Security & JI Maint./Util. Directors; **Amy Adams**, Canaveral Scientific (12:37)
2. **Agenda Reordering, Deletions, or Emergency Additions**
3. **Presentation/Proclamations**
 - a. Employee Health Insurance Renewal for 2018-2019 (Melanie Stegall, Brown & Brown)

Ms. Stegall said she met with HR Director Darlene Wiltzius and Town Manager Stabe and they reviewed renewal options, with the recommendation made to keep the employee health insurance through Florida Blue at a 7% increase, which was budgeted for as 10% higher, and the trend in 9-12% increase. There was discussion with the Vice Mayor and Councilman Haverland about if they went out to the market for alternative choices, and she said they did and found that Humana and United Health Care (UHC) quotes were similar, but the employees would be losing significant benefits. UHC network would cause disruption to the doctors, and with both UHC and Humana at a higher cost with lower benefits, they were not the recommended choice.

Town Manager Stabe reminded the Council that the Florida Blue plans presented were substantially similar, as contractually obligated. It is his job to review them and to make a recommendation, which is what was before them for remaining with Florida Blue, offering two plans, the traditional or an HSA. Different deductible levels and less costly alternatives were discussed further before a **motion was made** by Councilman Auwaerter **to approve the recommendation to stay with Florida Blue at a 7% increase**, which was supported by Vice Mayor Ochsner and **passed 5-0**.
4. **Consent Agenda** (10:56)
 - a. Acceptance of May 4, 2018 Finance Committee Minutes
 - b. Acceptance of May 14, 2018 Planning, Zoning & Variance (PZV) Board Minutes
 - c. Approval of May 17, 2018 Regular Town Council Meeting Minutes
 - d. Approval of Invoice Dated May 31, 2018 from Town Attorney
 - e. Approval of Old Winter Beach Road Invoices
 - f. Approval of Portable Fire Pump for the New PSD Marine Patrol Unit As Budgeted

Vice Mayor Ochsner pulled items b, c, e, and f.

A **motion to approve consent items a and d** was made by Councilman Haverland and supported by Councilman Auwaerter, passing 5-0.

Regarding **Item b**, May 14 PZV Board Minutes the center page was missing from the copy in the Council's packet, a copier error which was rectified immediately.

Two clarifications in **Item c**, the Council meeting minutes of May 17, page 2 bottom of the page, "...Vice Mayor Ochsner could contact the Sebastian Mayor..." and page 3 of the same minutes, center of the page, Resident Lisa Rose's item "...project not being totally reviewed and the sidewalk placement..." were agreed to be Vice Mayor Ochsner.

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.

For **Item e**, copies of all invoices were not included, which was explained that only the ones over \$5,000 that require Council's acceptance are normally provided. The Vice Mayor also said it was presented in a confusing fashion, requesting that the Treasurer only provide the invoices and totals.

Item f, fire pump for patrol boat, was explained by Captain Shaw as a requirement for receiving the FIND grant, and while we don't have the boat yet, it will be here soon. Usefulness of the pump was discussed briefly.

A motion to approve items b, c, e and f was approved 5-0 upon being made by Councilmember Peniston with support from Vice Mayor Ochsner.

5. **Town Attorney** (11:07)

a. Ordinance 538, Term Limits & Police-Fire Pension Board, 2nd and Final Reading

Mr. Clem read the title of Ordinance 538 by title as follows:

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, FLORIDA, A MUNICIPAL CORPORATION, AMENDING THE TOWN OF INDIAN RIVER SHORES' POLICE-FIREFIGHTERS DEFINED BENEFIT PENSION PLAN AS SET FORTH IN ARTICLE 3 BOARD OF TRUSTEES SECTION 3.01(C) TO CHANGE THE TERM OF THE TRUSTEES FROM FOUR (4) YEARS TO TWO (2) YEARS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

With no discussion the Vice Mayor, with a second from Councilman Auwaerter, **made a motion to approve the final reading of Ordinance 538 amending the terms of the Police-Fire Pension Board, which passed 5-0.**

b. Ordinance 539, Noise Regulations, 1st Reading (11:09)

This item, Mr. Clem explained, has considerable history, including a hearing set up by Senator Mayfield regarding the John's Island subaqueous line. He had reviewed our noise ordinance following concern expressed by our residents of The Shores and River Club. In the past, the Town enacted limited ordinances that did not help with this type of noise. The Town has control of noise when the line comes over to our property. He combined two previous existing ordinances that were previously in disarray, 96.30 and 96.31 with no change to either section, and added a new section 96.32 to address construction site noise not addressed in the other ordinances. If the County has other requirements, the Town can enforce them. Mr. Clem has heard no objection or comment about this. Section 96.33 has to do with specific noise levels. He reviewed other ordinances that have decibel (dB) levels, but we have no real way to measure these in our Town. Therefore, Mr. Clem's recommendation is to **not** have decibel levels at all and eliminate 96.33.

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, FLORIDA, A MUNICIPAL CORPORATION, REVISING ORDINANCES RELATING TO NOISE REGULATION WITHIN THE TOWN LIMITS AND PLACING ALL SUCH ORDINANCES IN ARTICLE IV OF CHAPTER 96, CODE OF ORDINANCES; ORDINANCES COVERED HEREIN ARE: SECTION 96.30, SPECIFIC NOISES PROHIBITED; SECTION 96.31, EXCESSIVE NOISE PROHIBITED and ENFORCEMENT; SECTION 96.32, CONSTRUCTION SITE NOISE; AND 96.33, SPECIFIC NOISE LEVELS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Discussion with Vice Mayor Ochsner noting the County specifies dB levels. Mr. Clem said the residents of the Shores have been dealing directly with the County, and the County Attorney provided no levels of noise. It would be on the permit. Sam Nelson, John's Island Utilities Director, said to the best of his knowledge, JIWM has restrictions of 65dB in the preserve areas and 80dB next to the home, which is the equivalent of a power lawn mower, and a time limit also. By the preserve it is required to be kept at 60 dB or less.

Mr. Clem noted the Town has every right to be more restrictive and work with the people who live there. The County has good requirements, but we can do better. Councilman Auwaerter said the level of sound disturbance is in the "ear" of the beholder. There will be dB and vibration meters onsite, Mr. Nelson said, and the machines will not be closer than 100' to a home. They don't want to cause a problem, just get the job (John's Island reuse water line installation) done.

Councilman Auwaerter invited the Town's Public Safety Department (PSD) to provide some measurements. NIOSAH and OSHA say a person is at risk from environmental sound levels of 95 dB after 4 hours. Normal conversation is 60 dB. In the Town, Officer Iovino read the level at the Seven Eleven's air conditioning system at 100' it's 52 dB; the John's Island golf course pump house, 54 dB at 100'; Engine 101, 80 dB at 3' and 57 dB at 100'; a vacuum cleaner is 80 dB.

Councilman Auwaerter suggested the Ordinance included 65 dB from 7 a.m. to 7 p.m. and 60 dB at night, 7 p.m. to 7 a.m., measured from the boundary of receiving property, in Section 96.33 (a) (2). This is consistent with 96.30 and 96.31. Vice Mayor Ochsner offered that “receiving property” should be better defined. Mr. Clem said this wouldn’t apply to construction only, there could be a social gathering.

Residents comments.

Tom Ether, 200 Shores Drive, asked who the person from JIWM was, and Sam Nelson introduced himself as the Director of Maintenance. Mr. Ether reminded the Council that he had addressed them in March regarding 24 hour/day noise. He was not aware of anything different from JIWM than the current proposed 80 dB level at 75' away from construction area. Also, he said the County has highly restrictive noise levels. He is requesting that the residents be protected at similar levels as a resident in unincorporated County would be, 60dB and 55dB. The County Attorney said they were not comfortable with including County Code in their permit as it is outside their jurisdiction.

More discussion between Mr. Ether and Mr. Clem followed, with mention of an app to measure sound. The Town’s Building Official Perry said the app doesn’t have a calibrated tool, but the PSD does.

Councilman Auwaerter made a **motion to approve the first reading of Ordinance 539 with 96.33, paragraph (a) (2) modified as following: Permitted noise level shall not exceed 65 dB daytime 7 a.m.-7 p.m. or 60 dB from 7 p.m.-7 a.m.**, seconded by Councilman Haverland, which **passed 5-0**. Mr. Nelson asked from what point the measurement would be taken, to which Councilman Auwaerter replied it shall be measured for 15 minutes from the boundary at the receiving property.

- c. Resolution 18-03 Celebrating 50 Years of Municipal Home Rule in the Florida Constitution (11:40)

Mr. Clem read the resolution in its entirety, printed by title below:

A RESOLUTION OF THE TOWN OF INDIAN RIVER SHORES IN INDIAN RIVER COUNTY, FLORIDA, HONORING FIFTY (50) YEARS OF MUNICIPAL HOME RULE IN THE FLORIDA CONSTITUTION AND COMMITTING TO AN EDUCATIONAL INITIATIVE TO HELP FLORIDIANS UNDERSTAND THIS BENEFICIAL RIGHT

A motion to approve Resolution 18-03 celebrating 50 years of municipal home rule in Florida was made by Councilman Haverland with support from Vice Mayor Ochsner which **passed 5-0**.

6. **Mayor’s Items** (11:40)

Mayor Slater said that after Mr. Stabe announced his retirement at the last meeting, the Vice Mayor was asked to contact the Mayor of the City of Sebastian. Vice Mayor Ochsner said Sebastian spent \$27,000 to find 90 candidates, and he had conversations with Mayor Jim Hill, several other councilmembers and spoke to two of the three available candidates, which he had determined that the third was not a good fit with the Town’s requirements. Of the other two, one he was impressed with liked the area, and was serving in a temporary position about 90 minutes from Councilman Haverland’s northern home. Councilman Haverland spoke with him and provided a very thorough report to the Clerk, who in turn sent it to the Council. After reading his resume and speaking with him, the Vice Mayor also thought he was a great candidate.

Councilman Haverland agreed, and suggested that they go through a process he offered to oversee to narrow to just three candidates that are interviewed by all Council. He wants to meet with Town Clerk Aldrich and post job openings by tomorrow morning on the national and Florida sites, and see what resumes come in. He would go through them and prescreen them with a phone conversation to narrow it down to a few names and numbers to forward to the Council to speak with them individually. The Council could then communicate their thoughts to Laura. Three weeks from now they could be invited to the Town for the public process to give residents an introduction. Councilman Auwaerter asked what the minimum number of candidates he would propose to the Council, and Councilman Haverland said three to five.

Mr. Clem advised against the Council delegating this to one councilman. Delegating someone to take action for the Council is effectively giving that person five votes. Discussion ensued, with the Town Clerk directed to forward resumes to everyone so a unanimous level of interest can be determined without disclosing who has ranked the candidates. The issue is to set a 2-week deadline, and Laura would distribute all applications to Council. The top five could come here to meet with department heads and individually with each Council member. A deadline for applications was set for Monday, July 16th, and the possibility of an offer extended at the meeting on 26th. Councilman Auwaerter was concerned about the speed suggested for hiring.

They agreed to have the Town Clerk advertise today, receive applications through Monday July 16th, and forward them to the Council as they are received. The Council’s top 5 will be selected by Wednesday, July 18th, and by Friday 20th she will have a list of ranked individuals back to Council.

The candidate already spoken to would be included as one of the candidates, and the Town will pay his and the other four candidate's travel expenses. The Mayor asked Michelle, the Town Manager's Executive Assistant, what she thought after her conversation with the candidate, and also asked Laura to provide his performance evaluation to the Council.

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

a. Proposed Planners for the Town (Town Manager) (12:07)

Mr. Stabe suggested in response to the new Chief Building Official's concern that the Town doesn't have a certified planner on retainer, that we have two firms available similar to our two contracted firms for engineering. His recommendation is for **Kimley-Horn** to be under contract as our planner as needed, with a secondary contract with **Place Planning & Design** as a backup. There is no cost involved in securing a contract with these firms, as the developers cover that expense. **A motion to approve both firms as contracted planners for the Town** was made by Councilman Auwaerter and seconded by Councilman Haverland, **which passed 5-0.**

b. Town Manager Search Status (Vice Mayor Ochsner) (discussed above)

c. Modify/Eliminate Subsidy for Employee Medical Insurance Opt-Outs (Councilman Haverland) (12:09)

Councilman Haverland said he understood the intent six years ago was the employee would be paid 50% of what the Town paid for their health insurance if they opt out of being covered by the Town's insurance. It has been interpreted that the employee can stay in, and the dependents could opt out, which he said was not the intent. Clarifying it now may not apply to PSD, as it is in their contract. Vice Mayor Ochsner said we could make it effective October 1st. It is in the union contract now.

Mr. Stabe noted it has been mentioned numerous times in the past, and has been staff's understanding that it had nothing to do with having an employee coming off the plan, only the dependent(s). It is saving the Town substantial money, about \$43,000 per year now as it is. Now this is taking a benefit away from employees. Councilmember Peniston asked him to explain the savings, which Mr. Stabe said that every employee who has family members who are eligible to be covered under their spouse's insurance could take that expense from the Town and the Employee. By giving the employee 50% of the Town's savings, since the dependents were *on* the Town's plan, it is an incentive to take them off our plan. He and staff never had any different understanding other than saving the Town additional dollars.

Councilman Haverland said when we put it in place, the employee decides to stay in the plan, and the family opts into the spouse's plan. That saves us also. Councilman Auwaerter said the incentive should be set up to drive the entire family in one plan or another. The former town manager incorrectly interpreted this, not Mr. Stabe.

A motion to only allow the incentive benefit if the employee and family opt out of medical insurance coverage by the Town effective October 1, 2018 was made by Councilman Haverland. Town Treasurer Christmas said the Union Contract says, "or dependent." He **amended his motion to read "for non-union employees at this time,"** which was seconded by Councilmember Peniston and **passed 5-0.**

(Councilman Haverland left the meeting at this point)

d. PZV Board June 11 Meeting Recap and Recommendations

1) 935 Beachcomber Lane Variances (Realtor Tim Zorc for Owner) (12:23)

- (a) Front-Facing Garage
- (b) 5' Rear Yard Setback

Tim Zorc, Realtor representing the applicant, was present when Mr. Clem said the PZV Board had recommended approval of the two requested variances, and a **motion was made** by Mayor Slater with support from Councilmember Peniston **to approve the front facing garage as is common on Beachcomber Lane and the 5' rear yard setback as requested and recommended by the Planning, Zoning and Variance Board, which passed 4-0.**

2) Surfledge Master Development Plan (12:25)

(a) Ordinance 540, 5-Acre Rezoning from R2A Multifamily to PRD, 1st Reading

Mr. Clem said this variance request for Surfledge is a little more complex than the average variance. The developer came in with their Master Development Plan that was recommended to be approved by the PZV Board. At the next meeting the Council will have a quasi-judicial public hearing for the ordinance approving the Planned Residential Development (PRD).

Michael Hoyt, with Lutgert Companies, introduced Howard Gutman, President with Lutgert properties, and representatives from their design architect, landscape architect, engineering firm and realtor. He gave an overview of the parcel and its purchase from the Town at auction last year, noting it was zoned 6 units per acre. They have proposed a hybrid of a PRD between multifamily and single family homes, with an almost oceanfront multifamily building with 12 residences, six

over six, with a rooftop amenity space and a pool. There is a path the County has requested connecting the property to the Tracking Station Park. Councilman Auwaerter asked if there is any invasive vegetation, which Mr. Hoyt said the environmentalist said contains 75% invasive ornamental peppers. There are also 12 single family residences, and the drawing shows the Town's 5' pathway from A1A to the Tracking Station walkover. The separation between the walkway and this development is a 6' tall perimeter wall, set back a foot from the property line. Also on the northern boundary, they will have the responsibility for planting and a wall.

Councilman Auwaerter asked about the shared area of the transformer on the south side, which is in line with the 5' pathway and Pebble Bay that is not their property. The north side has the lift station, which will be landscaped, Mr. Hoyt said, as well as the wall(s) with low maintenance, low water plantings.

The preliminary engineering has been done, the site development plan is next followed by the permit process. Today is just the presentation, the next meeting is the second reading for rezoning, the Council's opportunity to adopt the final approval of development plan and PRD. Mr. Hoyt answered Vice Mayor's Ochsner's question about the size of the residences, which will all be between 2800-3500 square feet, and could be one or two story homes. The Council spoke favorably about the plans for the development.

Mr. Clem commenced with first reading of Ordinance 540 and reviewed the Whereas clauses:

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, FLORIDA, A MUNICIPAL CORPORATION, FOR REZONING OF A PARCEL OF LAND OWNED BY LUTGERT VERO, LLC, FULLY DESCRIBED IN THIS ORDINANCE; PROVIDING FOR LAND USE OF PLANNED RESIDENTIAL DEVELOPMENT (PRD) WITH ZONING OF PRD AS DEFINED IN SECTION 160.11 OF THE TOWN'S LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion to approve the first reading of Ordinance 540 was made by Vice Mayor Ochsner and seconded by Councilman Auwaerter which **passed 4-0**.

(8 guests and residents left the meeting at this time, and Amy Adams arrived)

- e. Old Winter Beach Contractor (Mancil) Change Order for John's Island Reuse Water Line (12:37)

Mr. Stabe said this Change Order relates to pipe deflection on the Old Winter Beach Road project and is not to exceed (NTE) \$9,947. He said there is some dispute, and Sam Nelson briefly explained that there is one section where material was put down, removed and then charged the Town for extraneous work and is not performing according to specifications. In order to keep the project moving, **a motion was made** by Vice Mayor Ochsner and supported by Councilman Auwaerter, to **approve the change order not to exceed \$9,947** that **passed 4-0**.

- f. Set Tentative Millage Rate (12:41)

Mayor Slater recapped that at the preceding Budget Workshop, the Council agreed to a recommended millage rate. **A motion to set the tentative millage rate at 1.420 for FY 18-19** was made by Councilman Auwaerter and supported by Councilmember Peniston, which **passed 4-0**.

8. Town Manager

- a. Public Safety Salary/Benefit Study Municipal Services Consultant Update (12:42)

Mr. Stabe said that he has paid a second invoice, and just before the meeting today another attempt at a final report was received, which is still incomplete and months late. There is an outstanding balance of \$3,960, the final 40% of the contract as agreed to, and Mr. Everetsen is "willing to negotiate a courtesy discount." This seems like a fair discount, Mayor Slater said, and for close to useless work, and Councilman Auwaerter added that there is no response to questions he has asked. Vice Mayor Ochsner agreed and said that most of the report is boilerplate. Mr. Stabe received clarification that the **Council is directing him not to pay the invoice**. The final invoice has not yet been received and will be discussed at the next meeting.

- b. Cell Tower Lease Agreement Update/Clarification (12:45)

The landscaping has been completed, and AT&T has installed some of their ground equipment in the leased area. The 2' easement for fiber optic is being recorded, and ATT may install their antennae before Verizon. Revenue for the cell tower has been included in the budget now. Building Official Perry has agreed that they can do quick inspections.

- c. Traffic Camera Statistics (Chief Rosell) (12:47)

Councilman Auwaerter said there are statistics for the traffic cameras finally, but they are missing the

