

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, August 23, 2018

9:00 a.m.

6001 SR A1A, Indian River Shores, FL 32963

1. Call to Order

- a. Invocation
- b. Pledge of Allegiance
- c. Roll Call. The meeting was called to order at 9:00 a.m., with the Invocation given by Vice Mayor Ochsner followed by the Pledge of Allegiance. Those present are listed as **TOWN COUNCIL** Mayor Slater, Vice Mayor Ochsner, and Councilmembers Auwaerter, Peniston and Haverland; **STAFF:** Town Manager Stabe, Town Attorney Clem, Town Clerk Aldrich, Town Treasurer Christmas, Executive Assistant Fentress, PSD Director Rosell, PSD Capt. Shaw, PSD Officer Iovino, and Building Official Perry; **RESIDENTS:** 70 (+/-) present; **GUESTS:** Ed Barenborg, Legislative Asst. to Representative Grall; Margaret Mitchell, Legislative Aide to Senator Mayfield; Tim Day (Town Manager Candidate); Joanne Stanley & Luis Francischi, Republic Services; William Fennel, North Beach Owner Assn.; 2 associated with Old Winter Beach Road project; Dylan Reingold (IRC Attorney), Jim Moller & Sam Nelson (John's Island); **REPORTERS** Janet Begley and Lisa Zahner present.

The Mayor announced that former mayor, vice mayor and councilman Chuck Wurmstedt had passed away on August 12. He had done a wonderful job for the Town, the Mayor added, and asked for those present to remember the family and friends in silent peace.

2. Agenda Reordering, Deletions, or Emergency Additions (None)

3. Presentations/Proclamations

- a. FDoT Regarding A1A Milling & Resurfacing Project - East Sidewalk (Donovan Pessoa)

Mayor Slater read an email from Donovan Pessoa that was sent to individuals who had contacted him by email on August 21, 2018. It stated that the FDoT is evaluating the feasibility of wider paved shoulders, or possibly reducing vehicle lane widths, taking public input, design speed and environmental impacts into consideration. A bike lane is not permissible with a 50-mph speed limit even if the shoulder is 7' wide, the letter stated. The 6' wide sidewalk on the East side of A1A is also being reevaluated based on the feedback received. Mayor Slater said he had received 200 contacts from residents.

Councilman Auwaerter said as the alternate MPO representative, he reported that the State is trying to push for zero deaths of pedestrians and cyclists. The Complete Streets Manual is the planning document that is used to make a change in roadways, and adding sidewalks is part of the plan. Mr. Pessoa said at the July 10 meeting that his hands were tied as this was the FDoT rules he was instructed to follow.

Mayor Slater opined that the amount of sidewalk traffic is light compared to the bicycle traffic that is in greater danger with narrow lanes, so a road widening project fits our area as a more pressing need. Vice Mayor Ochsner and Councilmember Peniston agreed, as year-round residents, that bicycles are more of a priority, with a wider lane. Councilman Haverland said he had heard little of support for the sidewalk on the East. Only three (3) residents raised their hands in favor of having a sidewalk on the East when he asked for a show of hands, and when asked about widening the bike path, all but 5 were in favor. Councilman Auwaerter said he is a full-time resident, and sees many people walking dogs and so forth. He likes the idea of a sidewalk on the East, but if there is a choice, as a cyclist, he would prefer a 7' bike lane if feasible. He lives on the East side of A1A, and mentioned the high risk in crossing during season to use the sidewalk on the West.

FDoT will be using their own right of way, and irrigations and plantings that have been placed by neighborhoods there will have to be moved by them, and they would not be compensated by FDoT. Mayor Slater echoed that any state, federal or county right of way is subject to have items removed at the owner's expense to repair or replace them.

Chief Rosell said that bicycles are on the sidewalk because they all believe it is too dangerous to cycle on the roadway. Adding lighted crosswalks, especially at the 7-11, would be most helpful. He believed the East is a prolific waste of money.

AUDIENCE: David Johnston, LaMer, East side of A1A since 2005. He and his wife walk and cycle a lot, and are opposed to another sidewalk. He disagreed with Councilman Auwaerter, saying he rarely sees anyone. During their Wednesday morning walk to John's Island, they saw 4 pedestrians and one cyclist. There's never been a problem crossing the street. The 7-11/CVS needs a crosswalk. He read the FDoT mission statement aloud, and said putting a sidewalk on the East side violates that. It only takes waiting a few minutes to cross.

Charles Brown, 111 Passage Island, Marbrisa. Drives South to Vero and sees a lot of foot traffic, and a lot of afternoon bike traffic in the afternoon. It's a beautiful drive in the Town, and cutting back vegetation on the East side would change the character of the drive significantly. He is in favor of more crosswalks or a decreased speed limit to 45 mph.

Melissa Ellison, Bike Walk IRC, and is the Safe Routes to School coordinator for the MPOA, and teaches bike safety in elementary schools and in the entire county. At the recent FDoT transportation quarterly meeting, A1A is the most heavily used road for cycling in the county. Over 300 members of Vero Cycling have 7-10 rides a week on A1A. "Close calls" are a daily occurrence with cyclists here. We need to work together to ensure the residents of the community are using the roads safely. A 7' buffered lane is ideal, and that will be reassessed as a project here. Councilman Haverland asked if any other streets in the County have a 7' bike lane, and she was not aware of any, but this is the standard the State subscribes to for all new construction.

Elizabeth Regan, Mariner Village. Lives here 10 months a year, and is against the sidewalks in terms of the hard surface added and earth removed with potential flooding issue. Mayor Slater said the State will be taking drainage into account.

Penny King, 114 Hidden Oak Drive, Bermuda Bay, said of our 30 communities, she was able to reach 15 of them, all of which were against the East sidewalk. Expanding the road and having a sidewalk is an overkill for our area.

William Ferrell, 12546 N. A1A, is not a resident but is North Beach Civic Association President and an oceanside resident, addressed proper swales. He also was concerned that buffering for bike lanes can cause drainage problems. Agreed adding a sidewalk or wider bike lanes will change the scenic roadway character.

Doug Graybill, Palm Island HOA President, said the residents he could reach in the neighborhood disagreed with having an additional sidewalk. Two concerns are cost and the duration of time that A1A will be under construction if the sidewalk is going to be put in, estimating it as better part of a year.

Frantz Bertin, 800 Sable Oak Lane, Bermuda Bay. Tried to see a copy of the drawings and was unable to get them from FDoT to see the impact of the sidewalk on the residents. He disagrees that the FDoT's hands are tied, they have to determine the right decision. Councilman Auwaerter said the east side A1A proposed sidewalk is shown on the plan and available for order from FDoT.

David Bankston, 130 Mariner Beach Lane, Mariner Beach. The beautiful oak trees define our community, and their community would lose at least two large oak trees. As a full time resident, he walks three times a week, and can cross safely even in season if you wait. Their community sees no reason to have it.

Jack Kane, 5536 Highway A1A, resident of La Mer since 1991, asked when FDoT votes on this, which Councilman Auwaerter said it is in their budget, but is not necessarily a done deal. At the July 10 meeting they asked for comments with a time limit for them to be addressed. He added that FDoT claimed that only 6 trees would be removed in the entire project.

Suzanne Johnson, President of Board of Baytree, suggested a letter campaign to better communicate that we are not for it. Penny Johnson said the only way they were told to stop it was to contact Debbie Mayfield and Erin Grall. She said the representatives must be involved. **Mayor Slater** said the Council can also write a letter to the representatives advising that the local government is not sure it makes sense to follow their guidelines here.

Margaret Mitchell, Legislative Aide to Senator Debbie Mayfield, said they have received over 350 emails and several hundred phone calls about the sidewalk project. Senator Mayfield sent a letter to FDoT asking them not to try to fit this community into a box, and received a letter from Secretary O'Reilly, FDoT District 4, that he is collecting all of the emails and input, and are waiting for input from the community before they will consider all of it. The Senator is hoping they will reevaluate their plans and have another meeting with some alternatives. Senator Mayfield's office is forwarding all correspondence to Mr. O'Reilly, and they have also heard from some business owners who *do want* the sidewalk, and residents who overwhelmingly do not want the sidewalk. (Applause) The businesses she mentioned are south of our Town other than CVS, and the Mayor thought that

the Village Shops are asking for a sidewalk pedestrian, FDOT is waiting for correspondence from the Town officials.

Flavio Carvalho, 710 Canoe Trail in Indian Trails, said an internet survey of their 110 homes had 90% of the respondents against the East sidewalk.

Vice Mayor Ochsner made a **motion that the Council write a letter on behalf of the residents to FDOT, Senator Mayfield, Representative Grall asking for their support, expressing strong opposition to the East sidewalk**, supported by Councilman Haverland. Councilman Auwaerter asked how they would address wider bike lanes which has also been identified as a problem. Mayor Slater agreed that the letter should include this as a more critical safety issue to have wider bike lanes, saying the letter should state that the Town does not feel the need for East side sidewalks. An **amended motion that the Town Council write a letter to FDOT, Senator Mayfield and Representative Grall expressing their opposition to the East side sidewalk with a request that bike safety be taken into account and engineer an appropriate width for the bike lane**, which was seconded by Councilman Auwaerter and **passed 5-0**. The Mayor thanked them for coming, as the room emptied. A five-minute recess was called at 9:55.

Those remaining were Residents (9), Reporters (2), Guests (9), and staff (3) plus the Town Attorney, Town Manager and Town Clerk.

4. **Consent Agenda** (10:00)

- a. Acceptance of July 9, 2018 Planning, Zoning & Variance (PZV) Board Minutes
 - b. Approval of July 26, 2018 Regular Town Council Meeting Minutes
 - c. Approval of July 26, 2018 Second Budget Workshop Meeting Minutes
 - d. Approval of Invoice Dated July 31, 2018 from Town Attorney
 - e. Approval of Old Winter Beach Road Invoices
 - f. Approval of MSW Consultants Invoice for Recycling Services ITB
 - g. Approval of PSD Replacement Handguns (Transition from .45 caliber to 9 mm) Using Forfeiture Funds
- Councilman Haverland asked if Old Winter Beach Road was addressed, which was included in the Financials. The Mayor asked Amy Adams for a quick project update, which she said the project is on schedule so far, she added, and there are no more change orders. A large amount of funding is associated with John's Island. A **motion to approve the consent agenda as presented** was made by Councilman Haverland with a second by Vice Mayor Ochsner, which **passed 5-0**.

5. **Town Attorney** (nothing at this point)

6. **Mayor's Items**

- a. CoVB Electric Utility Sale to FPL Status (Local Involvement)
 - 1) Possible Intervention in Florida PSC Appeal of FPL-VB Electric Acquisition (Councilman Auwaerter)

The Mayor reminded them of the challenges made to the PSC filing, and a meeting on October 9 and 10 will be held to address them. Councilman Auwaerter mentioned conversations with the Town's utility attorney, Bruce May about the hidden membership roster of the Florida Industrial Power Users Group (FIPUG) and about having the Town Manager budget for possible intervention by Bruce May on behalf of the Town. Some push back from the area (City of Vero Beach, County Attorney, and the Town) now is suggested. The Mayor agreed with intervening, and it should stress that we are an unusual town with electric service split between two providers. One third of the residents pay at least 25% more. Councilman Haverland asked what intervene means in this instance, and Mr. Clem said we are coming in as an additional party because we are so interested in the outcome and will have standing in the case. Discussion ensued, with mention that intervening gives the opportunity to have several minutes to speak rather than a possible 30 seconds. We have been in this situation for so long, it would be an error not to bring it to conclusion, the Mayor concluded.

Mr. Clem had provided a draft of the petition filed by the County, and not having the Town included in the appeal is most unusual and detrimental, since the County and Vero Beach are included, after having spent over \$1 million dollars. The other Council members agreed. Mr. Clem said this would only be about \$5,000, and suggested a budget of not to exceed \$10,000.

Mr. Reingold, County Attorney for Indian River County, said the comments are on point. When he went to PSC hearing in June, the staff report referenced the local litigation and significant circumstances. An intervener is more involved in the process, being subject to discovery on both sides, and Mr. Reingold wants to make sure the Commission doesn't see just disgruntled parties - they should see the County, the

Town, the City representing the majority of the voices in their communities standing there. A **motion was made** by Vice Mayor Ochsner **that the Town authorize the Town Mayor and Manager to intervene in the matter before the PSC and authorize a budget NTE \$10,000 for Holland and Knight**, which was seconded by Councilman Auwaerter and **passed 5-0** .

- b. Introduce Candidates for Town Manager Position (If Applicable) (10:19)

The Mayor noted that one applicant from last month, Tim Day, was present and no others.

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

- a. Cape Canaveral Scientific, Inc. Contract for DEP Tasks 5, 6, 7, 8 Management, Old Winter Beach Road
Mr. Stabe said that Amy Adams from Cape Canaveral Scientific is here as the grant manager for Old Winter Beach Road project. A contract for costs under DEP contract for tasks 5, 6, 7 and 8 was provided, which total \$115,500, all of which costs are being paid in the DEP grant. A **motion** was made by Councilman Haverland and seconded by Vice Mayor Ochsner **to approve the contract** , which **passed 5-0**.

- b. Addendum 1 to Old Winter Beach Road Knight, McGuire & Associates, Inc. Engineering Services

David Knight, engineer of record on the project, and Amy Adams were both present to answer any questions. The Vice Mayor asked if this is above what we anticipated, and Mrs. Adams explained that the Town was on the hook for 25% of the \$1.5 million. Then changes due to delays caused by Hurricane Irma led to increased prices in the span between the 2016 grant funding request and the full contract award in February this year. She explained that they were shifting some of the monies because the project is going on longer, but there is not a net change in any funds.

There was an extended Council discussion. Mr. Knight had presented a **long** list of items above what was originally agreed to in order to justify an additional payment to him. Councilman Auwaerter argued that most of the items on the list were things that the Engineer should have anticipated doing in making his original contract bid. Councilman Auwaerter felt that Mr. Knight was only entitled to 25% of the additional sum that he requested, at most. The Council requested that they be kept more informed on the details. A **motion to approve the Change Order as requested** was made by Councilmember Peniston, seconded by Vice Mayor Ochsner, which **passed 4-1 with Councilman Auwaerter opposing**. Mrs. Adams noted that 27 days were added to the schedule because of working with residents from The Shores.

- c. Recycling Invitation to Bid Results and Recommendation (10:39)

Mr. Stabe referenced the August 13 memo with the results of the Invitation to Bid. Total costs submitted for the bids were Republic Services, \$308,893 and Waste Management, \$672,519 annually. A breakdown of pricing was provided, which included the Interlocal Agreement and Memorandum of Understanding that the Council and County recently entered into, with \$2.03 being reimbursement for every single-family unit and \$1.53 for every multi-family unit each month that will be in turn given to the vendor that the Council chooses. Councilman Auwaerter asked if we accept Republic's quote, would his cost for curbside service go from \$6.80 to \$4.77 for recycling, which Mr. Stabe affirmed. Vice Mayor Ochsner thanked County Attorney Reingold and County Administrator Brown for resolving this financial issue, and called out Commissioner Solari for the notion of setting up a quota for Town residents to make sure they were recycling sufficiently, which was mentioned at the Commission meeting. A **motion to award the recycling contract to Republic Services was made by Vice Mayor and seconded by Councilmember Peniston**, which **passed 5-0**.

- d. Request to Move October Meeting (17th, 18th or 19th) – Councilman Haverland (10:43)

The Mayor said he could make the meeting if it were set on the 19th, Councilman Auwaerter could only make it on the 17th, which the Mayor *could* make it if it were a quick meeting. Councilmember Peniston also was unable to make it during the normal week and is available any of the three days mentioned. A **motion to move the meeting to Wednesday, October 17th at 8 a.m.** was made by Vice Mayor Ochsner with a second by Councilman Auwaerter, which **passed 5-0**.

- e. Permit Fees Revision (Councilman Haverland) (10:45)

Councilman Haverland discussed the Planning, Zoning and Building fund, and although we changed the fees in March in an attempt to try to work down to a reasonable reserve level, the tentative budget had revenue up and expenses down, and now we are projecting to make \$125,000, which is opposite of where we intended to go. He recommended an operating loss of \$200,000 to \$250,000. Mr. Perry said the State mandates not showing a surplus, we have a 3-year budget with reserves of \$3 million with capital improvements. Three large projects are on the verge of beginning, the Strand, Surfsedge, and 8050. He recommended waiting a few years to see the impact of the new fees rather than just a few months.

After more discussion, Councilman Auwaerter agreed that the fees shouldn't be changed without seeing how the reduced fees impact the fund.

(Dylan Reingold, Margaret Mitchell left 10:55)

Vice Mayor Ochsner asked how much in permit fees these three large projects might incur, and Mr. Perry roughly guessed \$600,000. Councilman Auwaerter said the operating budget had to also be considered. Mr. Perry asked if he could set a reserve amount for three years (operating expenses), which Councilman Haverland countered with setting a \$250,000 operating loss per year for 3 or 4 years to get to a \$400,000 reserve level. Mr. Perry said changes are coming to lower the fees, they are trying to save people money, not make money. The Mayor suggested changing fees at the beginning of the fiscal year beginning October 1, and adjust every October 1. Councilman Auwaerter asked for projections on permits and activity, and what additional operating expenses are anticipated. Mayor Slater said to **revisit this next month and with a fee schedule by resolution for next month's meeting** to become effective October 1.

8. **Town Manager Updates** *(11:00)*

a. PZV Board Report (no Council action needed)

Mr. Stabe said two trees of special concern were approved and a 1' encroachment variance for a garage was also approved.

b. Cell Tower – AT&T and Verizon Update

Mr. Stabe said AT&T will complete physical work on the tower and site this month, with antennae socks to be installed this or next week, and in mid-October the switch will be turned on and the signals fine-tuned for AT&T. Verizon has delayed installation with no further information available. They are now paying lease payments. The Mayor is working with DataPath and higher-ups at Verizon.

c. Departmental Reports (Building, Finance, Town Clerk, Public Safety)

Vice Mayor Ochsner noticed the absentee rate is down for PSD, and two officers are still out on workers compensation. The table with absentee periods was questioned whether it was fiscal or calendar year by Councilman Auwaerter, who was told that Chief Rosell would find out. Chief Rosell noted there is a new Lieutenant, Albert Iovino.

9. **Council/Committee Reports or Non-Action Items** *(11:07)*

(MPO, EDC, TCCLG, TCRPC, IRC PSC Citizen's Oversight Committee, CoVB Utilities Commission)

a. Committee Reports

The Mayor, Councilman Haverland, Councilman Auwaerter, and Councilmember Peniston had none.

Beach & Shores - Vice Mayor Ochsner said there was a strong presence of residents of Summer Place Community near Wabasso Beach. A resident staked out a section of beach based on the new law July 1 about beachfront property ownership. Governor Scott's executive order didn't fix the new law, so the County is asking for everyone and anyone who walks from Wabasso Beach north to the end of the sea wall to offer testimony by way of photos or verbally at their hearing as required by law establishing ancient or customary use on October 2nd. The County has 60 days to file this in court.

b. Informational Updates or Comments

10. **Call to Audience** *(11:10)*

A resident asked if anything was going on for the reconstruction of the Community Center, and was told that permits were issued, and the trailer is here. An anticipated completion date was given by the Building Official of 6 months or less, compared to the contractor's estimated 300 days. The Town Clerk asked if the Council wanted to have an official groundbreaking? Maybe, and ribbon cutting was discussed upon completion. Councilman Auwaerter asked not to have a plaque with names on the building.

Another resident asked when Old Winter Beach Road is expected to be finished, and was told by Amy Adams that the first week of January or possibly the end of January. The road will be under warranty for one year.

11. **Adjournment** *(11:13)*

Respectfully submitted,

/s _____
Laura Aldrich, Town Clerk

Approved by Town Council at the September 20, 2018 Meeting