

MAYOR  
THOMAS F. SLATER

VICE MAYOR  
ROBERT F. AUWAERTER

COUNCIL:  
JESSE L. "SAM" CARROLL, JR.  
BRIAN T. FOLEY  
DEBORAH H. PENISTON



TOWN MANAGER  
JOE GRIFFIN

TOWN CLERK  
LAURA ALDRICH

TOWN ATTORNEY:  
CHESTER CLEM

## MINUTES

### Regular Town Council Meeting & Quasi-Judicial Hearing

Thursday, May 28, 2020, 9:00 a.m.

TOWN OF INDIAN RIVER SHORES

6001 N. STATE ROAD A1A INDIAN RIVER SHORES, FL 32963

#### 1. Call to Order

- a. Invocation
- b. Pledge of Allegiance
- c. Roll Call

Vice Mayor Auwaerter opened the meeting at 9:00 a.m. with the invocation given by Councilman Carroll followed by the Pledge of Allegiance recited by all. Those in attendance were as follows: Mayor **Slater** (by telephone – medically detained out of state and eligible to vote), Vice Mayor **Auwaerter**, Councilman **Carroll**, Councilmember **Peniston** and Councilman **Foley**. Also present were STAFF: Town Manager **Griffin**, Town Clerk **Aldrich**, Town Attorney **Clem**, Town Treasurer **Christmas**, Assistant to the Town Clerk **Pallo**, Public Safety Director **Rosell**, Building Official **Martinez**, and (for part of the meeting) Public Safety Officer Derek **Cranmer**, Firefighter/Paramedic Rick **Villars**, and Sgt. Shawn **Hoyt**. RESIDENTS present were PZ&V Board Chair Patty **Gundy**; Nancy **Auwaerter** IRC Census CAC; Judith **Carroll**, Cowry Lane; Dorothy **Chasewood**, Sunrise Terrace; and Robert & Pilar **Rose**, Pebble Bay. GUESTS present were Tim **Knutson**, Forrest **Smalley**, Oriana **Eysangar**, and Marc **Seagrave** from Florida City Gas; Christine **Noll-Rand**, Carr, Riggs & Ingram; Rick **Kaiser**, Vero Beach; Barry **Segal**, Vero Beach; and Mike **Korpar**, John's Island Properties. REPORTERS present were Janet **Begley**, Press Journal.

#### 2. Agenda Reordering, Deletions, or Emergency Additions

Town Clerk Aldrich asked that item 3.c. be removed, as Mr. Sharpe is continuing to avoid public places due to COVID-19 and will pick up his certificate from the office. A **motion to amend the agenda removing item 3.c. passed unanimously** upon being offered by Councilman Carroll with support from Councilman Foley.

#### 3. Presentations/Proclamations

- a. Presentation – Florida City Gas (Tim Knutson) 9:03

Tim Knutson, Vero Beach resident and Local Account Advisor with Florida City Gas, addressed the audience. Florida City Gas is currently working on a feasibility study to bring natural gas to the barrier island in Indian River County. Mr. Knutson explained that Florida City Gas is a subsidiary of NextEra Energy, who purchased the company in July of 2018, as well as the 'little brother' FPL. They currently serve 112,000 commercial and residential customers within the State of Florida from Titusville down to Florida City, mostly on the East Coast of the state. They have 82 miles of high pressure transmission lines which are brought into communities and then they install their distribution systems throughout.

Mr. Knutson said that natural gas is domestically produced, is the cleanest fossil fuel available for residential and commercial uses, and is much more economical than any of the other available energy sources. Important for us here on the barrier islands of East Coast Florida are weather and storms. Incorporating natural gas-driven appliances reduces our dependence on grid-distributed power and reduces the amount of vehicular traffic related to the delivery of propane throughout communities. During power outages, customers who use natural gas-driven air conditioning equipment can continue to serve their homes and businesses with a relatively small back-up generator. Following Hurricane Irma in 2017, Florida City Gas lost service to only 57 customers and statewide, only 357 natural gas customers lost service.

Some safety features that Florida City Gas has put into place include installation of the newest technology available to the natural gas industry. They implement physical components and control features necessary for the safe operation of the Florida City Gas pipeline system, and install excess-flow valves on every one of their service lines to ensure protection from over-pressurization. Each station that services their communities is

monitored 24/7 and has automatic controls that can be operated remotely. Any abnormal conditions are corrected within a timely manner; technicians for a leak are normally on-scene within 30 minutes.

Florida City Gas is in the early preliminary stages of looking into the feasibility of bringing natural gas from the St. Lucie County line all the way up to the Sebastian Inlet. Mr. Knutson believes ours is the last barrier island in the state that does not have natural gas services. Their investment would be in excess of \$35 million, which would include transmission systems, distribution systems, low-pressure distribution pipelines, high-pressure regulator stations, service lines and meters. They would also conduct an extensive marketing campaign to make everyone aware that natural gas is available. Mr. Knutson then asked if there were any questions.

Vice Mayor Auwaerter asked what intrusion could be expected upon the roads in gated communities during pipeline installation. Mr. Knutson stated that 95% of their construction is done by directional boring, which has minimal effects on the community. Their contractors are required to make as minimal an impact as possible and to leave the premises as-they were or better when they leave. They also follow all FDOT regulations in situations where lane closures or similar are necessary. When running a service line to a home, there is generally a two (2) foot-square hole where the gas main is located and a two (2) foot-square hole where the meter will be installed, the area is re-sodded after the line is installed, and the entire process is completed within a couple of hours.

Councilman Foley asked if Florida City Gas would use existing easements for the project, and Mr. Knutson responded affirmatively. Councilman Foley asked if they would require any additional easements, and Mr. Knutson stated that they do not know at this time, but if additional easements are needed they would approach either the private residential community, the Town of Indian River Shores, Indian River County, existing FPL easements, etc.

Councilman Foley said that he remembers hearing that barrier islands are more geologically challenging in terms of the safety of installing natural gas lines, and asked if Florida City Gas has technology to overcome these difficulties. Mr. Knutson deferred to Marc Seagrave, Director of Strategy & Business Development for Florida City Gas, who stated he has not experienced any such difficulties. Their lines are installed at relatively the same depth as the other utilities, so you can expect to see relatively nonexistent movement.

Councilman Carroll asked what variables they are using in considering whether or not to proceed with the project and what needs to happen in order for Florida City Gas to commit. He also asked if there is a cost to the homeowner for gas line installation. Mr. Knutson stated that the first step is generating an interest in the community. They know that commercial customers are a fairly captive audience. A direct-mail campaign to every premise on the barrier island is in process to gauge interest. He reiterated that they are in the early preliminary phase and it could be a year before they are ready to make a decision on whether to proceed. Regarding residential gas line installation, Mr. Knutson explained they are allowed to spend up to six (6) years of revenue on behalf of the customer to provide service to them, so the more gas appliances a customer has in their home, the more they can spend to provide service to them. It also depends on the home. In most cases, changing a water heater from electric to gas will cover the cost of the line installation. They also have rebates available to customers to offset costs, whether the customer is converting from electric or propane to natural gas. He estimates that 90-95% of customers have not had to pay to have their service line installed.

Councilmember Peniston said she understood that one of the primary benefits is not losing power as one would with electricity. Mr. Knutson explained they do not shut off natural gas service during a storm, as it is run underground and it always available, so one wouldn't need to worry about running out as you would with a propane tank. The chances of losing service with natural gas are pretty slim. Councilmember Peniston also asked if they have a mechanism to determine whether switching to natural gas would be economically beneficial to a homeowner, and Mr. Knutson said they can email a staff member, who will perform a cost-savings analysis. Lastly, Councilmember Peniston asked, if they do decide to go forward with the project, how long it would take for final implementation. Mr. Knutson stated the project would take a couple of years from start to finish. Councilmember Peniston surmised they would require a certain percentage of homeowners to be on-board in order to proceed with the project, and Mr. Knutson agreed it would for the project to be financially feasible.

Councilman Carroll asked for Mr. Knutson's definition of interest, and the reply was that it would be based on the response they receive from the mailers, preferring somewhere near 75% interest.

Mayor Slater said he has been thinking of the demand for water heaters, stoves, dryers, pool heaters and as a constant supply for generators. It will be interesting to see the cost-comparison of natural gas vs. propane, as there is currently a lot of propane in the area. Marc Seagrave stated propane is about \$10 per gallon, or \$5,000 to have a 500-gallon tank installed with a service line and filled with gas. The cost for residential use is anywhere between \$2.50 to \$4.00 per gallon. In comparison, Florida City Gas' highest per therm rate is \$1.21, which is

equivalent to a gallon. Another comparison was offered with natural gas vs. electricity from FPL, which is about \$0.11 per kilowatt. There are about 29.3 kilowatts per therm. Using \$0.10 for easy calculation, that is about \$2.90 per therm vs. natural gas at \$1.21 per therm.

Mr. Seagrave reiterated that natural gas service does not go out when electric service does, but noted that using natural gas service to a generator alone does not generate revenue, as there is no guarantee there will be any usage. A customer would need to have other natural-gas driven appliances in order to qualify for installation based on revenue-driven criteria.

Vice-Mayor Auwaerter asked if there were any questions from the audience, and Press Journal reporter Janet Begley asked how the gas will be brought to the island. Mr. Knutson stated they already have several gate stations located within Indian River County to draw the gas from, but they are unsure as to which location they will use and how it will cross the inter-coastal waterway. There are several options; FPL has easements to bring electricity to the barrier island. They want whatever will work best for the project, the community and the environment. There being no other questions, Town Council thanked the representatives from Florida City Gas for their time.

b. Presentation: Auditor Presentation (Christine Noll-Rand, Carr, Riggs & Ingram, LLC/Heather Christmas) 9:26

1) Presentation of Financial Statement For Fiscal Year Ended 18-19

Town Treasurer Christmas stated the annual audit was finished in April. There was a delay in receiving final reports from a third-party, and then the presentation was delayed due to Coronavirus. The financial statements were sent to all Finance Committee members to review and provide feedback, which was incorporated. Mrs. Christmas introduced Christine Noll-Rand, who is the partner with Carr, Riggs & Ingram in charge of the audit.

Mrs. Noll-Rand began briefly pointing out some highlights in the financial statements, mainly on page 19, which is comparable to an Income Statement. The Town only has governmental funds, and the net change in fund balance was negative for all the funds due to capital improvements. The General Fund reflects the construction of the new Community Center, the Road & Bridge Fund the work on Old Winter Beach Road, the Planning & Zoning fund decreased because the rates were intentionally reduced to reduce that fund balance, and Other Governmental Funds had a decrease because money was spent for Capital Improvements as Bike Path and Pedestrian Walkway funds. If you do not include the capital outlay and look at it more from an operating standpoint, none of the funds were negative except for Planning & Zoning, which was done intentionally. From an operational standpoint the Town didn't spend more than it brought in; it saved up money and then spent it on fixed assets.

It was a clean audit opinion on the financial statements. There were no comments or recommendations. Mrs. Christmas was on-point and delivered everything as quickly as she could. As she mentioned, there was a delay in one of the actuarial reports which includes numbers required for the statements. Mrs. Noll-Rand made reference to the Financial Indicators, which is a tool the Florida Auditor General gives them and asks them to fill out. The front page says 'Inconclusive,' which is normal for almost every municipality. The benchmark includes other cities and towns that have a population of 1,000 to 6,000, have only governmental funds and have a similar tax property value to that of Indian River Shores.

There are, however, differences between the Town and the other municipalities that make up the benchmark. One example is Financial Indicator 4, which shows the General Fund and then All Governmental Funds, and that shows up as 'Unfavorable.' Mrs. Noll-Rand stated she is not at all concerned about the Town's investment level. She said that because this is only Governmental Funds, the Fiduciary Funds do not show up in that number. None of the other entities in the benchmark have an OPEB trust fund, so they have to have the cash investments in their Governmental Funds to pay that liability, whereas the Town has a separate Fiduciary Fund set up. The trend is down for the last few years, but that is because of the land sale in 2017, and money was moved into the Town's trust fund, and then this year it was spent on the Community Center. If you look at the Year 5 Entity, it shows the percentage for the General Fund as over 1000% cash and investments over liabilities.

Mrs. Noll-Rand asked if anyone had any questions or concerns regarding the financial statements. Mayor Slater said he thinks the Town is operating very well, and applauded the management of the Town, giving Town Treasurer Christmas very high marks for keeping us on the straight and narrow and reporting it very well.

Regarding the Public Safety Pension Fund, Vice Mayor Auwaerter said there was a market drop-off but it is starting to come back. As of fiscal year ending September 30, 2019, we were 101% funded with a relatively

low future rate of return. Those two features are very rare. Our retiree healthcare benefit plan, also referred to as OPEB, or Other Post-Employment Benefits, was 121% funded as of September 30, 2019. Most municipalities in this country do a 'pay as you go,' and do not forward fund it as they are supposed to according to the Government Accounting Standards Board (GASB) and proper financial protocols.

**A motion** was made by Councilman Foley **to approve the Financial Statements for fiscal year 2018-2019**, which was seconded by Councilman Carroll and **passed unanimously**. Vice Mayor Auwaerter thanked Mrs. Noll-Rand for her presentation.

2) Extension of Contract with CRI for FY Ended 19-20

Town Treasurer Christmas explained we are entering the final year to extend the audit contract and the cost would be \$26,500 as it was for 2018-2019. We will need to go back out to bid next year for proposals. Mrs. Christmas highly recommends extending the CRI contract, as they are highly efficient, non-disruptive to daily operations and are very thorough. Councilman Carroll made **a motion to extend the CRI contract for fiscal year 2019-2020**, which was seconded by Councilman Foley. Vice Mayor Auwaerter stated he was on the Finance Committee when CRI was initially hired. They appeared to be the best at the time and it looks as though that has come to fruition. The motion **passed 5-0**.

c. Present Certificate of Appreciation to George Sharpe, MPO Bicycle (Pedestrian) Advisory Committee (Removed from the Agenda in item 2).

4. **Consent Agenda**

- a. Approval of Regular Town Council Meeting Minutes dated March 21, 2020 **(no April 2020 meeting)**
- b. Cell Tower Access Road/Pathway
- c. Amy Ann Lane Repaving & Improvements

With no discussion, a **motion to approve the consent agenda as presented** was made by Councilman Foley, seconded by Councilman Carroll, and **passed unanimously**.

5. **Town Attorney** 9:37

- a. Charter Clarification on Roll Call Votes

Mr. Clem said this is informational, and no vote is needed. He stated that going forward, when Council is voting on Ordinances or Resolutions, said vote should be done by Roll Call as per the Town Charter. There were no comments from Council.

*Recess Regular Town Council Meeting (9:38)*

**QUASI-JUDICIAL HEARING**  
**945 Sunrise Terrace Variance Request**

- 1. Call to Order (Mayor/Vice Mayor Announce Procedure & Identify Party Proponent/Applicant)
- 2. Swear-In of All Those Who Will Testify (Town Clerk)

Town Clerk Aldrich asked those who would be testifying to stand and raise their right hand for the oath, and those who stood and repeated the oath were Barry Segal and Rick Kaiser.

- 3. Council Disclosures, e.g. Ex Parte Communication (Town Attorney)

Vice Mayor Auwaerter stated he received a letter from the applicant, Mr. Kaiser and a memo from the Chair of the PZ&V Board, Patty Gundy. He also rode his bicycle past the property but spoke to no one. Councilman Foley stated he also received a letter from the applicant, as he believes everyone on Council did, and he also received the memo from Mrs. Gundy. In the course of discussion regarding other matters related to the Town, he also had a conversation with Mrs. Gundy to clarify the record at the PZ&V Board hearing regarding this matter. Councilman Carroll said he visited the property on two (2) occasions. He spoke with the neighbor to the west, Mr. Rory Hansen, the architect John Binkley, the applicant's attorney Barry Segal, Mrs. Gundy and Town Attorney Chester Clem. He read all of the minutes of the PZ&V Board meeting held regarding this matter. He also received a letter from the applicant, a letter from Mayor Slater and the memo from Mrs. Gundy. He also reviewed the Land Development Code (LDC). Mayor Slater also received a letter from Mr. Kaiser, visited the property, and had discussions with Mr. Clem regarding the situation. He also wrote a letter which he believes was distributed to everyone on Council stating his opinion on the matter and disclosing that he has known Mr. Kaiser for a number of years. Vice Mayor Auwaerter added he also spoke with Mr. Clem regarding the procedures for running a quasi-judicial hearing but did not discuss the subject matter of the variance request.

- 4. Statement from Staff/PZV Board - Agenda Transmittal (Town Manager)

Mr. Griffin stated he authored the agenda transmittal which includes items relative to the LDC depicting R1A and R2A classifications and their requirements. He believes the agenda transmittal speaks for itself. He did receive, after

post-time of the agenda, some documents that he has distributed to Council, including a summary of Florida law for a variance due to hardship, letters from the neighbors to the east and west of the subject property and a letter from PZ&V Board Chair Patty Gundy. Copies were also provided to the applicant and his attorney.

5. Statement from Proponent: Rick Kaiser, Represented by Barry Segal, Esq.

Mr. Kaiser said he and his wife looked at the Lot, and consulted the Indian River Shores Code of Ordinances, which stated that a 12,000 square-foot lot is R2A. He did not find out the Lot was zoned R1A until just before closing. He and his wife were in the position of losing their escrow deposit, so they decided to go forward and ask for a variance, which was denied by the PZ&V Board. They then decided to approach Council. He does not blame anyone but himself for the mistake.

Attorney Barry Segal on behalf of Mr. Kaiser spoke, adding that the Kaiser's not only ran the risk of losing the deposit and design costs, Mr. Kaiser also had a long career in the military and is currently the Director of a non-profit museum, neither of which pays a lot of money. Additionally, the seller threatened to sue for specific performance, a legal remedy to compel the buyer to perform. The Kaiser's were at that point no longer acting of their own free will as they were subject to various legal positions under the contract that took away their ability to make a free and voluntary decision.

Mr. Segal said he wanted to discuss the provisions of the LDC that dictate when you can or cannot grant a variance. The first is special conditions with regard to the property. There is R2A zoning from almost down to the CVS all the way up to a block short of this property, and then the R2A zoning continues up through John's Island. A majority of the land on the river-side of A1A is also R2A zoning. Most of the surrounding communities are developed with R2A standards. The request is for a minimal variance which would bring this property into conformity with the R2A zoning code. There are 54 lots between Beachcomber Lane and Holoma Drive, 16 of which are 12,000 square-feet or less, which is the problem with the subject property. This plat existed before the Town overlaid a zoning restriction on it, virtually taking away the ability to build a home on that property in conformity with the way it was designed and platted. Of the 16 properties, two (2) have homes that were built in this century. The balance of them have an average home built in the 1970s, and three (3) of the properties are vacant. It is a very narrow scope of properties within that area that are affected by this, but it does create a special condition because of the incorrect zoning of this size of lot.

Councilman Foley asked if there are any other homes within that area that were built outside of the R1A zoning specifications. Mr. Segal answered that according to the Property Appraiser's office, there is one (1) home that was built larger than is allowed, which is on the same block as the subject property. There is no setback issue with that particular home, but there is more square footage than allowed by the LDC, so there is at least one home that was built outside the parameters of R1A zoning. Councilman Foley said it seemed to him the applicant is not asking for a variance, but rather a re-zoning of the Lot, for it to be the only R2A-zoned property in that community.

Mr. Segal said he believes it would be appropriate for the property to be re-zoned correctly. Councilman Foley said but that would be the only lot. Mr. Segal said he believes the whole area should be rezoned to R2A, or at least those two (2) plats. Councilman Foley said the consequences of that are that future property owners could all request R2A zoning. Mr. Segal said when these lots were platted, there was no zoning overlay, which took away the ability to have those setbacks. Councilman Foley asked when the re-zoning occurred, and Mr. Segal said probably before he was born. This is not something new, but Mr. Segal believes it is incorrect or inappropriate.

Continuing, Mr. Segal said this leads to the question of whether there is a hardship involved, or if the applicant is deprived of a substantial property right that is enjoyed by other parties in this area. The reality is that in this area, the Kaisers could build their home across the street because the lots are larger, but they cannot build it on their lot, even though it is in the same zoning.

As to whether this was self-created, when the Kaisers reviewed the property, they did look at the size of the lot and the LDC. They thought the house they intended to build was doable as the lot was 12,000 square feet, which they thought was R2A. They were not acting ignorantly or incorrectly, per se, as much as they made a logical conclusion because they did not think that the Town of Indian River Shores would have a zoning class attached to the property that does not match the Building Code. Currently, you cannot have a 12,000 square-foot lot in this zoning class, the minimum is 15,000 square feet.

Councilman Foley asked when the architect and attorney were retained in terms of the purchase and sale process, and if there was still time to back out before their retention or were they irrevocably committed prior to retention? Mr. Segal said he was retained early on but not for the purpose of due diligence on the Lot, because when we look we do not know what is going to be built on it. He does not know when the architect came on board and started drawing plans, or what research went into it. It was a relatively short due diligence period because it was just a vacant lot; there were no required home inspections or anything of that nature. The information was not discovered until the ability to renegotiate or cancel the contract had passed.

Mr. Segal next addressed whether the requested variance is minimal, and he stated that it is. They are merely looking to bring it consistent with what the Town requires for 12,000 square-foot lots. The request is for 2.5 feet on each side and 5 feet in the front. The only other issue would be adjacent property, and they are not creating a new use. They have letters from both the neighbors stating they have no objections to the requested variance. The grounds are available for Council to make a decision to grant the variance. If Council is concerned that they would be setting a precedent. Mr. Segal said he believes it is a very good precedent that needs to be adjusted. He compared the houses in this area to the Affordable Housing of Indian River Shores. A lot of these homes are going to be rebuilt over time. It is appropriate that these 12,000 square-foot lots be built on according to the zoning that has been adopted everywhere else in the Town for 12,000 square-foot lots. He suggested the Town may want to consider drafting a text amendment to the zoning code that would say any lots that were platted before 1970 that are 12,000 square-feet and are located in R1A zoning can use the variances of R2A. He believes it would increase property values, tax revenue and the aesthetic appeal of that area. Mr. Segal then asked if there were any other questions from Council, and there were none.

#### 6. Statement From Any Party Opposed

Chairwoman of the PZ&V Board Patty Gundy was sworn in. She was not the Chair at the time of the PZ&V Board Meeting regarding this issue. The PZ&V Board listened to all of the issues stated by the applicants as to why they were requesting a variance. Although the Board was sympathetic, the applicant did not look up the property record on the Property Appraiser's website which lists the property as zoned R1A; rather, they made the assumption that it was an R2A, and when they found that it was actually zoned R1A they chose to go ahead with the purchase of the property figuring he could resolve the issue after the property was purchased.

From the PZ&V Board's standpoint, the whole issue is that they represent the Town, and the Town has standards they must uphold that say in a certain area with certain zoning category, you are restricted to certain margins. The hardship seems to be more hard-headedness on the owners' part in not being willing to change the layout of the home they have designed. The house has not been built; at this point it is only an architectural rendering. Their hearts are set on a house that does not fit on the land they purchased. They are saying we should just change the zoning, and if that is the issue they want to consider, changing the zoning for the entire Town would require a rewrite of the LDC in order to accommodate this, which would open up every R1A area. Today, everyone is coming in and razing an existing home to build a new one, pushing out the limits of the home, which gives you less green space which also impacts our ability to keep our Town green. She personally moved to Indian River Shores because of the strict regulations and the rules that we all have in place that keep it a beautiful residential area. To grant this variance opens the door to anyone who has any sort of physical or emotional disability to request the same.

The house is changeable right now, it is not yet built. It is just an idea in the applicants' heads that they choose not to want to change. The Board listened to all of the issues and voted against granting the variance, and she still feels that it should be denied.

Councilman Foley asked whether the vote to deny the variance request was unanimous and Mrs. Gundy answered that it was. Mayor Slater said that as he stated in his letter, he has been associated with Indian River Shores as a member of the Finance Committee, a member of Council and recently as the Mayor for more than nine (9) years. He has really dedicated himself to this Town, and he wants to be clear that he has the highest respect for the members of the PZ&V Board, because they do an unbelievable and diligent job, and have for all the years he has been here. He has always voted in support of every one of their decisions. He even had the respect, in regards to his own property, to not request a variance from the PZ&V Board to do something that he wanted to do but wasn't allowed.

That being said, he also feels that the request for variance at 945 Sunrise Terrace is a very special case. This is one (1) of only six (6) lots in the entire Town where a request of this nature could arise. He thinks, as was pointed out earlier, that it is possible to debate that this property should be looked at as an R2A as opposed to an R1A. He is not actually sure that they did not make a mistake many years ago. Since this is a special case, he does not believe they would be setting a precedent. The neighbors have agreed that they are fine with it. The idea of changing the zoning for that area of Town is not a good one, in his opinion, but he does think that for these few lots, that for whatever reason are at variance with all of the properties North and South, we should look at the situation carefully when it does come time for them to be torn down and rebuilt.

Greg Gandolfo, owner of 925 Sunrise Terrace, which is two (2) lots away from the subject property, stated he did not receive a notice regarding the hearing, and asked what the requirements are regarding notification to neighboring property owners. Town Attorney Clem confirmed that only the properties immediately adjacent to the subject property are required to be notified. Mr. Gandolfo asked whether there is to be one (1) or two (2) houses built on the property. Vice Mayor Auwaerter deferred to the Mr. Segal, who stated a single residence is to be built

on the structure. Town Attorney Clem clarified that only single-family homes are allowed to be constructed on properties zoned R1A.

Mr. Gandolfo stated there were rules he had to follow when constructing his home. When he first made an inquiry to the Building Department regarding the requirements, the Building Official was quite adamant that they must be followed. So he made changes to his house in order to accommodate the requirements. We have rules. If he has to live by them, so should others. If the house results in a smaller house, it will not impact the value of the house. Right now in real estate, is it not about the size of the house but the features and the location. Size is a factor, but not the primary factor, especially when on the island. He is not a real estate expert that is just his experience in trying to sell his own home. He doesn't believe there is not a great loss of value in making your home's footprint slightly smaller in order to accommodate the rules. He believes everyone should follow the rules and he is concerned that granting this variance request would set a precedent.

7. Closing Statement from Proponent

Mr. Segal said they simply wish for the Lot to be treated as the other 12,000 square-foot lots in Town.

8. Council Deliberation and Decision

Mayor Slater stated he thinks this is a very special case, it would not set up a precedent, and the neighbors have agreed that they are fine with it. He votes in favor of granting the variance request. He thinks the Kaisers will be wonderful additions to our Town.

Councilmember Peniston said her initial thought was not to override the PZ&V Board as she thinks they perform an important role. If she understands correctly, what the applicant is requesting is that this 12,000 square-foot lot be treated as other 12,000 square-foot lots are treated. She thinks that perhaps in this case, that has some merit. She is inclined to go along with the request.

Councilman Carroll said he takes issue with Mr. Segal's statement made at the February 18, 2020 PZ&V Board Meeting "...under existing zoning, the lot is unbuildable." The lot is buildable, with a design that conforms with R1A zoning requirements. It is unfortunate the Kaiser's were led to believe they could build a home conforming with R2A zoning and that they were made aware of this problem only 4 days before the closing date. The Kaisers, probably upon consulting with their architectural and legal advisers, decided to 'take a chance' and close on the property hoping to 'correct any issues afterwards'. The PZ&V Board works closely with the Town Building Official to apply the Land Development Code and provisions contained in other Town ordinances. The members of this decision-making board are permanent residents of the Town, meet monthly prior to each Regular Council Meeting and have sworn to uphold the Town's LDC.

According to the Town Attorney, the zoning classification is valid, and the lot is buildable. As the PZ&V Board knows from experience applying the LDC, the crucial points of a variance are practical difficulty, undue hardship and unique circumstances applying to the specific property involved, not to the occupants. In order for the PZ&V Board to approve a variance, they would need to find a hardship that would make building impossible. Furthermore, the Kaiser's asked for a variance on a self-imposed issue.

Mr. Carroll said he does not see why Mr. Binkley, should the Kaiser's decide to retain him as an architect, cannot revise his design to conform with the limitations of the R1A-zoned lot they purchased. He has complete confidence in the PZ&V Board and believes they made the correct decision to deny the Kaiser's request for a variance and votes to uphold their decision. Mr. Carroll added that he truly hopes the Kaiser's become residents of Indian River Shores.

Councilman Foley thanked Chief Master Sergeant Kaiser for his service, which he takes very seriously. If it wasn't for that, he doesn't think this is a special case at all. Councilman Foley said he put a lot of effort into this because he wanted to find a principled way to vote for Mr. Kaiser, and if his service and his character were the only relevant criteria, he would vote in favor of granting the request. But that isn't the only criteria. The criteria we have are, as Councilman Carroll eloquently stated, set forth in the Planning and Zoning regulations of the Town. Also, there is really well-settled Florida law that Councilman Foley consulted just to make sure that the principles we are following are correct. There is legion law that basically says that this doesn't qualify as a hardship, as it is self-created. The applicant's attorney said he wants to have it treated as a 12,000 square-foot lot, and in that community it is in another zoning area. The way Councilman Foley is looking at it, this is not a request for a variance, it is really a request to rezone one (1) lot in one (1) community. He doesn't know that all the neighbors would be so supportive of that if it were made clear to them. These could conceivably apply to every lot in that neighborhood.

He believes that Council does owe deference to the PZ&V Board who gave very careful deliberation to this and applied everything correctly. He sees no reason to set aside their judgement. While he also hopes that Chief Kaiser and his wife become residents of the Town of Indian River Shores, he does not see any basis to set aside the opinion of the PZ&V Board.

Vice Mayor Auwaerter said he was torn regarding this issue. He thinks everyone has made some excellent points. He is coming down on the basis of Mayor Slater's comments. He has a lot of respect for the PZ&V Board, attends a lot of their meetings and knows that they work really hard. This situation is a really odd duck. The way the lot was originally platted doesn't make sense. He is in favor of granting the variance request.

Mayor Slater made a motion to approve the variance request at 945 Sunrise Terrace, which was seconded by Councilmember Peniston. A roll call vote from the Council was taken and the motion passed 3-2, with Councilmen Foley and Carroll voting Nay.

9. Adjournment (10:19)

*Reconvene Regular Town Council Meeting*

6. **Mayor or Council Items** 10:20

a. Public Safety Pension Fund Performance Update (Vice Mayor Auwaerter)

Vice Mayor Auwaerter said he believed that Council received the March 31, 2020 report from AndCo regarding the Public Safety Pension Fund performance for the first six (6) months of the fiscal year. The total fund net performance is down almost 8.9%. He was concerned that the fund is set up in terms of tracking the Russell 1000 Value Index, which on the equity side massively outperformed the S&P 500.

(10:22 Sgt. Hoyt, Firefighter-Medic Villars and County Attorney Reingold arrived).

The real estate growth looks pretty good; fiscal year to date it is up 2.5%, but in his mind, that is not the true performance. He looks at the Vanguard Real Estate Investment Trust (REIT) Value Index. These real estate investment trusts are invested in a whole range of different properties such as commercial, apartments, warehouses, etc. Fiscal year-to-date, they have lost 23.6%. The market is actually making an assessment of what the true values of the underlying properties are in terms of the cash flow they could generate. Last Saturday, The Wall Street Journal had an article talking about exactly this phenomenon; how these real estate funds, these comingled, non-market traded funds' performance, has been really superior to the REIT. That differential, fiscal year-to-date, between the real estate fund, our number is at 2.55 %, and the REIT fund at negative 23%, is roughly 25 percentage points. Ten percent (10%) of the fund is represented by real estate; if you multiply that by 25 percentage points, instead of being down 8.91%, the fund is possibly down as much as 11%.

Vice Mayor Auwaerter also wanted to point out the graph that shows value stocks versus growth stocks. It looks at a performance differential in terms of a ratio. If value stocks and growth stocks performed exactly the same, there would be a straight line across the graph at one (1). Value stocks outperformed growth funds until the early 2000s, when his understanding is that this fund was changed to a more value-based orientation, and now they have gotten crushed. His point in bringing all this up is that he is concerned that the Pension Board has not met this year since the market got crushed. He believes it is their fiduciary duty to meet during this time of crisis to discuss what is going on, and he drafted a letter to be sent on the behalf of the Town Council requesting that they meet as soon as possible.

Councilman Carroll stated he is the person who recommended using the Russell 1000 Value Index and wanted to respond as to the appropriateness of it. Manning & Napier is a self-described value manager. There is no way that Manning & Napier should be compared to a growth manager or a growth index. In the equity world, there are two (2) potential benchmarks to use. One is a style benchmark which is, in his opinion, the most appropriate, because it takes a benchmark and measures the results of a self-described manager's style against that benchmark. There is no question that the style benchmark against which they should be compared is the Russell 1,000 Value Index. The other kind of benchmark that is typically used is a market benchmark, which covers the market as a whole without differentiating between value and growth. He thinks that the S&P 500 as it is laid out in the investment policy statement is the appropriate market benchmark to use. He said that if Council can meet, and the PZ&V Board can meet, there is no doubt in his mind that the Pension Board can find a way to meet, in this room, on a regular basis, irrespective of what is going on with the Coronavirus. He believes it is dereliction of duty that they have not done so.

Vice Mayor Auwaerter said Councilman Carroll is absolutely correct that Manning & Napier is a value manager and should be judged against a value index. Vice Mayor Auwaerter's broader issue is with the overall approach to the fund. He is not making any negative comments about Manning & Napier's performance, as they are doing what they are being told to do. Given the poor performance of the past several years, if he were on the Board he would be asking whether they should hang in there or not.

Mayor Slater said that Council has been strongly suggesting that we need to change the way we look at some of these investments, including the high rate of return percentage. He agreed that Council needs to urge the members of the Pension Board to meet immediately, and that we need to get people on the Pension Board who truly understand investing. Council needs more input into what they are doing, since the Council is responsible for funding the pension, and they don't have any control over how the money is invested. He agrees with sending a letter, but thinks they need it to be more strongly worded.

Councilman Carroll explained that of the five (5) members of the Pension Board, two (2) are Public Safety Officers, who are selected by their own, two (2) are residents appointed by Town Council, and the fifth (5<sup>th</sup>) member is selected by the other four (4). Councilman Carroll proposed both of Council's current representatives on the Pension Board. Fred Gaertner is a fixed-income expert who spent most of his investing career with Chubb. He spent 40 years in the fixed-income business and there is no one in Indian River Shores, save the Vice Mayor, who knows more about investing than Fred Gaertner. The other member is Tom VanDeventer, who has been in the equity investment business all his life. He has worked for several Wall Street firms and, more recently, a portfolio management company that established an office here. Mr. VanDeventer knows as much about equity investing as anyone in Indian River County. So, the two gentlemen who were appointed by this Council are as well-versed about investing as anyone we could find.

The fifth (5<sup>th</sup>) member is appointed by the Board – the two (2) members who are Public Safety Officers and the two (2) members who are appointed by Council. Those positions are coming up for renewal in November. Currently, the fifth (5<sup>th</sup>) member is Mr. Solin. Councilman Carroll used to be on the Board and sat next to him for a couple years. He does not know anything about Mr. Solin's business or personal background. Councilman Carroll said he has never been a part of the fifth (5<sup>th</sup>) member selection process, but supposes that Mr. Gaertner and Mr. VanDeventer could come up with a name, somehow, without being in violation of the Sunshine Law. Town Clerk Aldrich stated the members can individually select a candidate and communicate that selection to the Board through the administrative person who works for the Pension Board. She added that she has been in communication with the Pension Board and they are planning a meeting, although she is unsure of the exact date. Mayor Slater asked Town Clerk Aldrich if Council members could individually seek out a candidate for the fifth (5<sup>th</sup>) seat on the Board. She responded that Council is free to encourage anyone to go to the Town's website and fill out the application for board membership.

*(10:30, Officer Cranmer arrived)*

Vice Mayor Auwaerter referred to Tab 3 of the Financial Statements, page 44, Note I – Pension Plans. He pointed out where it says 'Deductions – Administrative Expenses.' He totaled all the fees, assuming an average fund balance of \$17.5 million, and it is 0.84%, which is really a high expense ratio. Management fees are 0.49%, the actuary costs 14 basis points. That's a big drag on performance year after year. He knows he is being a bit repetitive, but when you look at this Town from a financial perspective, we are an \$18 million pension plan with a side business of a government operation with a balance sheet of about \$8 million. Other than a hurricane, this is the biggest risk to this Town, and it is just not being run right.

Councilman Carroll said of the 84 basis points, the Pension Board only controls 49 of them. The balance is mandated. We have to have an actuary and a consultant. He is not saying 49 basis points is a deal, because we can get passive management for the whole portfolio for probably 15 basis points with equity and fixed interest.

Councilmember Peniston asked if there is a way that Council identify someone that they might like to unanimously put forward as the fifth (5<sup>th</sup>) Pension Board member. Councilman Carroll said that is in process.

Vice Mayor Auwaerter made **a motion that the letter he drafted be sent to the Board of Trustees on behalf of Town Council**. Councilman Foley seconded the motion, and it **passed unanimously**.

b. Virgin Trains Financial Update (Vice Mayor Auwaerter)

Vice Mayor Auwaerter stated that Dylan Reingold, the County Attorney, is here to give an update on the lawsuit against Virgin Trains. Vice Mayor Auwaerter took a few highlights from Virgin Trains annual report. The interesting thing is they have made absolutely no progress in reducing their losses as they move into 2019. In March of 2019 when the bonds were issued and they had to update their ridership projections, they projected that by the end of 2019 they would have two (2) million riders. Nine (9) months forward, they only had one (1) million riders and it was heavily discounted in terms of revenue. The Vice Mayor noted with interest that the train is operating at a loss of \$64 million, calculated by taking the total revenues and subtracting direct operating

expenses. He found it to be bizarre that when they shut down the train due to COVID-19 they were saving money. Their losses and debt have gone up substantially, and to keep their members' equity the same, they had to kick in \$184 million.

Attorney Reingold said on May 18<sup>th</sup>, Indian River County filed its Petition for Writ of Certiorari with the United States Supreme Court. He thanked the citizens of Indian River Shores for their contributions to help keep the appeal alive. In the Federal case, there are revolving issues around NEPA compliance, improper approval under Title 23 funding and the issue of whether individual governments had to approve the bonds. We focused specifically on Title 23 funding; that's our argument to the Supreme Court. Their big argument is that the courts deferred to DOT on their interpretation of what receiving Title 23 funds means. They completely overstepped the idea of just taking a plain reading of the Statute, which is what Courts should be doing. The next step in the process is submitting briefs, which are due June 19<sup>th</sup>. They anticipate that it will be addressed by the Supreme Court in the early fall.

Mr. Reingold mentioned that Miami-Dade County is working on a deal with Brightline to pay \$350 million to build five (5) additional commuter stations, and on top of that will be paying rent and operating expenses. He expects that part of the money will come from the CARES Act. As a County with a large population, Miami-Dade County received some of this Federal coronavirus funding.

Mayor Slater said it will be very interesting to see what develops. Vice Mayor Auwaerter thanked Mr. Reingold for his time.

#### 7. Discussion with Possible or Probable Action *10:47*

- a. Reschedule November Meeting from November 12<sup>th</sup> to the 19<sup>th</sup> Due to Elections Certification (Town Clerk)

Mrs. Aldrich explained that there is a 10-day waiting period from Election Day to Certification due to the receipt of mail-in ballots, and requested that the November meeting be rescheduled by one (1) week to November 19<sup>th</sup>. Councilman Foley made a **motion to approve rescheduling the Council meeting as suggested**, which was seconded by Councilman Carroll and **passed 5-0**.

#### 8. Staff Updates:

- a. Introduction of Luis Martinez, Building Official (Town Manager)

Mr. Griffin said there was a vacancy for a Building Official in mid-January. Mr. Griffin went through the process of interviews and selected Mr. Luis Martinez, who comes to us with 35+ years of experience. The Town Manager said he has already received positive feedback from the Community. Mr. Martinez said he came from Palm Beach County with a brief stop in South Carolina, and he is very happy to be here.

- b. Town Treasurer Report

Mrs. Christmas projects that we will lose about \$50,000-\$60,000 due to interest rates. We did get \$7,000 from the CARES Act for ambulance runs. We lost about \$30,000 from the Postal Center, but it is a wash because we are always basically in and out with the revenue and the expenses. We may lose about \$65,000 in tax revenue from the sales tax and the local infrastructure tax. We don't expect it to have an impact on next year's ad valorem revenue because the valuation had already been completed, but it might impact the following year.

We are tracking all expenditures relating to COVID-19. The Public Safety Department is marking their invoices and completing associated FEMA forms. We will try and recoup some of that money, but we just received \$20,000 from Hurricane Dorian expenses, so it does take some time to receive the funds. This week the Town will be requesting the money from DEM that is currently recording a lot, so that negative fund balance in the Treasury report should go away by the end of the fiscal year. The Public Safety Pension Fund did recoup about 8% of their funds (about \$1.4 million) in April.

The Finance Department has fully implemented the new time-management system, and Treasurer Christmas thanked all the staff for that, because it was a big transition from the former system of paper timesheets. She specifically thanked Captain Shaw and Corey Richter from Public Safety, as we were able to work together as a cohesive team on this. The new financial software is being implemented this week. It has gone well, with no complaints after running payroll.

Vice Mayor Auwaerter stated there was an article in the Press Journal today in which an economist from the State said that April's revenue for the State of Florida was down \$878 million from projections. The bulk of that loss was \$600 million from sales tax collections. The Florida Policy Institute said their projected sales tax losses will move to \$800 million per month. The Governor has not signed the budget because he has been busy handling COVID-19. The Vice Mayor said that one of the issues he raised with the Vero Beach Utilities

Commission regarding the plans for a new water-treatment plant at the airport was in receiving monies from the State for construction, which he said might not be available.

c. Public Safety Department report 10:54

Chief Rosell explained that sick leave is down around 7%, but the previous months were 14% and 12% due to a run of unfortunate instances including two (2) employees on workers' compensation who elected to use sick leave as opposed to working on light duty. Additionally, one officer offered their resignation, and then proceeded to use their sick leave for several weeks. The amount is leveling out, but we do still have one (1) employee on workers' compensation.

Regarding crime-related issues, he added extra patrols when the pandemic started to prevent burglaries, especially in non-gated communities. For the most part, per diem officers were used to lower costs. There were a couple of attempts, but no burglaries. You will still see police vehicles parked closer to the edges of Town limits, sometimes occupied and sometimes not, which seems to be working. We have received a lot of comments about an increased police presence. Vice Mayor Auwaerter asked if there was an increase of burglaries in Central Beach (City of Vero), and Chief Rosell answered that there were a couple and the County had many, possibly due to so many individuals out of work due to the pandemic.

He added that there will be a couple of press releases within the next few days, one in particular regarding an arrest that was unsavory that the Town Manager has been briefed on. Chief Rosell said that Council should call him with any questions. Mr. Griffin stated that he would update the Council regarding that arrest. Public Safety is also currently working a couple of cases regarding exploitation of the elderly.

d. Town Clerk Updates/Reports

Mrs. Aldrich asked if there were any questions regarding the report she included in the meeting packet, and there were none.

e. Project Updates (Town Manager) 10:58

Mr. Griffin said that he and a representative from MBV Engineering performed the final inspection of **Old Winter Beach Road** with DEM a couple weeks ago, which was successful. Mrs. Christmas is going through the application to receive the final funds from DEM and that should be closed out. Since the rains have started he has been performing onsite inspections, and is not entirely happy with some of the drainage. With standing water, the 72 hour rule applies, and in the areas where turf has been replaced with sand the drainage has been perfect. He will be watching the other side closely. He thinks we are at a B+ and he will know more as we go through the summer rains.

The **cemetery survey** with sonar mapping has been completed and we should have the results from MBV in another week or so. We are still on target with Tropical Property Management who will be doing improvements this summer.

The **cell tower pathway improvement** project was finished. Part of the project involved improving the drainage on the west side between Town Hall and the Maintenance area. While not perfect, it is a vast improvement over what we have had in previous years, with water moving; he rates the project as a B+.

The **Public Safety fence** project is currently in process. The electric gate was recently installed and the final electrical connections should be finished soon. A security screen is still to be installed on the fence over by Bermuda Bay.

We recently published a public **bid for a Disaster Debris Hauler** in anticipation of hurricane season. Last year we did not have this ready when hurricane season hit, so a verbal contract with Tim Rose Contracting was approved by Council should the need have arisen. This year we are going through the formal process of a bid. He has created a Debris Management Plan, and he will present the results of that bid along with the Debris Management Plan at our June Council meeting.

Regarding **reopening the Town Hall Complex**, we will mirror the County's reopening plans. While the County is opening their offices for appointments only starting Monday, June 1<sup>st</sup>, we do not have the amount of exposure regarding the number of visitors, patrons and customers at our Town Hall Complex. He believes it appropriate to reopen the Town Hall Complex on Monday, June 1<sup>st</sup>. A staff meeting is scheduled at 2:00 PM today. As Town Council knows, we have been kind of on a half-schedule in order to distance our employees from one another, which will end on June 1<sup>st</sup>. The three main areas which receive customers; the Postal Center, the Building Department and the Clerk's Office will have signage posted indicating we are only receiving customers one (1) at a time. The Community Center will remain closed until Phase 2 is introduced by the Governor.

9. **Council/Committee Reports or Non-Action Items** 11:05

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

a. Committee & Informational Updates or Comments

**EDC (Economic Development Council).** Councilman Carroll said he participated in a conference call meeting of the on May 19<sup>th</sup> , which primarily focused on sideration of a referendum to renew the County Ad Valorem Tax Exemption for tax abatement, which was previously approved via referendum in 2010 and expires this year unless renewed by the voters. The EDC voted to recommend a referendum for November to the County Commission.

**MPO.** Vice Mayor Auwaerter said he has been in touch with the staff that supports the Metropolitan Planning Organization (MPO), and a contract has been rewarded for A1A resurfacing with construction to begin this summer. There is no projected completion date at this time.

**TCRLC (Treasure Coast Regional League of Cities).** Mayor Slater attended their meeting via telephone on May 20<sup>th</sup>, at which representatives were appointed to attend various Florida League of Cities (FLC) meetings. They were reminded to complete their annual ethics training as required for all elected officials.

Councilman Foley stated that all of his committee meetings have been suspended until further notice.

10. **Call to Audience** 11:08

Indian River County (IRC) Complete Count Committee member for the Town, Nancy Auwaerter, reported that they met via Zoom last week to discuss the **2020 Census**. As of last week, IRC ranked 9 out of 67 counties in Florida for reporting percentage with a 63.7% self-response rate. Indian River Shores has a 59.9% response rate, which is about in the middle in terms of the other cities within the County. Sebastian has a 74.2% response rate, Orchid has 64.3% and Fellsmere is lagging but starting to pick up with a response rate close to 45%. All the municipalities in the County are doing better than the 2010 Census at this point in time. She encouraged everyone who may have an opportunity to please remind people that it is extremely important that every individual gets counted to maximize the amount of federal funds received.

11. **Adjournment** 11:12

Respectfully submitted,

*Approved by the Town Council at the June 25, 2020  
Regular Town Council meeting.*

/s  
Laura Aldrich, Town Clerk