



MINUTES

Town of Indian River Shores
Regular Town Council Meeting
Thursday, August 27, 2020

Immediately following 9:00 a.m. Public Hearing

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

1. Call to Order (9:09 AM)

- a. (Invocation and Pledge foregone as they were done at the preceding Public Hearing)
- b. Roll Call

The meeting was called to order at 9:09 by Vice Mayor Auwaerter, followed by the roll call by the Town Clerk. Those present were as follows: Mayor **Slater** (by Zoom), Vice Mayor **Auwaerter**, Councilman **Carroll**, Councilmember **Peniston** (by Zoom) 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 Captain **Iovino** and Building Official **Martinez**. RESIDENTS present were PZ&V Board Chair **Patty Gundy** (Pebble Bay); Sue and Tom **Ether** (The Shores), and Peter **Tedesko** (Sea Forest). GUESTS present were Louis "Buck" **Vocelle**, Vocelle & Berg, LLP; Vincent **Burke**, IRC Utilities Director; Sam **Nelson**, John's Island Utilities Director and Janet **Begley**, Press Journal.

2. Agenda Reordering, Deletions, or Emergency Additions

3. Presentations/Proclamations

- a. COVB Water Discussion (Louis Vocelle)

Louis "Buck" Vocelle said after he appeared at the last Council meeting, he has since spoken with each Council member individually. Under the 2012 Franchise Agreement, the City of Vero Beach agreed not to charge the Town any more than the County was charging. That rate was at \$0.67 last March. The County came out with their new promulgated rate at \$0.21 per 1,000 gallons of reuse water. There was a mediation conference with the City, who allowed the rate to remain at \$0.67 while they performed a rate study. The rate study was on reuse water, and their claim is that they should be charging \$1.24. They are now having studies done for potable water and sewage. The Council has three options: 1) do nothing and leave it status quo until the City's rate studies on the other components are completed; 2) reinstitute the pre-suit mediation to discuss alternatives; or 3) institute a lawsuit in the nature of a breach of the franchise agreement and request a Declaratory Judgement action as to what the franchise agreement actually says and whether it is ambiguous or not.

We cannot discuss strategy or settlement negotiations in private unless a lawsuit is instituted, which would allow the opportunity to conduct a shade meeting. This meeting would be held privately with the Council members, would be transcribed by a court reporter and that transcript would be available to the public after the litigation is concluded. Those are the Council's options, and Mr. Vocelle asked for their direction in how they want to proceed.

Mr. Griffin stated that they conducted individual phone calls from his office with Counselor Vocelle and the individual Council members. They discussed these options and it was determined that Council needs to direct Counselor Vocelle as to the action they wish to take.

Vice Mayor Auwaerter said in terms of the rate study, cost accounting allocations is an art, not a science, and you can come up with whatever number you want. The City argues that they are losing

This is a public meeting. The Town of Indian River Shores does not transcribe verbatim minutes. Should any interested party seek to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

money on reuse water yet he saw an article in the newspaper that Utilities Director Rob Bolton was applying for a grant to set up a process to pull water out of the main relief canal to create more reuse water. If they are losing money on it, why would they be doing that?

He continued that as far as mediation is concerned, having gone through mediation in the private sector held behind closed doors with the parties in separate rooms, in this case it has to be done out in public, which he believes is a complete waste of time. He believes that the Town needs to go ahead with a Declaratory Judgement so that Council can get behind closed doors and plot an appropriate strategy. He asked for comments from his fellow Council members.

Councilman Foley said people should know that when we file the Declaratory Judgement, it is not a jury action, but it will be decided by a judge. He asked Mr. Vocelle what the timeframe looks like if we filed tomorrow, for example. Mr. Vocelle said there are 120 days in which to serve them, during which time the Council could have a shade meeting, so they could actually meet in private before serving the City of Vero Beach. Regarding the courthouse, nothing is happening. The civil judge, Judge Janet Croom, is conducting Zoom hearings, but there are no trials, with or without a jury. The Chief Justice will deem when it is safe to return. He said he knows that several circuits around the state are attempting trial procedures and reconfiguring their courtrooms, but that has not been done here yet.

Councilman Foley said since we don't have a jury, a lot of the workup on this is going to be paperwork, and Mr. Vocelle agreed. Councilman Foley continued that he expects there will be a hearing in front of a judge, as there are some witnesses who were involved in the original franchise agreement negotiations and can provide very powerful evidence in terms of what the understandings of the parties were. Councilman Foley asked if Mr. Vocelle thought that hearing could happen within a year or outside of a year, and Mr. Vocelle said if everyone agrees to a Zoom hearing it can be done sooner. If someone insists on an in-person hearing, they are not happening right now, so he does not know.

Councilman Foley it is uncomfortable as a former practicing lawyer that the Council is not able to speak freely with their attorney in terms of confidences and strategy, and the only mechanism for that is for us to file the Declaratory Judgement action. We don't need to serve the complaint until 119 days. Mr. Vocelle said there are still options, such as developing tolling agreements to be entered into. Councilman Foley expressed a lack of confidence in successful mediation, as you have to have two willing parties who are facing some sort of event like a trial for it to really work, so he is in favor of filing the Declaratory Judgement action. He does recommend that they have a shade meeting before they serve the complaint to have a better idea of what we all intend to get out of this proceeding.

Councilmember Peniston said she agrees with Councilman Foley and would like to move forward to having a shade meeting. Mayor Slater concurred, suggesting that we let the City know that we are putting them on notice. Councilman Carroll said he also agreed with option three (3). Town Attorney Clem said a motion is required directing Counselor Vocelle to file a lawsuit, then Mr. Clem can request a shade meeting. Councilman Foley made a motion that Council direct Counselor Vocelle to prepare and file a Declaratory Judgment action against the City of Vero Beach on the specific contract issue, as well as breach of the franchise agreement, but not to serve the complaint until Council has held a shade meeting, which was seconded by Councilman Carroll and passed 5-0.

Mr. Vocelle said he will draft the Declaratory Judgment, will run it past Mr. Clem and Mr. Griffin, and they will go from there.

Mr. Vocelle, Mr. Ether and Mr. Burke left the meeting.

4. Consent Agenda (9:21 AM)

- a. Approval of Budget Workshop Meeting Minutes dated July 23, 2020
- b. Approval of Regular Town Council Meeting Minutes dated July 23, 2020

With no discussion, Mayor Slater made a motion to approve the Consent Agenda as presented, which was seconded by Councilman Carroll and passed unanimously.

5. Town Attorney

- a. Resolution 20-04, OPEB Funding and Payment Policy
Mr. Clem read Resolution 20-04 by Title as follows:

A Resolution Establishing A Policy for Funding and Payment of Other Post-Employment Benefits (OPEB) through a Trust.

Discussion was then turned over to the Town Manager. Mr. Griffin stated that this was discussed at the last Council meeting, and Town Treasurer Christmas said we should have a policy both on the high and low side, which she developed and is now being brought forward for approval.

Vice Mayor Auwaerter said he believes the funding percentage is currently 141%, and Mrs. Christmas stated that is correct. He said that probably puts us at the top end of the entire country for any municipality, which shows the good work that this Council has done on that. A roll call vote was taken, and **Resolution 20-04 passed unanimously.**

6. Mayor or Council Items (9:23 AM)

Mayor Slater followed up with comments on former **Mayor Bill Kenyon's passing**, just two weeks shy of his 94th birthday. He said he was a terrific guy who dedicated himself to our Town. He was on the Town Council for eight years, four as a Councilman, two as Vice Mayor and two as Mayor from 2009-2011. He served during the 2008 financial upheaval and helped to lead the Town through that. We will miss Bill and pay tribute to his dedication to the Town.

Vice Mayor Auwaerter said he counted eleven **Mosquito Joe signs** along A1A within the Town limits and called Mr. Griffin to report the issue and ask if anything could be done, such as issuing a fine. Mr. Griffin determined that there was not a mechanism for doing so, and Vice Mayor Auwaerter suggested this might be something to look into going forward.

Councilman Foley said he agrees. In the context of the budget, you notice that there is a cost for **Code Enforcement** yet no fine revenues whatsoever. It is hard to believe that there were no repeated code violations. He believes they should discuss it and come to a consensus as to where they want to go with this. He does not want to have a draconian enforcement reputation, but when there are repeat floutings of our ordinances, he believes we need more effective consequences for those violations.

Mayor Slater suggested that an item be added to the agenda for the next Council meeting to address this issue. Mr. Griffin stated that he and Mr. Clem would work on that. Councilmember Peniston agreed it should be discussed at the next meeting. Janet Begley arrived.

7. Discussion with Possible or Probable Action (9:26 AM)

a. Town Council Board & Commission Appointments

Vice Mayor Auwaerter said his term is coming to an end and he wanted to remind Council that he has a couple of appointments that will need to be filled. He asked Mrs. Aldrich to send an email to City of Vero Beach Deputy Clerk Sherry Philo stating that he is stepping down immediately as a member of the City of Vero Beach Utilities Commission. So long as we are receiving services from the City Utilities, we have the right to representation on this Commission. Councilmember Peniston thanked Vice Mayor Auwaerter for all that he has done on this Commission. He said he is also Chairman of the MPO and will follow that through until the end of his term.

Councilman Foley asked whether Vice Mayor Auwaerter wanted someone to step onto the Utilities Commission now, in the event of a meeting. Vice Mayor Auwaerter said he is unsure if they will discuss the so-called rate study. GAI has done presentations at these meetings before, which have been less than ideal. He said it is probably worthwhile just to have someone observe. Councilman Carroll asked whether they do Zoom meetings, and Vice Mayor Auwaerter said he was unsure whether they have that capability as everyone has been attending in person.

Mayor Slater seconded Councilmember Peniston's comments regarding all the work that Vice Mayor Auwaerter has done. He said that he hopes Vice Mayor Auwaerter will be available to chat with the next member of the Commission to bring them up to speed. Vice Mayor Auwaerter indicated that he would be happy to do so.

b. 175/185 Share Plan Funds

Vice Mayor Auwaerter asked Town Treasurer Christmas to include this report as the numbers continue to remain high, as expected. Our compensation study showed that the Town is one of the only municipalities in the local area that gives 100% of the 175/185 Plan funds directly to the members. The vast majority of municipalities take that money and use it to fund their contribution to the pension plan. He believes it is important to remember that. A member of the Pension Board

has commented in the past regarding concern that the amount of 175/185 funds could go down, which has not been the case at all.

Vice Mayor Auwaerter added that he is in the process of renewing his insurance, and his windstorm insurance has gone up dramatically, as others' have due to an increase in storms occurring. Additionally, interest rates are at all-time lows, which oftentimes acts as a buffer or an offset to increases in insurance rates because the insurance companies get your premium in advance and invest it. We now have a 10-year Treasury that is yielding 0.7% and corporate bonds earning 2.5%, which does not give a lot of leeway. The 175/185 Plan is a tax on insurance premiums paid by everyone in this room.

Mayor Slater said it is nice to see the contribution numbers continuing to go up. He asked whether the method of distribution of these funds to the members is based on a State formula, as it appears to be fairly lopsided. Mrs. Christmas said the distribution is defined by the Plan documents, not the State. The terms were agreed to when the Plan was established. It is not part of the Union contract, but the members of the Union established it with agreement from the Town and it was done by ordinance. Any changes to the Plan must be done by ordinance. Mayor Slater asked Mrs. Christmas to send him a copy of the Plan documents, as he would like to understand it better. Mrs. Christmas stated that Town Clerk Aldrich has the documents and will send them.

Councilmember Peniston noted that the distribution seems lopsided in favor of the firefighters as opposed to the police and asked the reasoning behind that. Mrs. Christmas said the amounts received from the State are lump-summed and distributed based on years of service. Councilman Foley said he would also like a copy of the plan documents, and Mrs. Aldrich said she would send them to the entire Council.

c. Town Clerk Performance Review/Merit Increase (9:38 AM)

Vice Mayor Auwaerter said a composite performance evaluation of the Town Clerk was included in the meeting packet and asked if Council had any comments. Mayor Slater said he would like to thank Mrs. Aldrich for her work and for improvement in certain areas over the year. She is a great asset to the Town, and he believes this review reflects that. Councilmember Peniston agreed and added progress has been made in the last couple of years with the addition of the Assistant to the Town Clerk, Chelley Pallo, with improvement across the board. Councilman Foley said he wholeheartedly agrees.

Vice Mayor Auwaerter continued with the recommendation of a 4% salary increase and asked if there were any comments from Council. Mayor Slater said he thinks it is well earned. Councilman Foley made a motion to increase Town Clerk Aldrich's annual salary by 4%, which was seconded by Councilman Carroll and passed 5-0.

8. Staff Updates: (9:40 AM)

a. Building Official Report

Mr. Martinez reported that there is a very healthy level of construction within the Town. The number of inspections and applications for permits is still rising, which he expects will continue until the season starts. They have had meetings with the County and the City of Sebastian regarding the new permit software they intend to install. The other project they are actively working on is the Town Hall building renovation.

b. Town Treasurer Report (9:41 AM)

Mrs. Christmas said she provided the Council with the Draft Budget for the September 10th 1st Budget Public Hearing and asked that they please take the time to review it and call her with any questions. She noted in the budget that the Town's portion of Public Safety pension fund contributions was reduced from 20% to 16%. This number is still arbitrary, but as they are not in the negative, she felt we could be closer to this year's contribution rate than we were last year. The budget is set at 1.3374, the prior year's millage rate.

Vice Mayor Auwaerter said now that the markets have come back he believes we are in pretty good shape on the pension fund, although it will be interesting to see how the Public Safety Pension Fund recovers given that it is weighted toward lower capitalization in stocks, which are slower to recover than the Standard & Poor's 500.

c. Public Safety Department Report (9:43 AM)

Mr. Griffin explained that Chief Rosell is out of town and he has asked Captain lovino to attend in his stead. Captain lovino spoke about the installation and trial of **new license plate-reader cameras**. The existing cameras were developed by a company called L3 and were around \$75,000 when initially purchased. From a technology standpoint, as things are developed the costs drop with more competition. The Public Safety Department has found a company called Flock Safety which will provide cameras comparable to those we have now, but will only charge for the cameras, not for the service, which is a lot less expensive.

He went on to say that from his own personal experience the current cameras are functional, but there are a lot of issues with the company (L3) as far as reliability of service and cameras being unavailable. They are not communicating via FDLE's "hot list" of expired tags, suspended driver's licenses, etc. Those lists are not populating and updating, so oftentimes the officers are getting negative hits on tags. The Flock Safety system, as it is a newer software with a Cloud-based system, should not run into those types of issues, and will save the Town money in the long run with the same functionality and safety of the existing equipment.

Vice Mayor Auwaerter asked how long it would take to swap the systems, and Mr. Griffin said this would be a 30-day free trial and the cameras will be installed at the same location as the current cameras. Councilmember Peniston asked if there is a one-time cost involved, and Town Treasurer Christmas responded that she believed the cost for the first year is \$1,500 - \$2,500 for the installation. The yearly cost is \$16,000. The Town is currently paying \$12,000 in maintenance fees, so this would be an additional \$4,000, but they are newer cameras that we do not own. Mr. Griffin added that the database would be increased with the new system in that it will include out-of-state tags that is not currently available, which he believes will be a huge advantage. Mrs. Christmas said we also will save the planned expense of having to buy a server for \$16,000 for the current cameras, which has since been removed from the budget. Vice Mayor Auwaerter asked if that \$16,000 cost would have been in addition to the \$12,000 annual cost, and Mrs. Christmas affirmed. Mr. Griffin stated that if we do like the new system, the current cameras will be declared as surplus and sold through GovDeals to recover some funds.

Councilman Foley asked whether the existing cameras would remain mounted and functional during the trial period, and Captain lovino confirmed. He said one of the biggest issues is that they currently capture tags from out-of-town, but they do not run them, as there is no information available. A lot of the numbers that Council sees monthly on the tag camera reports are duplicates, and a lot of them are out-of-town tags, so unless an officer physically sees the violation or runs the tag with the police car behind it, they could be offenders and we wouldn't know. Councilman Foley said the great thing about technology is that it improves every couple of years, and he thinks they need to just be prepared to upgrade, as necessary.

Captain lovino stated that in 2019 this company performed a study in Marietta, GA, which is just outside Atlanta, and that study showed these cameras caused a 60% reduction in crime. Obviously that area has a much higher crime rate than the Town, but it worked. Councilmember Peniston said that was impressive and it sounds as though this is something that should definitely be looked into. Captain lovino added that other agencies also utilize the information provided by our license plate-reading cameras, such as the City of Vero Beach.

d. Town Clerk Updates/Reports (9:49 AM)

Mrs. Aldrich announced that there are currently **three pre-qualified candidates for Town Council**, the latest being former Planning, Zoning & Variance Board Chairman Chris Hendricks submitting his application.

We are almost finished with the **public records request** that was submitted in June, with Assistant to Town Clerk Pallo having finished loading everything onto the server they provided. There were over 4,900 emails that had to be gone through. We are currently tallying up the final bill.

Regarding the new **cemetery software**, we are currently working on the mapping and answered two questions regarding the plots with the aid of some older pictures.

Finally, 20 people attended the Indian River County **Chamber of Commerce Leadership Class**, by Zoom, which she and Mrs. Christmas participated in by speaking about the Town.

e. Project Updates (Town Manager) (9:51 AM)

Mr. Griffin stated that **the flagpole** in front of Town Hall was damaged during recent high winds and is scheduled to be repaired within the next week.

He continued that RFP 20-03 for the **Town Hall Remodel** was published last Friday. Currently, 31 companies have downloaded the documents via DemandStar. There will be a Mandatory Pre-Bid Conference on September 9th at 2 PM. Representatives from MBV Engineering will be in attendance, as well as our Building Official Mr. Martinez, to answer any questions the contractors may have. The closing date for the bids is September 23rd, which is the day before our next Council meeting, so he will be able to report to Council the number of bids received. He has plans, specifications and the RFP available in his office for viewing.

Regarding the **cemetery improvements**, things were moving along until some individuals on the team contracted COVID-19. Work stopped at a rather inopportune time given where they were with excavation, fencing and irrigation. Mr. Griffin decided to put up signage essentially closing the cemetery, as he was concerned about potential injuries. The oak trees have been trimmed and there is one more Sabal palm to be removed. The project should start back up next week, and he will continue to keep the Council updated.

Vice Mayor Auwaerter alerted Mr. Griffin to some **traffic problems** at the intersection of 46th Street and A1A, which is between the CVS and the 7-11. Mr. Griffin arranged a meeting yesterday with representatives from FDoT as well as Vice Mayor Auwaerter and he believes there is a "fix" in place involving signage. The drainage problems there were also discussed. Mr. Griffin does not anticipate that the drainage issue will be totally cured once construction is finished, but he is hopeful that once the residential development at the Tracking Station is completed that the County will start paying more attention to improving that intersection.

9. **Council/Committee Reports or Non-Action Items** (9:57 AM)

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

a. **Committee & Informational Updates or Comments**

Beach & Shores. Councilman Carroll reported that he attended the meeting on the 17th via Zoom, but there was no quorum, so the meeting was informational-only. There was no damage to the beaches or dunes due to the recent hurricane. With regard to the restoration projects currently underway in Sector 3 and Sector 7, the County is having difficulty obtaining consent for an easement. In Sector 7 they only have 57% and for Sector 3 they only have 76%. He received an email from the Committee two days ago saying there is a chance the projects will be postponed for another year if they fail to get the approval percentage they need.

Vice Mayor Auwaerter said it is free sand, they just have to let people go across their property. Mr. Griffin stated that Mr. Morgan (also on the Beach & Shores Committee) approached him a month or so ago about this very issue. We developed a letter, and he was in the process of developing a database with parcel numbers for the properties within the Town of Indian River Shores who were non-responsive to the easement request. The misconception is that the sand replacement easement would come across the owners' landside property, which is not true, they would only be accessing an individual's property from the beachside.

Vice Mayor Auwaerter said that about a year or so ago, the consultant recommended that the County make application again to DEP to have Sector 4, which covers the majority of the Town, designated as critically eroded, and they had a lot of material in support of that. He asked Councilman Carroll if that has been done, who responded that he has not heard anything further regarding that.

10. **Call to Audience**

Vice Mayor Auwaerter asked if there were any comments from the audience. There being none, the meeting was adjourned.

11. **Adjournment** (10:02 AM)

Respectfully submitted,

*Approved at the September 24, 2020 Regular
Town Council Meeting.*

/s _____

Laura Aldrich, Town Clerk