



## MINUTES

### REGULAR TOWN COUNCIL MEETING THURSDAY, JANUARY 27, 2022 9:00 AM 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

The meeting was called to order by Mayor Foley at 9:00 AM. The Invocation and Pledge of Allegiance were led by Vice-Mayor Carroll. Those present were ELECTED OFFICIALS: Mayor Brian **Foley**, Vice-Mayor Sam **Carroll**, Councilmember Bob **Auwaerter**, Councilmember Chris **Hendricks** and Councilmember Mary Alice **Smith**. STAFF present was Town Manager Jim **Harpring**, Deputy Town Manager Heather **Christmas**, Executive Town Manager Asst. (formerly Asst. to the Town Clerk acting as Recorder), Deputy Public Safety Director Mark **Shaw**, and Building Official Luis **Martinez**; RESIDENTS James **Carbin**, PZV Board (Village Shores) and Steve **Reydel** (River Club); and GUESTS Robeson Juste & Daniel Campbell, IRC Realtors.

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

There were no changes to the agenda.

3. **Presentations/Proclamations**

- a. Proclamation Recognizing January 23<sup>rd</sup> – 29<sup>th</sup> as School Choice Week

Mr. Sweeney read the proclamation in full. Mayor Foley asked if there were any objections to the proclamation; there being none, the proclamation was **passed unanimously**.

4. **Comments From the Public Regarding Agenda Item(s)**

There were no comments.

5. **Consent Agenda**

- a. Approval of Regular Town Council Meeting Minutes dated December 16, 2021
- b. Approval of PZ&V Board Meeting Minutes dated December 14, 2021

Councilmember Auwaerter made a **motion to approve the Consent Agenda**, which was seconded by Vice-Mayor Carroll and **passed unanimously**.

6. **Mayor's Report**

Regarding the City/County Chapter 164 proceeding, Mayor Foley said there was a City/County mediation which the Town was not a party to but which we were able to observe; there was no resolution, and the mediation is being held in abeyance. The biggest item of interest is that the City has agreed to propose to the County a buyout of the rights of whatever may be standing in the way of the County servicing the Town of Indian River Shores. The County did not appear to indicate that they felt the need to do this; and the mediation overall did not seem to be very productive.

Councilmember Auwaerter commented that he attended the meeting and told the County Commissioners who were present that they shouldn't feel the need to pay for what the City can't sell. Mayor Foley said that is a very good point.

Regarding appearances at HOA meetings, Mayor Foley advised that himself and Town Manager Harpring have been addressing the various HOA's in Town and have found it very productive. He said there were many questions regarding the FDOT construction on A1A, as well as questions regarding the ongoing water issues. Mayor Foley said any of the councilmembers are welcome to address their own association, as two councilmembers cannot both

attend a meeting due to the Sunshine Law. Mr. Harpring clarified that these are the Annual Meetings of the associations.

Councilmember Auwaerter questioned whether it would be appropriate for him to attend his own association's annual meeting as an audience member with Mayor Foley as a speaker, and Mayor Foley deferred to Town Attorney Sweeney. Mr. Sweeney confirmed that anything that could or is likely to come before Council should not be discussed outside of a publicly noticed meeting if there is more than one councilmember present. Councilmember Auwaerter said that being the case, he would present at his own association's annual meeting in Mayor Foley's stead.

Regarding HB 777 – Local Tax Referendum Requirements, Mayor Foley said there are several bills pending in the Florida Legislature, some of which are very concerning to municipalities such as the Town. He explained there is a bill which would require that a referendum be held in a general election year, as opposed to having a special election or a referendum in an off-election year, if the issue being presented involves any tax consequence. He said there was another bill of interest to him which says a public utility that transfers money into the General Fund cannot accept public money for a project, and he believes the Town should support this bill and watch it carefully.

7. **Councilmember Items** (9:16 AM)

a. Councilmember Auwaerter

Regarding SB 280 – Local Ordinances, Councilmember Auwaerter said the companion bill was discussed at the last Council meeting and he understands this will be on the Senate floor today for a vote. He finds it troublesome that if this bill is passed, any ordinance, outside of a narrow list of exceptions, that is approved by Council would require that Council produce a business impact statement detailing the expected costs of that ordinance to businesses in Town.

Councilmember Hendricks said that expecting the Town to guess as to the impact of an ordinance on any particular business is burdensome and could present liability issues. He continued that the Town already gives due notice regarding proposed ordinances and suggested that businesses could provide a business impact statement if they anticipate a proposed ordinance would impact them negatively.

Mayor Foley said he understands that this a priority bill that will more than likely be passed, and suggested that, in that event, Town Council could send a letter to the Governor asking that he veto the bill. Town Attorney Sweeney said he had a conversation with Indian River County Attorney Dylan Reingold, and this is on their radar as well.

8. **Discussion with Possible or Probable Action** (9:22 AM)

a. Resolution 22-01 RE: ARPA Fund Account

Mrs. Christmas explained she is requesting the creation of a special revenue fund for ARPA monies received, which will function as a tracking mechanism for expenditures and will make it easier for the auditors. Councilmember Hendricks made a **motion to approve the resolution**, which was seconded by Vice-Mayor Carroll and **passed 5-0**.

b. RFP 21-04R – Stormwater Retrofit of Indian & Seminole Lanes

Mr. Harpring said this request for proposals was posted twice due to lack of response to the first posting. He explained the recommended contractor did not submit the lowest bid but had the highest ranking based on qualifications and experience. Mr. Harpring explained that ARPA funds could be used, and no Town funds would need to be expended. Mayor Foley clarified that although this was not the lowest bidder, it was the lowest qualified bidder, and Mr. Harpring agreed. Vice-Mayor Carroll made a **motion to approve the proposal submitted by Jobear Contracting for RFP 21-04R**, which was seconded by Councilmember Auwaerter and **passed 5-0**.

c. Variance Request – 1006 Isla Verde Square

Mr. Sweeney explained that the applicant has a unique parcel and is looking to fence the entirety of their backyard. The applicant has received a letter of no-opposition and is surrounded on three sides by neighbors. The north side has a natural screen, the east side will be landscaped, and the south side has a stucco wall. Mr. Sweeney said there was vigorous discussion regarding the easement buffer on the north side of the property when the variance was presented to the Planning, Zoning & Variance Board (PZVB), but the applicant indicated he received no objection from the northside neighbor, and the PZVB approved the variance unanimously. The applicant understands that he will need to make the easement available as needed. Vice-Mayor Carroll made a

**motion to approve the variance request for 1006 Isla Verde Square**, which was seconded by Councilmember Auwaerter and **passed unanimously**.

9. **Staff Update** (9:26 AM)

a. Building Official Report & Statistics

Mr. Martinez said the Building Department is still very busy. There was a slow-down regarding additions and alterations in December. The new construction numbers are up for fees collected and total construction amount. He said inspections and plan reviews are still up. Mayor Foley passed along a compliment from a new resident regarding the ease of dealing with the Town's Building Department.

Councilmember Auwaerter asked about the tracking of fees to ensure that we are not in excess of one-years' worth of revenue in reserves, and Mrs. Christmas explained she has already discussed this with Mr. Martinez and will be checking in March at the 6-month fiscal year mark to ensure everything is on track for compliance.

Mr. Harpring explained that the decline in numbers was not demonstrative of an actual decline in alterations, but a reflection that residents don't generally have modifications done while they are in residence and during the holiday season. Councilmember Smith asked whether the change in numbers impacts the hiring of a new building inspector/plan reviewer, and Mr. Harpring clarified that it does not, and that the new positions has already been posted and applications have been received.

b. Town Treasurer Report

Mrs. Christmas said she had nothing to add outside of her written report. Councilmember Smith asked why the **attorney's fees** were off. Mrs. Christmas explained the number was put there as a placeholder due to the difficulty of predicting litigation costs, and there is a note in the budget stating that excess costs will be pulled from the reserves.

c. Public Safety Department Report & Statistics

Deputy Chief Shaw said there **will be a pancake breakfast held on 2/24/22** in conjunction with SAFIR (Substance Abuse for Indian River County) regarding a prescription drug take-back program they offer. He also explained that there have been some recent issues with the **license plate-reader camera** due to it being positioned too far off the roadway. The camera has since been moved.

Councilmember Hendricks gave his **compliments** regarding a job very well done in assisting a neighbor of his. **Duck hunting** was briefly discussed, and Deputy Chief Shaw explained the season would be over in a few days.

d. Town Clerk Report

Mrs. Pallo-Darnell said there was nothing to report other than that Mrs. Aldrich is expected back soon.

10. **Town Attorney Report** (9:35 AM)

Mr. Sweeney said that the Supervisor of Elections (Leslie Swan) requested that the **qualifying period for candidates** be adjusted to **coincide with the qualifying periods of the other municipalities** within the County, including the County and the School Board, whose qualifying periods correspond with State statutes. There is nothing in the Town's Charter specifying the election qualifying period and there is an efficiency and economy in granting Mrs. Swan's request, which she made given the massive amount of turnout in vote-by-mail ballots during the last several election cycles. Mr. Sweeney explained there is no legal impediment in granting this request and would put the Town in line with the rest of the County.

Mr. Harpring said there is no resolution required to grant this request. Mayor Foley asked that Mr. Harpring coordinate with the Town Clerk's office to inform Mrs. Swan that the Town will change its qualifying period per her request, and also that the new qualifying period be published on the website. Mr. Sweeney agreed that the new dates should be published on the website, posted to the bulletin board, and generally be made as public as possible.

Mr. Sweeney said regarding the **State case against COVB relating to the reuse water rate**, there is a Motion for Summary Judgment that has been filed by the COVB which will be held on 01/31/2022 by Judge Janet Croom. The Town's outside counsel Paul Berg will be leading the argument on that. He expects that Judge Croom will reserve ruling, with the ruling taking anywhere between one week to several months. Whenever that is issued, the outcome could be either dispositive, meaning the COVB wins the case, at which point the Town would have the option to appeal, or that she denies the Motion for Summary Judgment in favor of the Town and we would move forward through the regular trial process, to include mediation. Mr. Sweeney said he will have an update subsequent to the hearing on the 31<sup>st</sup>.

Mayor Foley said that in order for the City to prevail on this motion, the Court would have to determine that there is no genuine issue of a material fact that would require a trial, which is a very high standard to meet. Mr. Sweeney agreed that was well said and that Motions of Summary Judgement are denied more often than not.

In regards to the **Town's antitrust litigation against the City**, Mr. Sweeney continued that the final Chapter 164 mediation was held last week, as required as part of the pre-antitrust federal litigation, which **ended in impasse**. Mr. Sweeney explained that a notice was filed with the Court that we have reached impasse, that we have completed the required process, and we have asked the Court to reinstate the case and move it along the typical track for litigation. He expects to receive that timeframe soon and will disseminate it to Council.

Lastly, Mr. Sweeney explained that there is now a full set of documents relating to the **charter revision** that will be distributed to Council for review in the very near future in preparation for the **public workshop on February 24<sup>th</sup>** which will immediately follow the regularly scheduled Council meeting.

Councilmember Auwaerter asked Mr. Sweeney if he had a chance to review sample language for public comment on agenda items. Mr. Sweeney stated he did and would disseminate it through Mr. Harpring for Council's review.

11. **Town Manager Report** (9:47 AM)

Mr. Harpring said he anticipates that the **Arcadis report** will be received and distributed by Monday. He said the **A1A project** is ongoing, hopefully to be wrapped up soon. Regarding the **Jones Pier** project, he has a meeting scheduled onsite with Mike Zito and staff from IRC for an update. He explained that Phase I has been completed and that Phase II, which will involve a lot of heavy equipment, is going to be starting soon.

Mr. Harpring continued that regarding the County's beach restoration project, the **Seagrape Trail Beach Access** will be re-opening soon with limited closures for a paving project.

Regarding the Council Chambers renovation, Mr. Harpring said we are still awaiting installation of the technological package to include cameras and monitors, which is scheduled for the week of April 4<sup>th</sup> – 7<sup>th</sup>. We hope to livestream the April meeting for the public through our website. He added that we have been receiving content for the new website and hope to launch it at the end of March/beginning of April. Councilmember Hendricks asked if the website would comply with State laws regarding accessibility and Mr. Harpring assured him the website will be ADA compliant. Councilmember Smith asked if Council would be able to view the website prior to its launch and Mr. Harpring said the beta version of the site will be sent to Council prior to its being made public.

12. **Council/Committee Reports or Non-Action Items** (9:52 AM)

Call for Committee Reports, Informational Updates or Comments

**Beach & Shores Preservation Advisory Committee.** Councilmember Hendricks said the southern part of Sector 3 has been taken care of and that Wabasso Beach will be handled within the next week or two. He said that Sector 3 cost approximately \$4.5 million per mile and Sector 7 is projected to cost \$6 million per mile. He expects that the restoration of Section 7 will occur in the next year.

**TCCLG.** Mayor Foley said at the meeting, the youth-vaping epidemic was discussed, and the Town may be asked to help support legislation granting local municipalities the right to regulate vaping and tobacco sales.

**COVB Utilities Commission.** Councilmember Auwaerter said he was named Vice-Chairman of this Commission. Other than that, he said most of their meetings seem to be discussions about stormwater, which doesn't impact the Town. Councilman Auwaerter said there was some discussion about septic tanks and that COVB Utilities Director Rob Bolton seemed to have a high number for those located within Town. Mayor Foley commented that Patty Gundy provided a report within the last year and a half regarding septic tanks on the island and asked that Mrs. Pallo-Darnell provide it to Council.

13. **Call to Audience** (9:55 AM)

There were no comments.

14. **Adjournment** (9:55 AM)

Respectfully submitted,

*Approved by the Town Council at the 2/24/2022  
Regular Town Council Meeting*

Laura Aldrich, MMC  
Town Clerk