



## MINUTES

### REGULAR TOWN COUNCIL MEETING

THURSDAY, MARCH 24, 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. Vice Mayor Carroll led the invocation, followed by the Pledge of Allegiance. Mayor Foley noted for the record that the meeting was being livestreamed by Ryan Blade of Indian River News. Those present were as follows: Mayor Brian Foley, Vice Mayor Sam Carroll, Councilmember Auwaerter, Councilmember Hendricks and Councilmember Smith.

2. **Agenda Reordering, Deletions, or Emergency Additions** (9:02 AM)

A motion to approve the agenda as presented was made by Vice Mayor Carroll, was seconded by Councilmember Hendricks and passed unanimously.

3. **Presentations/Proclamations**

There were none.

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

There were no comments from the public.

5. **Consent Agenda** (9:03 AM)

- a. Approval of General Employee Defined Benefit Plan Board Meeting Minutes dated March 25, 2021
- b. Approval of Planning, Zoning & Variance Board Meeting Minutes dated February 8, 2022
- c. Approval of Regular Town Council Meeting Minutes dated February 24, 2022
- d. Approval of Charter Review Workshop Meeting Minutes dated February 24, 2022

With no discussion, Vice Mayor Carroll made a motion to approve the Consent Agenda, which was seconded by Councilmember Smith and passed unanimously.

6. **Mayor's Report** (9:03 AM)

Mayor Foley said regarding the water dispute with the City of Vero Beach (COVB), there are two actions. The first is in State court with the Town insisting that the COVB honor its contractual obligation to provide water at the same rates as Indian River County (IRC). He said there was a Motion of Summary Judgement filed by COVB; the oral argument was heard by Judge Croom, and we are awaiting a ruling on that.

He continued that the second case is the federal lawsuit involving an antitrust violation claimed by the Town should the COVB continue to claim that IRC is unable to negotiate with the Town regarding water services due to a permanent Exclusive Service Area. The COVB has filed a motion to dismiss the case and an oral argument has been scheduled for April 11<sup>th</sup>. Mayor Foley will be attending and the rest of Council, as well as the public, are welcome to attend as well; it will be held in Ft. Pierce.

Mayor Foley said despite the agreement between the Town Council and the COVB Council at the Chapter 164 proceeding to move the case along as quickly as possible, the COVB lawyers have sought a much longer track for the case. He said he will defer to the Town Attorney regarding specifics.

Mayor Foley addressed the Charter Review and thanked the Committee members for their outstanding work. He said this will be addressed further under agenda item 8b, with the only substantive issue being that of whether the Town Attorney should remain a Charter Officer. He said he originally thought that the Town Attorney position was similar to

that of the Town Clerk in that many municipalities did not list them as Charter Officers, but upon further research by Mr. Sweeney, it was discovered that the Town would be unique in not including the Town Attorney as a Charter Officer. He continued that the way the Town Attorney works with the Town Manager is very different from the way the Town Clerk works with the Town Manager and he thinks Council should reconsider removing the Town Attorney as a Charter Officer and discuss it when they reach agenda item 8b.

Mayor Foley said he knows that Councilmember Auwaerter will be discussing the legislative issue regarding multi-story building inspections; he said he is unsure whether this issue will come back during a special legislative session or whether it will be addressed again next year. He said another bill that died in session was the proposition that any utility receiving public funding be prohibited from transferring money from the utility into the general fund, which is basically a restriction on running a profit in the utility fund and then transferring the funds, which is obviously an issue of concern to the Town going forward.

7. **Councilmember Items** (9:10 AM)

**Councilmember Auwaerter**

a. Multi-Story Building Inspections

Councilmember Auwaerter said the State did not act regarding setting standards for “milestone” inspections of multistory buildings along the ocean. Councilman Auwaerter’s understanding is that it was thought to be too onerous for Condo and HOA associations if an issue was found. He stated that many engineering groups have made recommendations as to how to approach the issue and many of the recommendations match the current Miami-Dade municipal code for building recertification.

Councilmember Auwaerter said he brought this to Council to determine whether they should start a dialogue regarding whether the Town should institute any sort of policy regarding these types of structures going forward and asked his fellow Council members for their thoughts.

Councilmember Hendricks said that he believes the State legislature did not take action on this issue due to the potential cost. He added that real estate transactions for sales of condominium units are starting to require more information from condominium associations regarding maintenance, and other items.

Mayor Foley said the topic has come up at some of the annual meetings attended by himself and Mr. Harpring, and they advised that the condo association may want to have some funds available in reserves should the State ever reimpose the inspection requirement. He said he has concerns regarding potential liabilities should the Town get involved and mentioned that the County has not yet enacted any policies regarding the matter. He said he believes the Town should engage in a campaign of information and encouragement to the condominium associations regarding inspections and asked that Mr. Sweeney and Mr. Harpring come up with some recommendations regarding such and bring them back to Council.

Councilmember Auwaerter asked whether the Town could have potential liability if they required that condominium associations have milestone inspections be conducted by a third party and then submit the results of that inspection to the Town. Mayor Foley said he is unsure, but he can envision a scenario in which the Town would have liability.

Councilmember Smith asked whether there were any existing rules regarding inspections for older condominium buildings and was informed there are not. Mayor Foley explained there used to be a state statute regarding such but that it was thought to be too expensive for condominium associations to pay for inspections that oftentimes resulted in nothing.

Vice Mayor Carroll said he would be interested in hearing Mike Korpar’s comments regarding measures, if any, that the John’s Island Property Owner’s Association (JIPOA) plans to take regarding this issue. Mr. Korpar introduced himself as the General Manager of JIPOA and explained that JIPOA is the Master Association, but that CCSI manages all the condominium associations within John’s Island.

Mayor Foley thanked Councilmember Auwaerter for bringing the issue forward and asked that Mr. Harpring and Mr. Sweeney bring back a report at the April or May meeting. Mr. Sweeney said there is a possibility that the state legislature will hold a special session and therefore thinks that it would be more appropriate to report on this at the May meeting in case the State takes action on this in the meantime.

8. **Discussion with Possible or Probable Action** (9:24 AM)

a. Designation of Interim Town Clerk

Mayor Foley said that his understanding is that an official designation is required for Mrs. Pallo-Darnell to perform certain duties of the Town Clerk, which role she has been fulfilling since Mrs. Aldrich's retirement. Mr. Harpring explained that there are certain signature and legal requirements requiring the designation of an Interim Town Clerk prior to the hiring of a new Town Clerk. He said that Town Council should determine a monthly stipend for Mrs. Pallo-Darnell while she is acting as Town Clerk in addition to her normal duties and stated he believed \$2,000 per month would be reasonable.

Councilmember Smith asked how Mrs. Christmas' additional salary was determined during her tenure as Interim Town Manager. Mayor Foley said his recollection is that it was decided upon based on the increase in duties and responsibilities involved and was not a reflection of the previous Town Manager's salary. Mr. Harpring confirmed that the proposed figure for Mrs. Pallo-Darnell was arrived upon after a reflection of the increased duties and responsibilities involved.

Councilmember Hendricks made a motion to approve the designation of Mrs. Pallo-Darnell as Interim Town Clerk with a monthly stipend of \$2,000, which was seconded by Vice Mayor Carroll and passed 5-0.

b. Review of Proposed Town Charter Amendments

Mayor Foley began that the Town Attorney, after discussion with the Supervisor of Elections, has brought to Council's attention the fact that the vote on the proposed Charter amendments may need to be sent out via a mail-in ballot as opposed to being placed on the regular ballot on election day. He continued that the mail-in ballot would not cost more than placing the referendum on the regular ballot.

Town Attorney Sweeney explained that Council had both a legislative and clean copy of the Charter including the proposed changes and clarified that any formatting issues will be corrected prior to the document's final iteration. He reminded Council that an ordinance will be required prior to the referendum being sent to the residents for approval.

Mr. Sweeney continued that there are two (2) sections in which language was discussed and approved by Council at their workshop but where the changes are not present in the current version due to formatting issues. The first is regarding Section 1.2 – Powers, with the last clause being changed to read “as provided for in the Florida Constitution and the laws of Florida, as amended from time to time.”, the point of which is to ensure the Town is in compliance should any changes happen at the State level. Mr. Sweeney stated the second change to be included involves Section 2.1.5 – Boards, with language to be added stating “unless required by the laws of the State of Florida.”

Mr. Sweeney addressed the issue of charter officers and stated that during the course of his research, he was unable to find a single municipality in Florida that does not include their attorney as a charter officer. He requested direction from Council regarding this issue, as well as the issue of a mail-in ballot as previously discussed.

Mr. Harpring stated he is on the same page regarding the Town Attorney remaining a charter officer. He also clarified that, unlike an absentee ballot for the general election, a mail-in ballot for a special election for the referendum vote would be sent to every registered voter within the Town of Indian River Shores without a need for them to request such a ballot. Mayor Foley clarified that it is a passive system in which the voter does not have to request a ballot, which Mr. Harpring confirmed.

Mr. Sweeney added that there are currently 4,117 registered voters within the Town and every voter will receive a ballot, assuming it is not sent in conjunction with any candidate election, and the Supervisor of Elections suggested a January date given the seasonal cycle of residency within Town. He said the cost of a mailed ballot would be offset by the fact that no poll-workers would be required as in an in-person election.

Mayor Foley asked if there was any discussion regarding the Town Attorney remaining a Charter Officer, and there was none. Mr. Sweeney wished to clarify that the language regarding the removal of the Town Clerk as a Charter Officer was still acceptable, which was confirmed.

Mayor Foley then addressed the issue of a mail-in ballot, and discussion ensued. Councilmember Smith asked if there is a percentage of votes to approve needed, and Mr. Sweeney stated a majority of residents who cast a ballot will need to vote “yes” in order for the referendum to pass.

Councilmember Auwaerter asked whether the Town could include an insert in the mailing explaining the reasoning behind the proposed Charter changes. Mr. Sweeney explained that it might be better to do so independently via email, as he is unsure whether an insert is allowed to be included within the ballot. Councilmember Auwaerter mentioned that not all voters receive emails from the Town and requested the Mr. Sweeney or Mr.

Harpring reach out to the Supervisor of Elections to determine whether this would be allowed. Discussion ensued regarding various possible methods of educating the residents regarding the proposed changes. Mr. Harpring said an educational packet will be put together and recommends a couple of direct mailings to owners in advance of the vote.

Mayor Foley mentioned that a comment was received regarding pagination and punctuation and stated that all grammatical errors will be corrected prior to the final draft of the updated Charter being presented for approval. There was discussion regarding Article 4.2.2, which references an advisory referendum requirement, and it was decided to leave the verbiage as is. Mayor Foley recommended that Mr. Sweeney check the metes and bounds for accuracy. Vice Mayor Carroll said he had no additions or corrections, and Councilmembers Hendricks and Smith said the same.

9. **Staff Updates** (9:46 AM)

a. **Building Official Report & Statistics**

There has been construction activity at 20/20 Blue and the plans for the clubhouse and amenities building has been submitted to the Building Department for review. Construction of a second-floor slab is ongoing at Surfside. Mr. Harpring stated that an applicant for the new Building Inspector position was interviewed, and our HR Manager is currently reaching out with an offer. Councilmember Smith asked if the outside Building Inspector will no longer be needed when this position is filled, and Mr. Harpring stated the volume at this time is so great as to merit the additional help. Mayor Foley asked about the numbers and Mr. Harpring explained they remain steady but are expected to increase throughout the summer when many residents are away.

b. **Town Treasurer Report**

Mrs. Christmas said financial statements for fiscal year 2020-2021 have been issued to the Finance Committee and the audit will be presented to them at the April 7<sup>th</sup> Finance Committee Meeting pending the receipt of one further piece of information.

c. **Public Safety Department Report & Statistics** (9:51 AM)

Chief Rosell explained they are required to submit a Uniform Crime Report to the federal government on an annual basis, and crime is down by 48% this year. He continued that one category of crime that has increased and is consistent with national trends is domestic violence, which might be attributed to the pandemic.

Councilmember Hendricks asked whether the officers have the necessary training to deal with domestic violence calls, and Chief Rosell said he is sending half a dozen officers to a domestic violence training course in April. Mr. Harpring commended Chief Rosell for pursuing the extra training for the officers, and Councilmember Auwaerter thanked Chief Rosell for the reduction in crime.

d. **Public Works Department Report**

Mr. Bryant said he wanted to give a brief overview of the work done on a weekly basis by the Public Works Department, and explained that they perform facility maintenance repairs, monitor A1A daily for road hazards and perform drainage repairs. He said they directly communicate with FPL and their contractors and handle various maintenance items related to the John's Island Cemetery. Mr. Bryant said they also liaise with contractors during special projects, such as the current Indian & Seminole Lane stormwater retrofit.

He continued upcoming projects include the updating of the Town sign and landscape lighting, as well as relandscaping of the historic anchor area and a redesign and upgrade of the courtyard. He said that paving and milling of the FEMA lot is also planned.

Councilmember Hendricks asked if Mr. Bryant knew the status of the wooden FPL poles along A1A, which appear to no longer be required due to the installation of new cement poles, and Mr. Bryant explained they may be required for stabilization.

Vice Mayor Carroll asked whether inspection and oversight is limited to Town property or whether it also occurs within HOAs/condo associations within Town. Mr. Bryant explained that an inspection within an HOA would only occur as the result of a code enforcement complaint. Vice Mayor Carroll mentioned the poor appearance of the lot across the street from Town Hall which was used as the staging location for the A1A construction and asked if anything has been done to rectify the situation. Mayor Foley mentioned this is an issue for the Town's Code Enforcement Officer.

Councilmember Auwaerter asked if Mr. Bryant meets with FDOT quarterly regarding maintenance and Mr. Bryant explained that Louis Berger - FDOT reaches out to him quarterly regarding streetlights. Councilmember Auwaerter

then requested that trees, bushes and grass be kept out of the bike lanes and that signs should be kept clear from foliage.

9. **Town Attorney Report** (10:07 AM)

Mr. Sweeney said regarding the State litigation case against the City of Vero Beach regarding reuse water rates, the Town is awaiting a decision from Judge Croom which will be disseminated to Council upon receipt. Regarding the federal antitrust case, a Motion to Dismiss hearing has been scheduled for April 11<sup>th</sup>; the hearing will be held at the courthouse in Ft. Pierce, and all are welcome to attend. Mr. Sweeney added that our outside counsel has been able to secure an agreement with the COVB to dispense with mediation given the long process already completed with the Chapter 164 proceedings.

He continued that the PZVB has requested a potential ordinance change required that the owners of properties within a certain distance of homes where a variance is being considered be notified in advance. Mr. Sweeney said many other municipalities already have such verbiage in their codes. He added that this would be a one-off ordinance change prior to the planned Land Development Code (LDC) overhaul and questioned if the applicant could be required to give notice to their neighbors. Mr. Sweeney explained that the Town could request this be done via the application but that it would be unenforceable. Mayor Foley suggested that the Building Department could then contact the neighbors to inform them of the requested variance. Mr. Sweeney agreed it would be appropriate for the Town to provide such notification.

Councilmember Hendricks explained that the variance application process already requires that the applicant notify their abutting neighbors and stated that, upon approval of the request, the PZVB could make a recommendation the request be approved by Town Council upon the production of documentation from the abutting neighbors indicating their approval of same. Mayor Foley said since the PZVB already plans to update their application this would be a good time to address this issue, and Mr. Sweeney said he would follow up with them regarding that.

10. **Town Manager Report** (10:17 AM)

Mr. Harpring stated that himself and Town Attorney Pete Sweeney met with Florida City Gas (FCG) representatives and their counsel, and that we have received a draft Franchise Agreement from them which is to be evaluated by Council. FCG will be reaching out to individual HOA's regarding their interest in natural gas.

Councilmember Smith questioned the tanks that FCG is supposed to bring in and their proposed location. Mr. Harpring explained he believes the word "tanks" is probably a misnomer and believes trucks will be used. He said there have been preliminary discussions regarding the use of the Town's FEMA lot. He further clarified that he does not expect any activity within Town in 2022. Mr. Harpring said he does not have all the details, as the discussion is in a very preliminary stage, but he will get drawings/specs for approval prior to any implementation. He assured Council that the tanks would not be visible along A1A.

Vice Mayor Carroll asked Mr. Harpring to describe the stages of approval. Mr. Harpring said, overall, it would start with Council approving an ordinance for the Franchise Agreement followed by FCG filing for, and being granted, the appropriate utilization permits. The secondary, or concurrent discussions, would be between FCG and the HOAs regarding authorization to enter their prospective communities.

Vice Mayor Carroll asked whether residents in John's Island would need to contact their individual HOA or the master association JIPOA. Mike Korpar, General Manager of JIPOA, stated he has also had preliminary discussions with FCG, and they have stated they will come in and install the lines, easements, and a connection in front of every facility, if the desire is there, and then each resident would have to choose whether to connect or not. Vice Mayor Carroll clarified that an HOA would have to approve the line coming in and then each individual homeowner would have to decide whether to connect to it, which Mr. Korpar confirmed. Town Attorney Sweeney said this is similar to a water meter, in a sense, in that FCG would bring their line to a point at your property line and would be responsible for all the maintenance, and assuming a property owner wanted to connect to the gas, a building permit would need to be issued by the Town.

Councilmember Auwaerter asked that FCG give the Town Council a presentation prior to potential approval of the Franchise Agreement to explain how the process will work regarding boring, construction, potential disruption to property, visibility of equipment from the right-of-way, etc. Mr. Harpring responded that a presentation from FCG is planned for the Town Council Meeting on April 28, 2022.

Mayor Foley said he has received questions from some of the HOAs in Town regarding existing in-ground tanks that power generators in case of a storm, as well as questions regarding the implementation process such as who would pay

for the installation of the lines and permitting, and whether the bill would be prorated if the owner is responsible. Mayor Foley concluded that there are certainly a lot of questions, and that Council will expect a full presentation from FCG to address them.

Mr. Harpring continued that there has been general discussion regarding electronic vehicle charging stations within some other municipalities and he wanted to make Council aware. He continued that work on the settling issue at the Community Center should be beginning soon, to include the installation of a dumpster with pad outside of Public Safety for the disposal of trash from the Community Center. He said that he has had discussions with Mike Korpar and FDOT relating to signage for East/West traffic along A1A in front of John's Island. He mentioned the County is planning improvements along some of the islands in the lagoon.

Councilmember Auwaerter asked for an update on the open Town Clerk position and Mr. Harpring said the job posting is still open and we are accepting applications.

**12. Council/Committee Reports or Non-Action Items (10:32 AM)**

**a. Call for Committee Reports, Informational Updates or Comments**

Councilman Auwaerter said he was unable to attend the COVB Utilities Commission Meeting and there was no MPO Meeting. He said he did attend the TCRLC luncheon, and said it was mentioned that the FLC Annual Meeting will be held August 11<sup>th</sup> – 13<sup>th</sup>. He volunteered to attend if none of his fellow Council members wished to do so, and it was agreed that Councilman Auwaerter should represent the Town at this year's meeting.

Vice Mayor Carroll said he had nothing to report.

Mayor Foley said there were some interesting items at the TCCLG meeting which are on file in the Town Administration Office.

Councilmember Hendricks explained that the restoration of Sectors 3 and 5 are basically complete except for the process of sea grass installation. He explained that there is a problem in Sector 7; given that there is no public beach access there are no State funds available for the restoration, which is expected to cost \$7-8 million per mile, and there is also no beach access for the trucks carrying the sand. He said the County has asked for their third yearlong extension and said the biggest holdup is getting residents to sign the easements allowing the restoration on their property.

Councilmember Smith said she attended the COVB Utilities Commission Meeting on 3/8/22 in Councilmember Auwaerter's stead, where the discussion centered around septic to sewer conversion. Discussion ensued regarding the septic to sewer conversion in the Town given the Town's current relationship with COVB Utilities. Councilmember Hendricks mentioned there are several locations on the beach where sewer lines are unavailable. Mayor Foley pointed out that connection to a sewer line is required for new construction, but septic tanks are still legal.

**11. Call to Audience (10:42 AM)**

Ryan Blade, a resident of the City of Sebastian, commented that the Town may want to review the Charter Review process that the City of Sebastian undertook last year.

**14. Adjournment (10:43 AM)**

Approved by the Town Council at their  
\_\_\_\_\_ Regular Council Meeting