



MINUTES  
THE TOWN OF INDIAN RIVER SHORES  
6001 North Highway A1A, Indian River Shores, FL 32963

REGULAR TOWN COUNCIL MEETING

Thursday, November 19, 2015

9:00 a.m.

**PRESENT:** Brian M. Barefoot, Mayor  
Gerard A. Weick, Vice Mayor  
Richard M. Haverland, Councilman  
Michael B. Ochsner, Councilman  
Thomas F. Slater, Councilman

**STAFF PRESENT:** Robert Stabe, Town Manager  
Chester Clem, Town Attorney  
Chief Rich Rosell, Public Safety  
Sgt. Shawn Hoyt, Public Safety  
Laura Aldrich, Town Clerk  
Heather Christmas, Finance  
Darlene Wiltzius, Finance

**OTHERS PRESENT:** Bob Auwaerter, Chairman & Bill Cull, Finance Committee; Chris Hendricks, PZV Board Chairman; Bermuda Bay resident Joseph Fitzpatrick; Janet Begley, Press Journal & Lisa Zahner VB 32963

1. **Call to Order**

- a. Pledge of Allegiance
- b. Invocation – Councilman Ochsner
- c. Roll Call – Town Clerk

The meeting was called to order by Mayor Barefoot at 9:03 a.m. The Pledge of Allegiance and invocation were recited and the roll call is as reflected above.

2. **Proclamations / Presentations.** None.

3. **Consent Agenda**

- a. Acceptance of October 12, 2015 Planning, Zoning & Variance Meeting Minutes
- b. Approval of October 22, 2015 Regular Town Council Meeting Minutes
- c. Approval of October 22, 2015 Cell Tower Workshop Minutes
- d. Approval of Invoices from Holland & Knight dated October 27, 2015 & November 17, 2015
- e. Approval of Invoice from Town Attorney dated October 29, 2015
- f. FY 2015 Ambulance Service Reimbursement Write-offs

The ambulance service reimbursement write-offs were questioned by Councilman Haverland as to whether the income is booked and then adjusted, and was responded by Ms. Christmas that it has no impact on the financial statements, as the income is not booked in advance. A **motion to approve the consent agenda as presented** was made by Councilman Slater with support from Councilman Ochsner which **passed 5-0**.

4. **Town Attorney**

- a. Resolution 15-10, Final Budget Amendment FY 14-15

Mr. Clem read the resolution by title for the final amendment for last fiscal year as follows:

**A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA OF FINAL AMENDMENT TO THE BUDGET FOR FISCAL YEAR END 2015 AS PROVIDED IN EXHIBIT “A”; AND PROVIDING FOR AN EFFECTIVE DATE.**

This places the budget in conformity with the final ending status, he added. Councilman Ochsner asked about the revenues in excess of what was budgeted, which are not addressed. This is more

*Please Note: The Town of Indian River Shores does not routinely keep verbatim minutes. Any party interested in such an appeal relating to any decision made by the Council with respect to any matter considered at this meeting is responsible to record the meeting and include the testimony and evidence upon which the appeal is to be based.*

related to the expense side of the General Fund, Ms. Christmas explained. A **motion to approve Resolution 15-10** was made by Councilman Ochsner which was seconded by Councilman Slater, which **passed 5-0**.

b. Ordinance 523, Charter Amendment for Election Date Change and Administrative Clarifications

Mr. Clem said he and the Town Clerk have worked their way through preparing an ordinance as directed by Council to change the Town's elections from March of odd-numbered years to November of even numbered years. The first reading by title was done by Mr. Clem as follows:

**AN ORDINANCE OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, A MUNICIPAL CORPORATION, AMENDING THE CHARTER OF THE TOWN OF INDIAN RIVER SHORES ARTICLE 2, MAYOR AND TOWN COUNCIL, SEC. 2-2 CHANGING THE TERM OF OFFICE BEGINNING IN NOVEMBER OF EVEN YEARS, AND MAKING MINOR ADMINISTRATIVE CLARIFICATIONS IN SEC. 2-8 AND 2-12; AMENDING ARTICLE 3, SEC. 3-3 TO CLARIFY THE TOWN MANAGER PROVISION AND MODIFYING SEC. 3-4, ORDINANCE ADVERTISING PROVISION; AMENDING ARTICLE 5, FINANCIAL PROCEDURES TO REMOVE SEC. 5-7 COMPETITIVE BIDDING; AND MODIFYING ARTICLE 6. ELECTIONS, SEC. 6-3(b) RELATING TO CHANGING TOWN COUNCIL ELECTION DATES FROM THE SECOND TUESDAY IN MARCH TO THE GENERAL ELECTION DATE BEING THE FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER OF EVEN YEARS; REQUIRING A REFERENDUM ON THE MARCH 15, 2016, PRESIDENTIAL PREFERENCE PRIMARY BALLOT; PROVIDING FOR CONFLICT AND PROVIDING AN EFFECTIVE DATE.**

This is primarily to change the election date, which has to be accomplished by voter referendum in the March 2016 Presidential Preference Primary election. Other provisions are self-explanatory, archaic language, defined the town clerk's and town manager's duties, corrected number of days for advertising ordinances from 7-10 days, had removed lengthy provisions for competitive bidding, which is not in the charter but is in the ordinance in Chapter 31. State Home Rule Statute overcomes this provision in our charter, and we are much more restrictive than what is in the state provisions.

Discussion followed regarding changing the Town's advertising requirement from 7 to 10 days, which Mrs. Aldrich explained is what we have been following as required by Statute, but our charter was outdated and did not match the requirement. Mr. Clem added that all of these things are to clean up the charter to match the statute, with the primary goal being to receive the voter's opinion on the election date change. Laura will draft the ballot questions for the Supervisor of Elections, he added. Councilman Slater asked to be able to see the ballot language before submitted, and was told it will be available at the next meeting as it has to be submitted by the 16<sup>th</sup> of December to the Elections office.

Mayor Barefoot noted that in Section 2-2, the election that will take place in November 2016 if this passes will have three (3) seats open, not two (2). Then in 2018 it is two, not three seats. That oversight will be corrected, Mr. Clem said. Vice Mayor Weick noted that The Town's election information would be at the end of a long ballot. Mayor Barefoot said the pros and cons are if we are going to have an election, presumably the turnout would be better at a general election. The other side is that it is nice to have focus on our specific election without being lost.

A **motion to approve the first reading of Ordinance 523 to change the election dates and amend some of the administrative provisions of the Charter** was made by Councilman Slater, with a second by Councilman Haverland, which **passed 3-2** with Mayor Barefoot and Vice Mayor Weick voting against it.

Mr. Clem said there was a request for a shade meeting for the pending lawsuit, and Florida Statute 286.0118 requires that it be made at a public meeting. He asked that it be scheduled for Monday November 23 at 9 a.m. to discuss pending litigation between the Town of Indian River Shores and the City of Vero Beach. A **motion to request this executive session to discuss the**

**pending litigation** was made by Councilman Ochsner, seconded by Councilman Haverland, and **passed 5-0.**

Mayor Barefoot said he would like to follow that executive meeting with a **second closed executive session for labor negotiation strategies at approximately 10 a.m. immediately following the shade meeting for the lawsuit on November 23**, which was set by motion from Councilman Ochsner and seconded by Councilman Haverland, **passing 5-0.**

5. **Mayor's Items**

a. Town Manager Performance Evaluation

Mayor Barefoot announced that the annual performance evaluation for the Town Manager had been completed, and he will discuss the salary adjustment at the next meeting. The four items that have been the focus over the last two years may need to be adjusted, stating that he believes the weightings are wrong. Councilman Haverland agreed that they change in importance year to year. Mayor Barefoot questioned if they are even necessary. Some sort of formal evaluation is good for everybody, as it provides a certain amount of history. Budgeting and general management are key in his opinion, and Public Safety is over-weighted at 40%. He asked the Council to also consider this and discuss it again in December. Councilman Slater said some of these items were not subject to any of the Town Manager's influence. Vice Mayor Weick agreed he was responsible for response time, but if a truck breaks down, that is not his fault. Mayor Barefoot also noted that morale is in the eyes of the beholder, and may not be really relevant. It is a component of how well the Town is running, but not a standard. The budget is really important, and living within it.

Councilman Haverland suggested that the Council should agree on the percentages at the beginning of the year, and reweigh things at the end of the year. Mayor Barefoot asked each Council member to provide specific ideas ahead of time, and identify the critical factors and adjust during the year. He encouraged each of them to meet with Robbie. The budget allowed for a salary increase, and specific recommendations for the review process will be reviewed at next meeting, as the salary increase would take place in January.

b. Electric Utility Update

It was mentioned that Judge Cox' ruling was mixed, and the next steps will be discussed with the attorneys at the shade meeting next Monday morning.

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

a. Approval to Purchase Traffic Cameras as Included in the Capital Budget FY 15/16 (Chief Rosell)

Mr. Stabe turned the item over to Chief Rosell for discussion. Councilman Ochsner said this is the type of rationale he expected to see the first time, and thanked the chief and his staff for doing a good job in presenting the case.

The system's cost, cloud-based servers versus a capital purchase on one onsite, installation, using cell or wireless service were briefly mentioned. Councilman Slater said these cameras check cars driving by, and if it sends an automatic signal should one pop up as stolen. The operation of the camera to local police is fast enough for them to do something, Chief Rosell said, as they are notified in less than a minute.

Vice Mayor Weick asked about out of state license plates, as the frame may obscure the state, and was told it would be disregarded, but if there is no license plate it rings a bell. Chief Rosell said they can set the parameters and can determine who to capture, focusing on the really bad guys and burglars rather than someone with a revoked license.

Councilman Haverland said he appreciated this amount of detail, asking for this type of rationale for all capital items that are not totally routine. He asked for a report on how this impacts what we get for the money, at least quarterly, to provide continual justification for the expense.

The Town Manager commented that we looked at having mobile mounted cameras on a vehicle years ago, and found that over 3,000 potential hits could have been stopped in one day. The results will be very surprising. A few months ago, a random check was made on an individual driving

through Town who happened to be wanted for involuntarily manslaughter in Texas, and was working as a landscaper who had just finished a job in one of our communities.

Vice Mayor Weick was concerned with out of state inquiries and readability of license plates. Councilman Slater said a count of how many plates we couldn't read would be nice. A **motion to approve the purchase of up to \$71,000 for license plate reader cameras** was made by Councilman Haverland with a second by Vice Mayor Weick, which **passed 5-0**.

b. Fiscal Year 15-16 First Quarterly Payment – OPEB Trust (Town Treasurer /Town Manager)

The Town Manager asked if the Council wanted to make upfront payments for both OPEB and General Employee Pension payments (item c.). Councilman Haverland said he brought these up because these funds are earning one quarter of one percent (.25%) in a bank account, and an investment manager could bring more like 6% yield on the funds. Vice Mayor Weick asked how soon the money is invested, to which Ms. Christmas replied within a week. Councilman Ochsner said dollar cost averaging should fit in over a period of time so it shows earnings, not to outguess the market. You get more money upfront over the year, and if you put it in the fourth quarter, Councilman Haverland said, which is outguessing the market. They all agreed that no one can time the market or know where it is going. Once a year for 10 years or every quarter still is dollar cost averaging. Mayor Barefoot said it is an asset allocation decision, and it is not in the Town's best interest to try to time the market. Councilman Slater said they should look at it over time. Vice Mayor Weick said not sure we should put money in OPEB, see how the budget turns out at the end of the year and go for the pension one now.

A **motion to pay the pension payment immediately** was made by Councilman Haverland with a second from Vice Mayor Weick and **passed 5-0**.

Mayor Barefoot asked what the Council's wishes were for the OPEB Trust, and Councilman Haverland requested that the Town put \$188,000 in now, calling it woefully underfunded. Vice Mayor Weick asked how much is in the funding now, and Ms. Christmas said \$200,000 plus interest. Vice Mayor said our cash cost is \$15,000, which prompted Councilman Haverland's response that our accrual-based accounting annual required contribution is \$230,000, which is for implicit costs. We are not taking anything out of the trust fund at all, the Vice Mayor and Ms. Christmas agreed. A **motion to place \$188,000 into the OPEB Trust Fund** was made by Councilman Haverland and seconded by Councilman Slater, which **passed 3-2** with Vice Mayor Weick and Councilman Ochsner opposing.

c. FY 15-16 Upfront Pension Payment (Employer Portion (Town Treasurer/Town Manager)

Discussed with 6. b. above.

d. Retiree Medical Insurance Option Buyouts (Councilman Haverland)

Councilman Haverland said a year or two ago we offered retirees who are participating in our medical insurance an option for a buyout if they agreed to cease participation. Seven of ten accepted the offer, which cost the Town about \$300,000 and reduced the liability by about a million dollars. Since none of these were obligated to take the option and the employees perceived it as a good deal, he characterized it as highly successful. The Councilman put together a proposal which is almost the same as what was offered to the existing retirees to illustrate what a potential offer to current employees to also give up the future right when they retire for partially funded medical insurance paid by the Town. The difference in these two offers is that the current retirees were given full credit, whereby current *employees* would get full credit for every year worked and half credit for years they have not yet worked to make it economically reasonable. For an employee who has been here a few years, the likelihood is not high for them to reach retirement here. Since 1978, we have lost 42 Public Safety officers who left the Town's employ before they reached retirement, or about one per year. This is why there would be a discounted award by X amount, so a 20-year employee would have a 100% chance of retiring. Councilman Haverland said he is locked into the concept, not the specifics, of offering an incentive if the employees drop their insurance now, and not many may take it. For example, a 35-year old who has worked here 8 years

could be offered \$22,000 to opt out. That would save the Town \$345,000 for an employee with the family plan. Councilman Slater agreed there is a sweet spot where there is a definite benefit, and it should be offered after an employee has been here a certain amount of time. Also, this is taxable income.

Vice Mayor Weick if someone leaves here after vesting, they get the Town pension, but can't retire unless they are of age. Retirement eligibility, cost for insurance, and cost savings to the Town was discussed. Councilman Slater said from the Town's side, it is attractive. How can it be also attractive for the employee, and what options would they have, he questioned. It would be up to the employee, Councilman Haverland said, and the employees may choose to take the money and leave. Some of the current retirees chose not to leave the plan because of family medical issues that would make obtaining insurance difficult to obtain.

Mayor Barefoot was concerned about someone coming back to the Town 10 years later with litigation after something catastrophic happens to someone who did not work here many years and accepted this offer based on their current circumstances. He is concerned about someone claiming they were never properly informed. Councilman Haverland said that today, insurance is guaranteed for everyone. He believes the government will ease the pain of increased costs. We have mostly college graduates and employees capable of making decisions. Maybe we should ask the seven people who took advantage of the Town's offer if they have any regret for doing this.

Vice Mayor Weick asked Councilman Haverland if he would take this if he were 35 years old, and Councilman Haverland said he didn't know, it would depend on circumstances like do I need a house down payment, is my wife securely working and eligible for insurance coverage through her employer? Councilman Haverland said he's trying to make it attractive to everyone.

Mayor Barefoot asked what the next steps are. Councilman Ochsner said there is an actuary who determines the liability, and they have the statistics on age and years of service. We could see what they are using to find their statistics, and was told that it is actually Ms. Christmas who has been doing these calculations.

Mayor Barefoot asked Mr. Auwaerter if the Finance Committee would like to analyze this, suggesting that they could provide another perspective. He agreed with Mayor Barefoot, who would opt out if their spouse has an insurance plan. Councilman Haverland said he had sent this to Mr. Auwaerter a few days ago for consideration of a meeting.

Mayor Barefoot suggested that Councilman Haverland work with Ms. Christmas and Mr. Auwaerter to see if this is a good idea. Councilman Haverland said another issue the Council needs to consider is who should it be offered to, and if the formula makes sense. Mr. Auwaerter asked if it would be a consideration for the Town to contract with a financial advisor from liability perspective. Maybe there should be an educational component to preclude litigation. Mr. Clem said there are real issues with liability. When you advise someone, the red flags come up. Councilman Haverland asked about the wording used for the seven who opted out, which he found that no one knew offhand what it said.

The Council agreed to have the Finance Committee and Ms. Christmas analyze this further. Discussion about this being in the union contract resulted in an understanding that it is not a negotiable item, but an offered item.

Mayor Barefoot thanked Councilman Haverland for all of his hard work on this.

## 7. **Town Manager**

### a. Land Development Code Update

Mr. Stabe said the final draft has gone to the PZV Board for review at their December meeting, with anticipation of final approval and recommendation to Council to consider at the December meeting. He asked if the Council wanted to see the final draft. Mayor Barefoot said some sort of summary would be helpful, and Mr. Clem said there are probably a thousand changes. The Town Manager said he will try to do a summary for them.

### b. Fred Tuerk Drive Drainage Update

Work is expected to commence Monday, November 30 with anticipated completion within three days. Mr. Stabe added he had meet with the engineer, contractor and the Department of Transportation this week.

c. Telephone system Install Update

We are scheduled for initial installation to begin on Monday November 23. The lines will be transferred after testing.

d. 5-Acre Market Analysis Update

He has requested a comprehensive market analysis from Sherri Brown at Treasure Coast Sotheby's for what is actually 4.5 acres east of A1A at the south side of Town, and when we receive the report it will be forwarded to the Council.

e. Turtle Signs Requirement

The signs are made and ready to install at private and public beach accesses. We were just recently made aware of the 2002 requirement stated in Article 4, Section 91.4 of the Town Code. Councilman Ochsner asked if this is a requirement by outside agencies, and was told that it is not. Mr. Clem read part of 91.45, Standards for Beach Access Points, which says standard signs shall be posted, supplied by the Town and maintained by property owners. It applies to anyone who has a private crossover to the beach from their property. These signs are about 25" x 20". One opinion was that the signs were too busy and would not be read. Mr. Stabe said the County is also ordering the same signs to install.

Mayor Barefoot believed this would be unenforceable, and discussed amending the ordinance with Mr. Clem. Two other Councilman wanted to make it applicable to only major or public accesses, not individual homeowners, with placement at the end of an open street with beach access.

The Council agreed to temporarily halt the installation of these signs, and instructed Mr. Clem to reword the ordinance to require these only at the public access points. This is a county-wide issue, Mr. Stabe said, and asked what they would like to do with the signs, suggesting that we could sell them to the County.

f. Departmental Reports (Building, Financial Balance, Public Safety).

There were no questions from the Council. Mr. Stabe noted that the Town Clerk had prepared a 2015 Year In Review Summary, which is a concise annual report to replace the 12-page printed version in a timely manner. The budget surplus at the top was questioned by one Councilman as misleading, so it was agreed to remove that item.

8. **Council / Committee Reports or Non-Action Items**

a. Planning, Zoning & Variance Board Meeting 10-12-15 (Chairman Chris Hendricks)

Chairman Hendricks said the minutes are in process, reporting that on November 9 the Board met to review a variance for an additional rear sign for the Tommy Bahama store to identify it from the parking lot. There is little visibility from A1A, and it is in conformance with other Village Shops signs. The Board approved the request.

b. Council Committee Reports (MPO, EDC, TCCLG, TCRPC, TCRLC, Others)

**Beach & Shores.** Councilman Ochsner said he attended the meeting earlier this week, and the discussion was about the possibility of pumping sand from offshore for beaches south of us. The Committee and the County are on record as being opposed to this. There is perfectly good sand available in the Bahamas, but there is a Federal law that prohibits foreign sand from being used on beaches in the US.

**TCRPC.** No report.

**TCRLC.** Councilman Slater said he did attend this meeting yesterday, and the Army Corps of Engineers wants to take sand from our area offshore and haul it to Miami. It was requested that they do an environmental study first. Also discussed was the potential state-mandated election change legislation that has been drafted, and everyone is very much against it.. They were reminded that the ethics and sunshine law course is required every year by elected and appointed officials, and he has taken an online course that qualifies.

**TCCLG.** No report.

**MPO.** No report.

**EDC.** No report.

Councilman Haverland asked if the December meeting could be moved if it was not inconvenient for others. He is available on the 7<sup>th</sup> and 8<sup>th</sup> and then gone for the next 10 days. The 17<sup>th</sup> is the scheduled date, and it was agreed to leave it where it is or move it to the 21<sup>st</sup>, which didn't work for Councilman Haverland. It was left as scheduled on December 17<sup>th</sup>, with Councilman Haverland stating he may be calling in.

Mayor Barefoot said he had been invited to speak at one of the beachside communities on December 8<sup>th</sup>, and will report back at the next meeting. He has invited Chief Rosell and Town Manager Stabe to join him, and plans to review the Town and its key issues and activities. This may be a good idea to carry forward to other communities as a type of Town Hall meeting.

The progress on the **cell tower** was discussed, with Mayor Barefoot stating that there was a meeting last week between a John's Island resident who lives very close to the proposed site, the John's Island General Manager and three (3) cell tower company representatives, who, based on their analysis and feedback, agreed that *the most logical place to put it for a variety of reasons is behind the substation at the end of Fred Tuerk Drive*. They realize there will be somebody who is not going to be happy with any site chosen if it's close to their home. Permitting, survey, and other preliminary activities are being done in preparation of the item **going before the PZV Board on January 8**. Resident expert Ron Creider sent a letter to the Council and has been available to meet with the Town Manager, DataPath, and John's Island. The Datapath representatives will be prepared to make a better presentation next time.

Councilman Ochsner asked what size tower is being considered, and Mayor Barefoot answered 130'. Two carriers are ready, and John's Island is on hold if we use this size tower. A monopole with the array on the outside is being discussed. The transmission of data is the big issue today. A big challenge in the Town other than the concrete buildings is the tree canopy, a monopole's panels can be adjusted more precisely. There are fewer homes that would worry about its placement at this location. The Town Manager added that the day before yesterday there were more specific photo simulations done for Stingaree Point, with placement either north or west of the substation, and Datapath has told us that Verizon and ATT have indicated a strong interest.

Mr. Clem said we need to address another ordinance to raise the height limit for a tower from 50' to 130' with the option to raise it later if we put in an 85'. He will prepare a draft ordinance for December.

9. **Call to Audience** – No response.

10. **Adjournment**. The meeting was adjourned at 10:59 a.m.

Respectfully submitted,

/s \_\_\_\_\_

(Approved by the Town Council at the December 17, 2015 meeting)