



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

REGULAR TOWN COUNCIL MEETING

Friday, November 22, 2013

9:00 a.m.

PRESENT: Brian M. Barefoot, Mayor
Gerard A. Weick, Vice Mayor
Thomas W. Cadden, Councilman
Richard M. Haverland, Councilman

ABSENT: Thomas F. Slater, Councilman (Excused – listened via telephone)

STAFF PRESENT: Robert Stabe, Town Manager Laura Aldrich, Town Clerk
Chester Clem, Town Attorney Jose Guanch, Building Official
Cpt. Mike Jacobs, Public Safety Lou Puchala, PSD Per Diem Officer
Heather Christmas, Finance Department

OTHERS PRESENT: Dr. Laurie Trenholm (University of Florida), Greg Pheneger (JI Golf Club Course Manager), IRC Commissioners Tim Zorc, Peter O'Bryan, John's Island Property Owners Assn. Jim Moller, Glenn Heran, Janet Begley, Lisa Zahner

RESIDENTS: John & Judy Orcutt, Bill Beardslee (PZV Chairman), Barbara Palumbo (PZV Co-Chair), Jerry Solin (Finance Committee), Bill Grealis (VB Utilities Commission Rep.), John Godfrey, Brenda Allen, Caroline Ervin, George Gergin

1. Call to Order

- a. Pledge of Allegiance
- b. Invocation (Town Manager Stabe)
- c. Roll Call

Mayor Barefoot called the meeting to order at 3:30 p.m. with the Pledge of Allegiance and Invocation performed, followed by the roll call by the Town Clerk as reflected above.

2. Proclamations / Presentations

- a. Fertilizer Ordinance/Lagoon Protection Discussion (Judy & John Orcutt, Dr. Laurie Trenholm)

Mayor Barefoot said our current Ordinance 508 addresses fertilizer, but no longer matches the County's recently approved ordinance on this subject. Presenters from both sides were invited to speak regarding revising the Town's ordinance or leaving it as it stands.

Judy Orcutt, 4665 Pebble Bay South, representing the Indian River Lagoon Coalition, spoke first, handing out printed slides and informing the Council that at the end of the presentation there will be a packet of documents with several letters from local officials and others which support a stronger ordinance to prevent pollutants from entering the lagoon.

The Lagoon is not healthy and is in a full blown health crisis. Since January 2013, there have been 285 manatee deaths due to the loss of their natural diet, sea grass, and consumption of toxic algae instead. Also this year we have had 69 dolphin deaths in our Lagoon. They are lagoon, not ocean dolphins, and do not intermingle. People have been experiencing flesh-eating bacteria, respiratory distress from airborne toxins and tainted seafood from the Lagoon. Too many nutrients and too much plant food cause excessive algae to grow quickly, disrupting the natural balance. Decomposing plants use oxygen that causes organisms to die. The solution is to stop the pollution at the source rather than removing the nutrients at \$1000 - \$2000 per pound. Stormwater runoff moves the rain quickly with its herbicides and pesticides, which contributes to the problem. When using reclaimed irrigation water, such as is used at Jaycee Park, there is an abundance of nutrients which

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.

result in healthy and green lawns without using fertilizers. City parks have not been fertilized in four years. Sprinkler heads that reach the road cause a problem by taking nitrogen and phosphorus to the lagoon as runoff. Fifty-eight percent (58%) of Indian River Shores' residents receive reclaimed irrigation water and do not need to be adding fertilizer to lawns. She urged the elected officials to educate the residents about the benefits of reclaimed irrigation water.

Mrs. Orcutt continued with information about the fertilizer sales, which reflect 37,000 tons sold in Indian River County and 134,000 tons from Volusia to Martin County, the length of the lagoon. Statistics from the Florida Department of Environmental Protection and Indian River County master gardeners were also cited before her husband, John Orcutt, continued.

Mr. John Orcutt said they have lived here in Indian River Shores for 18 years. He addressed the research to be provided by Dr. Trenholm, complimenting her and colleagues at the University on the science, professionalism and what they bring to the turf grass industry. He questioned the relevancy and applicability of the research as it was conducted on level ground and probably underestimates nutrient runoff. We have homes built on little hills. Most homeowners leave grass clippings on the yard to replenish nutrients. Most data they have gathered is from north Florida, which does not apply to the whole state as they do not share our climate. He addressed certain points in their research which have been debated. We have a lagoon crisis, not a turf grass crisis. He showed a comparison slide with the County ordinance versus the Town's current ordinance.

Mr. Orcutt discussed how the rain events increase nutrient levels (nitrogen and phosphorus) and how a strong fertilizer regulation works. Three cases were briefly reviewed: Roberts Bay in Venice, Florida; Lee County Storm Water Ponds, and the Huron River in Ann Arbor, MI. A list of 60 municipalities, including Indian River County, Vero Beach, and Sewell's Point, who have passed a fertilizer ordinance stricter than the State recommended ordinance, was provided.

A few months ago the Town signed on to the Indian River Lagoon Coalition, asserting that the elected officials will stand behind the improving the Lagoon health. The Indian River Land Trust, Harbor Branch, Pelican Island Audubon Society (PIAS), and ORCA all support a healthy lagoon. It is very important to the citizens in our community. He closed by noting that strong fertilizer ordinances on the west coast that have been in place since 2007 have taught us that they are more easily understood by the public, easier to enforce, creates no negative impacts on lawns, no negative impacts on lawn care companies, reduces nutrient loading and the sea grass is coming back. He urged the Council to move forward with a strong ordinance consistent with those enacted by Indian River County and the City of Vero Beach.

Vice Mayor Weick noted that we have a 10' buffer for fertilizer from the lagoon or 3' with a shield, rather than 6' as shown in the handout, and 50% slow release fertilizer is allowed. Mrs. Orcutt replied it was allowed all year.

Councilman Haverland received clarification on when Ordinance 508 was enacted, which was less than 2 years ago, and before that there was nothing. He asked if anyone has evidence that this Ordinance is not effective, which Mr. Orcutt said what we are doing is not working. We have lost 63% of the sea grass in Indian River County in three (3) years, and 60 other municipalities who have passed a strong ordinance have provided five (5) years of encouraging data. Councilman Haverland reiterated his question about evidence that an ordinance similar to the Town's is ineffective versus a stronger ordinance. Mr. Orcutt said there is no evidence that the state model ordinance works anywhere, and he gave two examples that a stronger ordinance has worked since their passage in 2007: Roberts Bay and Lee County Stormwater ponds.

Councilman Haverland said there was a presentation made to TCCLG regarding the history of phosphorus and nitrogen use over 15 year periods. The levels from the most recent period, a year to two ago, are dramatically lower than before. Councilman Cadden added there was also a presentation from a Lee County representative to the TCCLG in 2008 with photographic evidence showing tremendous improvements following implementation of an ordinance like ours.

Dan Lamson, Executive Director of the Indian River Neighborhood Association (IRNA), read a statement which in summary encouraged the Council to adopt a strong fertilizer ordinance that matches the County's and Vero Beach's ordinance.

Dr. Laurie Trenholm, University of Florida Turf Grass Agronomist, brought a PowerPoint presentation also that was not able to be viewed, so she will email it to Mrs. Aldrich. She explained that her experience includes working with the turf grass industry for more than 20 years, and she is a very proud former resident of Indian River County. She stressed that her intention is not to tell us how to write our ordinance, but to educate them on some of their research. In 2000 the Water Management Districts, lawn care-turf grass industry representatives and other scientists formulated the Green Industry's Best Management Practices (BMP's) which are now being required in January 2014 by state statute. Quite a few questions surfaced during this DEP-funded process that took place throughout the state from 2004-2012 about environmental concerns, so now we have the data. She described what would be shown on the slides, a bell shaped curve reflecting that growth of green grass slows down in the winter months. The roots are a mirror image, sloughing off up to 60% of their root system in the slow season. Most nutrients are taken and used from March to October. One study had a range of nitrogen rates showing greater leeching as more nitrogen was added, illustrating how effective the grass is in absorbing nutrients. Similar results have been recognized from research done by other universities across the nation with warm seed grasses and cold seed grasses. Turf grass used properly with mowing height, proper fertilizer, irrigation, and following BMP will filter stormwater runoff through the surface and roots. Nitrogen in limited, appropriate quantity is necessary, as is small amounts of phosphorus.

Councilman Haverland asked if what she is describing is related more to our current ordinance, and she said it does as our current ordinance allows for summer fertilization. Vice Mayor Weick asked if a ban on summer fertilizing would be extremely detrimental to the lawns. Dr. Trenholm said there are arguments for both sides on this, not all lawns will do well. Slow release nitrogen is advanced technology, more expensive, but helpful. Two to five applications of fertilizer is called for in this part of the state. Vice Mayor Weick relayed that when he first moved here, he fertilized five (5) times a year and it caused him problems. He stopped fertilizing altogether and it's fine now.

Councilman Haverland recognized Greg Pheneger from John's Island in the audience, and asked how they use fertilizer on the golf courses. He said they use it more often in small amounts, as the turf weakens without fertilizer in the summer, leads to disease and weeds if not enough or too much is applied. Vice Mayor Weick said the golf courses are exempt from the City and County ordinance.

Vice Mayor Weick made a **motion to direct the Town Attorney to revise the Town's ordinance to be in conformity with the Indian River County and proposed City of Vero Beach ordinances**, which was seconded by Councilman Cadden. Mr. Clem suggested that the motion be "as recommended by the Orcutt's to include 1) No application of fertilizer from June 1st through September 30; 2) have a 10' fertilizer-free zone by striking out the deflector shield verbiage, 3) slow release fertilizer required, and 4) no phosphorus in the fertilizer without a soil test."

Councilman Cadden said the County has passed their ordinance, and ours should match it exactly.

Mayor Barefoot said that there will be a drafted ordinance that is consistent with the County and Vero Beach ordinance. **The motion passed 4-0.**

The Orcutt's thanked the Council for their time, and Mayor Barefoot thanked them all for attending.

3. Consent Agenda

- a. Acceptance of Planning, Zoning & Variance Minutes dated October 14, 2013
- b. Acceptance of Special Called Planning, Zoning & Variance Minutes dated October 18, 2013
- c. Approval of Regular Town Council Meeting Minutes dated October 24, 2013
- d. Approval of Invoice dated 10-31-13 from Chester Clem, Town Attorney

With no discussion, Councilman Cadden supported by Vice Mayor Weick **made a motion to approve items a-d on the consent agenda, which passed 4-0.**

4. Discussion with Possible Action

a. Planning, Zoning & Variance Report / Action (Chairman Bill Beardslee)

At the regular meeting on November 12, a request for a 15' rear yard setback variance at 112 Hidden Oak Drive was heard. The owners were told when they purchased the home that they had a variance, but no evidence was found. Normally rear yard setbacks are not approved, but this one does not abut another home, only a fence and then the roadway. It made sense to the Board to recommend that the Council approve the variance.

Also an additional variance was requested for this property for a pool 10' setback, for which they recommended approval of a 3' variance.

A motion to approve these two variances concerning the rear setback and pool setback at 112 Hidden Oak Drive was made by Councilman Cadden and seconded by Vice Mayor Weick, which passed 4-0.

Secondly, Mr. Beardslee said there is a request for one additional Village shops sign, which is more than what our code allows. There would be a sign at the entrance and one at the exit in addition to the main Village Shops sign. It does not require approval. The Chairman had checked with Public Safety, who concurred that having a sign on Sunset Drive at A1A as well as on the north end of the complex was better for safe usage of the one-way drive. The Council was agreeable to this solution for safety. There will be two 2' x 3' signs at the entrance and exit, and the main sign is 3' x 5'.

b. Committee Related (Town Manager)

Code Enforcement Board (CEB) Chairman – Recommend Art Culver

Mr. Stabe recommended that the Council appoint Art Culver as Chairman of the CEB, as he is the senior member on the Board. The entire Board recently attended an organizational meeting, at which, and Mr. Clem gave them an overview of the Board, their responsibilities and the Sunshine Law. **A motion to appoint Art Culver as Chairman of the Code Enforcement Board** was made by Councilman Haverland and seconded by Councilman Cadden, **passing 4-0**.

Openings – MPO Citizens Advisory Committee (MPO CAC) & Finance Committee Alternate

There are two openings with one application before them, one for the MPO Citizens Advisory Committee (no applicants) and for an alternate to the Finance Committee (Allen Jones application). The MPO CAC volunteer can be any resident of the Town. Mr. Jones came in today and asked that his previous application that was withdrawn in 2011 be reactivated for the Finance Committee alternate opening. Mayor Barefoot and Councilman Haverland both attested to his ability to serve on this Committee, with Mr. Haverland noting that he is in Hawaii from May-September when meetings are most important. Mr. Stabe agreed to double-check with him regarding his availability.

c. Council Member Appointee to Treasure Coast Regional Planning Council (Town Manager)

With a rotating schedule, it is the Town's turn to serve as an Alternate to Fellsmere, which meets monthly on the third Friday at 9 a.m. It meets in Stuart or West Palm Beach area. All of the Council agreed with Councilman Cadden's decision to volunteer.

d. Asset Disposal List Approval (Town Manager)

Most of these assets have been disposed of or have been moved off the list due to value threshold. **A motion to approve the asset disposal list as presented** was made by Vice Mayor Weick with a second by Councilman Cadden, **passing 4-0**.

(Mayor Barefoot received consent to move discussion of item h above items e., f. and g.)

e. Petition to Florida Public Service Commission to Allow FPL to Service Town (Cmbr. Haverland)

The Mayor noted that the next three items are interrelated, and several were in the audience to address the topic. He asked Councilman Cadden, who has been heavily involved with this for years, to continue. Councilman Cadden began by revealing that he and County Administrator Joe Baird met this past Monday, and one of the County's top priorities he will be recommending for the local legislators is to get the electric utility of Vero Beach sold to FPL. Mr. Baird suggested to the Councilman that the Town also have a representative sent to appear to the legislature at the Indian

River County Legislative Delegation meeting. We have to get on their agenda by today to encourage that the Town be brought under the single electric utility of FPL as quickly as possible, by means of a total sale, the same as the County is requesting, and if we need legislation, they need to hear our plea.

Councilman Haverland said he has a slightly different view. He is hearing from certain sources that the sale could drag on until 2016 and may not even happen. A portion of our residents pay about \$2 million more for Vero Beach electric than they would for FPL.

Mr. Clem said the designation of service area is much more important. Councilman Haverland said the taxation without representation is the classic problem. We ought to begin to prepare to disengage with Vero Beach, and have Robbie go to Vero Beach and ask for FPL rates now. If we are turned away, he felt the Council should spend Town money to save electric bill money. He mentioned the available expertise we have in residents Bill Grealis, who is an industry expert, and John McCord who made a livelihood in getting electric services to communities, industries and companies inside service areas on a nationwide basis. If it costs us \$100,000, he said it is something we have to explore. Vice Mayor Weick said he has spoken with FPL Liaison Amy Brunjes, and they won't consider separating the Town from them unless the City deal falls completely through.

Bill Grealis, Vero Beach Utility Commission representative for the Town, said the FMPA has effectively denied the FPL proposal to solve the outstanding issues that would allow them to consummate the sale. At some point you have to assume that they will not take any action. Approval of 30 municipalities is required. There are amendments to the original Vero Beach sales documents that would have to pass the Vero Beach Council's approval. All of that aside, there is a pending petition before the PSC to change the service territory to exclude the non-residents of Vero Beach. This was filed quite some time ago, and Glenn Heran could discuss this. If this goes forward, the pleadings, interventions, and statement of position requesting separation from City of Vero Beach have to be filed. There could be bypass legislation that gives the end user a choice of provider. Recovering the cost of service for Vero's 32,000 customers versus FPL's 4,000,000 is difficult. We need FPL rates, not just the generation component. It is time to consider other options, since we are taxpayers of Vero Beach contributing to their General Fund at the moment.

Councilman Cadden said we are asking to be put on the agenda to petition the Florida PSC, agreeing with Mr. Grealis that we should join the existing petition.

Glenn Heran said the political climate in Vero Beach is that there is a passive attitude towards the FMPA. We need a proactive council to get their rights back. The 20 FMPA members who have generation rights cannot compete with FPL. The FMPA has no inclination to allow Vero Beach to exit. The City residents that voted to allow the referendum six months ago and then passed it, and followed that action by ousting the one Council member (Tracy Carroll) who was strongly in favor of the sale. The County Commission has hired a lobbyist, and he recommended that the Indian River Shores Council has to decide what they can do to protect their constituents. Dr. Faherty and Glenn Heran have a complaint filed with the Public Service Commission, Docket # 090524 that is in abeyance because every time they open it, they get sued by the City of Vero Beach and do not have enough funds to defend their position. A Councilman asked how the Town can join this Docket, and Mr. Heran said they have to have permission granted by Dr. Faherty and Mr. Heran. The County Commission is also being asked to join, and they will bring in a lawyer to ensure the legal sufficiency to make a stronger case. It will be a few month's effort, it's not FPL's responsibility to get the FMPA to make a deal, it's the City council's responsibility, and they were a charter member of FMPA.

Councilman Haverland suggested since Bill Grealis knows a lot more about this than we do, he should review this. Mr. Grealis deferred, and recommended that Mr. Clem review the pleadings in the Docket and the suit that was brought against Mr. Faherty and Mr. Heran. Mr. Clem said with all due respect, they need someone who appears before the PSC on a regular basis, a Tallahassee law firm to represent the Town and see if we have a chance. Mr. Grealis and Councilman Cadden agreed. Councilman Cadden said during the two years he was off the Council, he still served on the City of

Vero Beach Utility Commission for the Town, and was active on this issue. He has accumulated a set of files that neither the Council nor Mr. Grealis has seen, and offered them for review.

Councilman Haverland wanted Mr. Grealis to be the point person. Councilman Cadden asked that they review the file first. Mayor Barefoot said we will decide what to do and what steps the Council will take, and after the file is reviewed there will be an update provided at the next meeting.

Councilman Cadden clarified one more point: a newspaper article said he had supported Tracy Carroll so he would receive a reduced electric bill. He is an FPL customer, so that is not true.

- f. Legislative Delegation Attendance & Presentation on Electric Sale (Councilman Cadden)

(Covered in e. above).

- g. Ordinance for Public Input at Official Meetings (Councilman Cadden)

Mr. Clem offered to have something ready to present at the next meeting.

- h. Traffic Signal Box Replacement (Town Manager)

(This was discussed prior to items e., f., and g.)

Mr. Stabe said he was contacted by the County's Director of Signs and Signals, who indicated that the signal box at the John's Island main gate must be replaced due to salt corrosion. The estimated cost is between \$11,000 and \$12,000, which could come out of the Offsite Drainage fund. Vice Mayor Weick asked if it will be put in an aluminum box rather than steel, and was informed that Mr. Mora had said it would be of a higher caliber box. **A motion to pay for the replacement of the John's Island signal box at a cost not to exceed \$13,000** was made by Vice Mayor Weick with a second by Councilman Cadden, which **passed 4-0**. Mr. Stabe said there may be other options for payment.

Mayor Barefoot said this is not on the agenda, but he has had an unexpected commitment arise he cannot forego that precludes his attendance at the December meeting on Thursday the 12th, asking if they would consider moving it to Friday the 13th at 9 a.m. **A motion to move the December 12th, 2013 Regular Council meeting to Friday, December 13th at 9 a.m.** was made by Mayor Barefoot, with support by Councilman Cadden, which **passed 4-0**. Councilman Haverland will not be in town.

5. Town Attorney

Mr. Clem had nothing to report or for action.

6. Town Manager

- a. Departmental Reports (Building, Financial Balance, Public Safety)

Mr. Stabe had two personnel announcements, the first being that effective September 1, Heather Christmas is our Town Treasurer. Second, effective November 1, Capt. Mike Jacobs is appointed Acting Director of Public Safety. The Council congratulated them both.

One other announcement, Daniel Brobst, the Town's Public Works person, left today to go to Phoenix for a job offer he could not refuse. Mr. Stabe wished him well, adding that Daniel's brother, Adam Brobst, started yesterday as our new Public Works employee.

The department reports are provided as usual, with no questions asked regarding them.

Councilman Slater said he worked extensively with Jose Guanch and the ladies in the Building Department recently on a personal house project, and they did such an extraordinary job.

7. Committee Reports

Council Committee Reports (MPO, EDC, TCCLG, TCRPC, Others)

EDC. Vice Mayor Weick attended the meeting on November 19th. A job grant for \$137,000 that allows a 12-employee company to grow to 45 employees was approved.

TCCLG. Councilman Haverland went to the meeting that was held in Fellsmere, with a tour of The National Elephant Center prior to the meeting which he missed. A presentation was given on what's being done in the upper St. John's River Basin to help the environment.

Beach and Shores. Councilman Cadden attended the regular meeting last Monday, and provided a copy of what he called an excellent presentation by James Gray from Indian River County. The hottest spot (loses the most sand) in the County is Seagrape access, which experienced about a 6' drop in sand from the recent nor'easter. The County is adding sand to that area.

MPO. No meeting.

TCRLC. No report.

8. **Call to Audience**

Commissioner Tim Zorc, Indian River County District 3, applauded the Council's efforts and decision to explore the options for electric service. He extended an offer for the Council to join in their efforts with the lobbying firm of Ballard Partners in Tallahassee to keep the pressure on to be pro-sale. The more pressure we keep on the FMPA, the greater the likelihood that they will concede to allow the chance for competitive rates in the entire county. The officials at the County are here to help, Commissioner Zorc added, and concluded by thanking the Town Council for all they do in the County.

Mayor Barefoot recommended that Councilman Cadden, Bill Grealis, and Chester Clem consider this offer.

Bill Beardslee noted that beloved resident Jack Mitchell passed away this week, who had served on PZV Board for more than 12 years. He was always prepared for the meetings, thoughtful, articulate and incredibly tough. He had the best for Indian River Shores in mind. Mayor Barefoot asked that the record reflect that he also made contributions to this community for so many years, and was an "unofficial mayor" and ambassador of the Town.

9. **Adjournment**

Hearing no further comments, the meeting was adjourned at 5:22 p.m.

Respectfully submitted,

/s _____
Laura Aldrich, Town Clerk

(Approved by the Town Council at the December 13, 2013 meeting)