



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

REGULAR TOWN COUNCIL MEETING

Thursday, February 25, 2016

9:00 a.m.

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

STAFF PRESENT: **Robert Stabe**, Town Manager
Chester Clem, Town Attorney
Rich Rosell, PSD Chief
Stefanie-Jo Osborn, Mgmt. Assistant

OTHERS PRESENT: **Bob Auwaerter**, Chairman Finance Committee; Sea Forest resident **Doris Brandi**; Estuary resident **David Haynes**; JI residents **Sandy Kasten & Caroline Irvin**; JI Garden Club **Jeanne Manley & Cass Mennen**; **Jim Moller**, JIPOA; **Tim Zorc**, IR BCC; **Harry Howle III**, COVB Councilmember; **David Heuberger**, IRLT; **Cheryl Jones**, GFA Int'l; **Dylan Reingold**, IRC Attorney; **Aaron Bowles & Ryan McLean**, MBV Engineering; **Luigi Wells**, IRCFD; **Janet Begley**, Press Journal; **Lisa Zahner**, 32963

Laura Aldrich, Town Clerk
Heather Christmas, Finance
Jose Guanch, Building Official

1. Call to Order

- a. Pledge of Allegiance
- b. Invocation – Councilman Slater
- 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. Consent Agenda

- a. Acceptance of January 11, 2016 Planning, Zoning & Variance Meeting Minutes
- b. Approval of January 28, 2016 Regular Town Council Meeting Minutes
- c. Approval of February 9, 2016 Special Called-Collective Bargaining Town Council Meeting Minutes
- d. Acceptance of September 3, 2015 Finance Committee Meeting Minutes
- e. Approval of Invoice from Kerns Construction for Artificial Stone Veneer Installation
- f. Approval of Invoice from Town Attorney dated January 31, 2016
- g. Approval of Invoice from Holland & Knight dated February 16, 2016
- h. Approval of Invoice from Berman Hopkins Billing Towards Audit dated January 31, 2016

Following a **motion** from Councilman Slater with a second by Councilman Ochsner **to approve the consent agenda as presented**, the motion **passed 5-0** with no discussion.

3. Town Attorney

- a. Resolution 16-01, Florida Inland Navigation District (FIND) Waterways Assistance Grant

Mr. Clem explained the FIND grant and resolution. The application is for an upgrade to the boat received through a grant we received 15 years ago. We have the right for an additional 10 year lease of the dock at the Estuary for this patrol boat. He read the Resolution by title, and the Mayor asked if there were any questions. Councilman Haverland asked what we are resolving today, and Mr. Stabe and Chief Rosell answered that this is just to be eligible for the grant. Councilman Ochsner asked about the lease of the dock in the Estuary, which Mr. Clem explained is a 25-year lease that we started 15 years ago, so we have 10 years remaining, and it involved no payment to The Estuary. Following a **motion** from Councilman Slater with a second by Councilman Ochsner **to approve Resolution 16-01**, the motion **passed 5-0**.

4. Mayor's Items (Possible or Probable Action)

- a. Town Hall Meeting & March Council Meeting Date for March

The Mayor said they had discussed having a Town Hall meeting on March 21st, and the Council meeting is scheduled on March 24th. He will be out of town that week and was wondering if there could be another date

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.

for the Town Hall meeting if the Council thinks the meeting is of value to hold. Also, as soon as we get a cell tower consultant report we will invite citizens and have another workshop, or this discussion could be covered at the Town Hall meeting. Councilman Haverland asked if he is referring to the Council or Town meeting. Mayor said it's both and that he can't be here the 24th and the 25th is Good Friday. Early the next week could be a possibility if the councilmembers are available.

Everyone said that they are available March 28th. Mayor then asked Mrs. Aldrich to schedule the March Council meeting at 2:00 p.m. on Monday the 28th followed by the Town Hall meeting at 4:00 p.m. Depending on when we get the report from the cell tower consultant, we will have the cell tower meeting at the same time as the quicker we can move the cell tower process forward, the better for the residents.

Vice Mayor Weick asked, since we are on the subject, to move the April meeting to the 21st as he will be out of town the 28th or we could decide later, as it is far in advance. Mayor agreed to address this date change at March's meeting.

5. Discussion with Possible or Probable Action

a. Retiree Buyout of Current Employees (Councilman Haverland)

Councilman Haverland reviewed the details of a lump sum medical insurance benefit buyout that had been offered to the retirees three years ago to the audience. When all of our employees are eligible to retire, they are also eligible to remain in our medical plan under the existing group rate. Many of our employees, depending on the date of hire, also receive a subsidy to reduce the cost of the medical premium. The previous buyout offered a lump sum cash payout to retired employees, who in return were then not eligible for medical insurance with the Town's group plan. Seven of the ten employees who were eligible for that buyout took it, so that the Town reduced its unfunded medical liability by approximately \$600,000. Paying \$300,000 knocked off \$900,000 of liability.

Mr. Haverland has put together another program for future retirees. The terms of the buyout would differ by years of service and expected years until retirement, etc. Mr. Haverland's proposal was reviewed by the Finance Committee, who Finance Committee raised a number of legitimate issues. He took those into consideration and modified the program to be offered only to employees who have worked for the Town for at least 2 years with a lump sum payment based on a formula of 1 year credit at 2.5% for each year worked, and half that credit for each year until the expected retirement date. That would be multiplied by \$7,000, which is the annual premium for an individual employee. That would then be discounted by the formula based on years of tenure. It would be an option that may or may not be as attractive to all employees as in the past, but everyone is now guaranteed the right to purchase insurance by the Affordable Care Act. No one would be left high and dry if they choose this buyout.

Chairman Auwaerter said the Finance Committee has not yet made a recommendation, but the Town Manager and he did have a discussion with the labor relations attorney. A number of concerns were raised by the attorney. At the Finance Committee meeting, there was also a fair amount of push back on the idea, especially as to whether the employees had the financial knowledge to make a wise decision. It was discussed that the employees could, maybe at the Town's expense, consult a financial planner to look at the tax ramifications and other issues. Discussion about whether or not it would be taxable ensued, with the conclusion that it would be taxable.

Councilman Haverland said someone had suggested that this money could be rolled into an HSA, which would be a tax free amount but would have to be within the \$3,300 per person allowable limits. Mr. Haverland pointed out that the Town would inform the employees that this buyout is taxable, and that they could find themselves at some point in time unable to get reasonably priced insurance. He believes that the idea of paying for the employees to consult with an advisor is silly. With the Town's first offer to 10 people, 7 people took it, and there has been no negative responses to his knowledge from those who took it. This is an extraordinarily costly benefit to the Town, and of extraordinarily little value to the employee when hired. A medical program in retirement, when you are also guaranteed the ability to buy insurance via the federal government program or to jump into your spouse's program at a substantially lower net cost to you, is not that valuable to the employee. People in the position to get another insurance will take the money and run. The buyout is an option, not a requirement.

Mr. Auwaerter said the financial analysis gets a lot more complicated with someone 40 years old who has a long distance to retirement, but for an employee coming up on retirement the calculations are straightforward. Mr. Haverland said he thinks the calculations are very straightforward, and Mr. Auwaerter respectfully disagreed. Councilman Ochsner believed an offer to someone with only two years of employment was too soon, and it seemed to him that we are giving money away to someone who more likely than not will not be employed by the Town until retirement. Vice Mayor Weick agreed that about half of the Town's employees leave before they retire. Councilman Haverland said that's why he recommended that the reward be discounted

by 60% for someone that's been with the Town between two to five or eight years. Vice Mayor Weick noted if you retire and get a payout you can roll it to an IRA, and if you are working you can't roll it over. The tax would be deferred, but taxed eventually. Councilman Haverland said his presumption is that there would be a tax on it at time of receipt. Mayor Barefoot said the concept has some merit, but there are concerns.

Mr. Haverland gave an example that a 38-year old 12-year employee who has 14 years to retirement would receive \$43,000, and after 14 years, assuming the medical costs inflate 4% per year, the amount of savings by the Town would approximate \$200,000. If he were married, you could add 50 to 80% to what we could save. The offer wouldn't change, but the benefit would be even greater. The economics from the Town's standpoint are very powerful. The economics from the employee's standpoint can be equally powerful or it may not be. The employee could take the buyout, pay the tax, have around \$30,000 left and go on to buy a boat or something he couldn't otherwise have been able to do, and spend \$1,000 per year to be on their spouse's insurance. For this scenario it's win-win, a no brainer. This has no impact on staying on our medical program while employed, it is just giving up the right to our medical program in retirement. Vice Mayor Weick disagreed with offering this to employees with only 2 years of service. Councilman Haverland said 80% of private companies have no offer of retirement medical insurance.

Mayor Barefoot asked Councilman Haverland what his next step is, assuming the concept is worth following through. Councilman Haverland said he's wide open to adjustments to the formula, he just wanted the idea on the table. He suggested taking the existing employees and comparing the cost and lump sum the Town would pay and how that would impact our liability. This was done for the Finance Committee, Ms. Christmas said. Mr. Haverland said we can test the formula and consistently apply it to avoid discrimination.

Mayor Barefoot agreed that this program is worth exploring, and recommended that a laundry list be prepared of potential things that could go wrong, especially for the employees to be able to understand the implications of what they would be giving up. The economics would be compelling for the Town, as it is one of the biggest unfunded liabilities for municipal government. If there is something we can do that works for the Town and that does not disadvantage the employees if they are well informed, he has no problem with taking the formula and bringing it back for a presentation at the next Council meeting.

Councilman Ochsner asked if the concept could be presented to the employees first to get their sense of it before the Council actually acts on the program. The Mayor and Vice Mayor Weick agreed that was a good idea. Councilman Haverland suggested they have an analysis of the concept in terms of the impact it has on the Town and walk it through the departments. Councilman Slater said everyone's personal situation is different. Looking far into the future is the liability for an individual who may make more of an emotional decision than a financial decision.

Mr. Auwaerter said he wanted to remind the Council of what the labor attorney said. According to the labor attorney, no one in Florida municipal government has done this before. These are statutorily required benefits. The labor attorney brought up the potential liability issue of what could happen if these benefits were waived and the married individual subsequently got divorced. It is new territory. Councilman Haverland said he thought the issues could easily be dealt with by having both the employee and spouse sign off. Mayor Barefoot said if we go through the process, we could have the labor attorney get a formal review before discussing it with the employees. Councilman Haverland and Ms. Christmas could review the numbers and decide if it's worth discussing it again. Councilman Haverland said with regards to the uniqueness of this offer, to the best of his knowledge, the previous offer the Town gave to existing retirees was the first time it was ever done in the U.S., and it was done with no adverse consequences. The State of Rhode Island is attempting this. Rhode Island has serious problems and liabilities Mayor Barefoot added.

b. Budget Adjustment for P-F Pension (Town Treasurer)

Ms. Christmas said the budget was done at 42.2%, and now the interest rate is 52.94% which means another \$190,000 is needed for this fiscal year. Mr. Haverland noted that the budget is done in August and the actuarial report is done in December. Councilman Haverland suggested that we hold off on the budget number as it relates to this specific item until we get to September, or the last possible date, so that we can make a more informed decision and wouldn't have to make such a big adjustment. Ms. Christmas said we have to cite the tentative millage rate in July, and this has a big impact and we can't set the millage rate too low. Councilman Haverland said to set the millage rate higher, not lower.

Mr. Haverland said that with regard to resident reaction to a higher millage rate, the pension fund is so far underfunded that the residents should be as aware of the situation as we are. Mayor Barefoot said this would be an excellent topic to discuss at the Town Hall meeting so that people understand what's going on in general and specifically where the Town stands. You can never give people enough information. It is a topic that he would guess most people don't want to talk about or maybe really understand, but we have to think of the ramifications 20-30 years down the road.

A **motion to make an adjustment to the budget for \$190,000 for the Police & Fire pension funding shortfall** was made by Vice Mayor Weick with a second from Councilman Haverland. Mayor Barefoot asked if there were any questions.

Councilman Slater asked if we can expand this discussion a little, and said his concern is two Council meetings ago the Council made a recommendation to the Pension Board of Trustees that the current expected growth rate of 6.25% should be lowered to 5.75% going forward to be prudent based on the economic environment we are in. The Board rejected the recommendation. The Council's obligation is that the pension is properly funded so that the employees get to collect their pension in the entirety the way they anticipate long into the future. Mr. Slater pointed out that the Council can make a recommendation, but they don't make the rules even though they have to pay for it. He would like to voice to the Pension Board that we have to be realistic. We have now changed the mortality table we are using. People are living longer and we are going to be paying pensions longer. If we set a rate that is lower, it's a safer rate to set it and in years that we outperform the rate, we have a surplus we can put it back in or lower contributions. He wanted to encourage the Pension Board to revisit the issue.

Mayor Barefoot said the Pension Board did heed the Council recommendation to change the asset allocation from 60/40 equity/fixed income to 70/30, which with the most recent market correction is likely to continue. The problem, he said, even at 6.25% or 5.75%, it would be the lowest rate in Florida. He believes it is irrelevant on what is going on in the rest of the state. He chairs very large pension and investment committees, and whenever possible others are getting to 4 or 4.5% based on expanded studies showing those are more realistic rates of return. Even at 5.75%, one could argue that we are well above where we should be for long term sustainability. Councilman Slater added that we are making a \$190,000 adjustment now and with this kind of performance, there are going to have to be more adjustments in the future.

Vice Mayor Weick said we can do this with Reserves. He does agree with a lower rate. This is a small pension compared with other municipalities. When you have a larger pension, you have a tendency to make more money, and get better results. We always have money in Reserves. The Town could choose to lock it into a pension fund or keep it in Reserves and make the adjustments as time goes by. Councilman Slater feared the adjustments would get bigger and bigger, and Vice Mayor Weick said so does the Reserves. Councilman Haverland said it is very important that they adjust down to 5.75%. The Town has the ability to fund it as though it were at 5.75%. We will have a required contribution rate, we can pay higher as we have done in the past.

Mayor Barefoot said the concern is that the majority that voted to keep the rate where it was felt that they were doing the Town a favor by not obligating it to put in more money because of the lower rate, but as we can see, we have to put in money anyway, so why not be more realistic with a rate 5.75%.

Councilman Haverland asked to authorize the Town Manager to write another letter to the Pension Board and ask them to reconsider the request to reduce the rate to 5.75%.

Mayor said that we did not have a vote yet on the \$190,000 adjustment. **The motion to adjust the budget for \$190,000 Police-Fire pension funding shortfall passed 5-0.**

Mayor Barefoot asked Mr. Stabe to draft a memo to the Pension Board asking them to reconsider dropping the rate. Councilman Haverland said two members on the Board seemed to think that if we lowered the pension assumption, it would increase the Town's expense, and it would give the Town a better justification for getting rid of the pension plan altogether, which in one of the Board member's view was what the Town was trying to do anyhow.

Vice Mayor Weick asked Ms. Christmas how much this adjustment leaves in Reserves, and she said it would be about \$2 million if the electric utility law suit continues as budgeted.

6. Proclamations / Presentations

a. Report on 1-27-16 Tallahassee Meeting of Electric Utility Attorneys by Rate Expert (Terry Deason)

Mayor Barefoot said that the Town's representatives; Bruce May, Terry Deason and Bob Auwaerter met with the City of Vero Beach's representatives, Mr. Harrington and Attorney Schef Wright in Tallahassee last month. The purpose of that meeting was not to negotiate but to understand how the City came up with the \$64.5 million valuation, in contrast to the \$13.3 million valuation by Mr. Deason. There is a summary written by Mr. May and Mr. Deason and reviewed by Mr. Auwaerter that has been posted on the website for some time. Mayor Barefoot asked Mr. May and Mr. Deason to pull the numbers out of the written report and create a schedule, and asked Mr. Deason to come today and go through the differences between the City's valuation and our analysis. Among other things, some of the big differences lie between what the City used as assumptions, realistic or unrealistic, and some of the assumptions that Mr. Deason used.

Mr. Deason said what prompted the City's rate impact analysis was a response to a cash offer from Florida Power and Light (FPL) to the City to purchase their assets and customer base that resides in Indian River

Shores. When the City provided their study, Mr. Deason was asked around September last year to conduct his own analysis.

At that point, Councilman Slater asked to relay to the audience Mr. Deason's credentials. He said he was Former Chairman of Public Service Committee (PSC). This is someone with a lot of authority, knowledge and background in dealing with these kinds of issues. Mr. Deason mentioned that he started in Office of Public Counsel of Florida where he had his introduction to utility regulation as an active participant in PSC proceedings. One of the Commissioners asked him to be Chief Advisor, and he was then appointed to the PSC in 1991 and served for 16 years. He retired in 2006 and since that time has been doing consultant work in and out of the State of Florida.

Mr. Deason said this whole issue is a unique case. This particular question of one city providing service within the boundaries of another city is something the Commission has never dealt with before and there are some unique legal questions. We are here today to understand the nature of the City's \$64.5 million offer and if there is an alternative way to look at that or a reasonable way to put their offer into perspective. In all honesty, when he was asked to look at the City's analysis, he looked at it as if he was a Public Service Commissioner, what kind of questions he would ask. When he first saw the \$64.5 million number, he was taken aback, it's a number that struck him as unreasonable. He is not trying to disparage the work of the fine people of the City of Vero Beach and their analysts. He's sure they are very capable, qualified, reasonable people. He had a very different opinion about their rate impact analysis.

They met on January 27th in Tallahassee to go over it, as the Mayor mentioned, not to engage in debate but as a means to better understand the basis of the City's calculation. We basically confirmed our understanding of their calculation and we continue to have major concerns about the accuracy of that number. We did confirm that there are five categories of cost, using that term loosely. The City made it very clear that they did not attempt to determine the fair market value of the customer basis in the Town, but an effort to determine what the impact would be of losing the Town's customers and to recover costs by some means and keep the remaining customers whole and not harmed by the loss of customers. They identified five different cost categories. They refer to it as a rate impact analysis and he quibbles a little bit with that terminology. If you're going to look at what the rates are for the City now and what the rates would be if the Town's customers were to leave the system, you would need to actually use a calculation that is utilized by the PSC. Their calculation was not done at that level. That's one of the areas he has a problem with the City's numbers.

The first category is General Fund transfer. What the City did here is make the assumption that the current transfer to the General Fund of the City from electric utility operations that is attributable to the Town is \$467,000 per year. They took that amount and escalated it by 2.5% per year for 30 years and discounted that back at their cost of debt of 4.17%. That equates to \$11.2 million. Inherent in that calculation is the assumption that even though the Town's customers would leave the Vero Beach system, somehow there is an obligation by the Town's customers to continue to subsidize the General Fund operations of the City of Vero Beach, and to not only do that for a few years but for 30 years, and not only to do that based on the \$467,000 but to do that on the \$467,000 escalated by 2.5% per year. That raises some very fundamental questions. Putting aside the question of whether it is fair to continue to ask the Town's customers to continue to subsidize the City of Vero Beach, is it fair to ask that subsidy to continue to increase 2.5% per year, and for that to happen for 30 years?

Councilman Ochsner said he's had a problem for a long time about the portion of City profits from Indian River Shores, why the City of Vero Beach is entitled to any profit, and the idea that profit is generally associated with putting capital at risk. That's the reward for putting capital at risk. His understanding is that the City of Vero Beach really doesn't have any risk because the rate payers are the ones who pay the cost of bonds. The bonds were issued to fund this enterprise, the ratepayers pay the interest on the bonds, and the bond holders get their return because they're the ones that have capital at risk. How does the City have anything at risk? Mr. Deason responded that from the general perspective it seems the rationale is the municipality is providing a service, and it is a matter of policy of the City how they are going to use excess proceeds from the service. Their justification is that there are costs associated with providing the service and if rates exceed the cost, those are proceeds used to for other purposes within the City. It's basically a policy question of do you fund your city, with utility profits, or taxes, or a combination. He thinks the real crux of the matter is that when you have customers outside the city that are continuing to provide profits, and whether there really is any risk associated in doing that. The customer base is basically providing a source of support to guarantee the bond payments. Councilman Ochsner said the City really exists to provide a service and they pay for those services with taxes, and if they tax according to the level of service they provide, there is no need for additional money. Mr. Deason's response was that to run a utility sufficiently, there has to be some excess funds for continuance. There is not a requirement that there has to be profits in the sense of an investor-owned utility that has equity

investors. The City is a municipality where there is not that requirement. It basically boils down to a funding mechanism. Mr. Ochsner said we normally think of city governments funded by taxes. In our situation, 60% of the ratepayers are outside the City so essentially the 60% are paying taxes to Vero Beach. Mr. Deason said this is why he prefaced this entire cost category with the qualifier that if you assume that it is appropriate for outside customers to pay and help support the government of another municipality. If you make that assumption, he still thinks their number is wrong. Mr. Ochsner said there's no way he would ever assume he should subsidize them. Mr. Deason said he respects that. He thinks that this would be an issue if this matter was ever escalated to the Courts or PSC to make that determination. That is one of the policy questions that would have to be addressed at that time.

Mr. Deason continued that the purpose of this analysis is to show how their number was derived. He kept the cost category in the analysis to show how the \$11.2 million in the City's estimate could be as little as \$3.2 or as high as \$4.9 million, with an average of \$4.05 million. The City's analysis classified this as their equivalent to a return on equity that would be achieved by investor owned utilities (equity that they don't have, Councilman Ochsner added). Mr. Deason said he used a 10% discount rate and eliminated the escalation factor, calculating the amount for 10 years (\$3.2 million) and for 30 years (\$4.9 million). What that tells us is that the choice of the discount rate and the 2.5% escalation factor are really big drivers in getting the number to \$11.2 million, and both are questionable numbers.

The next cost category is the Outstanding Electric Fund Debt. It really boils down to the source of capital the City uses to fund their operations. If they were to sell the system to FPL, there would be sufficient resources to pay that debt off. We provided a schedule during arbitration that had some of the proceeds to fund the debt for X number of years. He made no adjustment to that cost category.

The third cost category of the City's analysis is Non-Departmental Fixed Costs. These are costs that even if the Town's customers were to leave, these are fixed in nature and still have to be paid, which results in higher cost. Councilman Slater asked if the costs wouldn't have to be reduced with number of customers being reduced. The City determined how much they would save in that cost category, and allocated 8.7% of that to the Shores. He thought that was not a fair allocation of the benefits to the cost savings so he did it on a per customer basis instead, and that calculation shows that there are cost savings for the remaining customers of the City. This is using the City's numbers before and after the Town's customers were to leave. Using their numbers and the number of customers that exist today, it actually equates to **per customer cost savings** which is why these numbers are in red, they are negative. That is a really big differential. His low number is \$12.2 million savings with no escalation, and spread over 30 years. The high is \$5.8 million savings with no escalation over 10 years with the average being \$9.0 million in savings. What is reasonable to allow the City enough time to review their operations for changes in their budgeting and changes in their operations? Councilman Ochsner asked for specific example of non-departmental fixed costs. Mr. Deason explained that the examples the City gave of these costs are administrative and general, professional services, or insurance. Councilman Ochsner said these changes would be instantaneous, not over years. Mr. Deason agreed. All costs are variable, even true fixed costs. The City's estimated \$15 million cost versus the \$9 million average of **savings is \$24 million that could be knocked off the \$64 million price**, Mayor Barefoot noted. Mr. Deason said they when they adjust their costs for Town customers leaving, they still allocate 8.7% of that back to the Town. Whatever savings there are, the City wanted to retain part of that savings and still have the Town pay 8.7% of the City's operations, which is not a fair way to look at it.

The next category is Other Electric Fund Expenses. These are more variable costs. He looked at them on a per customer basis. There were still net costs for their remaining customers. Since the costs are variable in nature, he only calculated the cost for 5 years. Councilman Haverland asked for an example of a variable cost. He said he thinks of variable as variable. If they don't have this business, they don't have these expenses. He would like to know what costs the City thinks would continue beyond one year of the Town's customers leaving. Mr. Deason said the examples the City gave were customer service, electric system design and metering. In the City's analysis, they wanted 30 years' recovery of those costs and they wanted the costs escalated 2.5% per year over 30 years. In his calculations, Mr. Deason eliminated the escalation and gave 5 years, which is more than ample time, for the City to be able to make the necessary budgeting and operational adjustments to withstand losing 8.7% of their customer base. With the 4.16% discount rate, he calculated a \$1.9 million cost.

The last and very significant cost category is Bulk Power Supply Differential Cost w/o Indian River Shores. This is the power that the City has to acquire to provide service to all its customers. The City calculated the amount of bulk power costs with the Shores being part of the system and also with the Shores leaving the system, and when the Town was no longer part of the system, it increased the per megawatt hour cost. This was primarily driven by new OUC contract which the City entered into. Per that contract, there are

a lot of fixed costs the City has to pay regardless of the amount they need to use. Councilman Haverland noted this lawsuit was already in effect when they signed this contract and the threat of losing us existed. The hospital and Piper were talking about using gas instead of the City's electric, plus the airport is talking about going solar. Therefore their suggestion of this penalty on us is a result of their decision to sign a take or pay contract when they could have done a variable rate contract. They stuck themselves in a hole and they're trying to penalize us for it. The question raised is whether this is a legitimate cost category. Mr. Haverland noted that this cost category should be a variable expense, and it would have been if the City hadn't signed a take or pay contract with a take requirement. Mr. Deason agreed that the Town had already alerted the City that the Town did not intend to renew their contract with the City, but apparently they felt it was still in their best interest to negotiate the OUC contract the way they did. The main driver of this cost category is the take or pay provision of that contract. The City classifies that as a cost that needs to be allocated to the Town in the amount of \$18.6 million. Putting aside whether this is a legitimate cost category or not, Mr. Deason recognized it for the 7 years left in the OUC contract. The City calculated 26 years because they said that even when the OUC contract expires, the City goes to the open market to buy bulk power, and not having the Town's customers as part of their system will result in higher bulk power costs that they would have to pay.

Mayor Barefoot said that this is embarrassing that the City of Vero Beach administration and their consultants would put forth something that could be so easily disputed in part or in whole, and whoever on the Vero Beach City Council that voted to approve the OUC contract with these provisions. There are several provisions of the contract that make no sense, and to sign it to save \$2.50 per month on the customer's utility bill. It is so bizarre, which is what's so frustrating for us and anybody else is paying attention to this thing.

Mr. Deason said that the Mayor has hit on the very nerve that is behind all this, the question of the Town having no say in the operations of the City. The Town doesn't have the ability to use the ballot box to elect those representatives who would be concerned about its constituents. The Town is not protected by the City of Vero Beach or the PSC. Mayor Barefoot said the problem here is that they keep talking about stranded costs and the liabilities. To them, the Town has a pro rata share of the liability because we are part of the collateral behind the bonds, but in addition to the liabilities we also have equity, which is never mentioned. In the OUC contract, there was a natural gas pipeline the City gave up their ownership interest in, because presumably their consultants or lawyers told them it had no value. It does have value, so where is the Town's check for our equity portion of what they gave away? They want us to assume responsibility for the liabilities, but allow no shared assets. It is so convoluted. The only way we can deal with this is through the courts or the PSC. The voters who can vote are the beneficiaries (of the Town's resident's contributions). Whatever value you want to place on the customers of the Town, the City has been unwilling to negotiate, whether it is \$64 million or \$14.2 million; there will be no agreement if you're unwilling to sit down and negotiate. FPL put forth a \$13 million offer and were not even able to finish their presentation.

Mr. Auwaerter commented that he found it interesting that even if we accept their methodology, there is no internal consistency. So if they argue the \$15 million cost of savings when the Town exits from the agreement (8.7% costs are assigned to the Town), the non-departmental fixed costs as calculated by the City on a yearly fixed basis that will drop from approximately \$8 million to \$7 million, or about \$1.5 million. What is important is the differential of 16.7%, and the rate base drops 8.7%, so they save more money than the rate base. Instead of being a positive \$15 million, it is a *negative \$15 million* - they save \$15 million. Fifteen million minus a negative \$15 million is \$30 million, which drops the \$64.5 total to \$34.5 million. Even their own methodology is inconsistent.

Vice Mayor Weick noted they are using 30 year timeframe, which is okay at the beginning of a franchise agreement. Our agreement expires in November 2016, and they should not have expected anything to go any further than the term of the franchise agreement. They are counting on future income that is not agreed to by either party. Also, calculating the \$14 million offer today using the rule of 72 to determine what it is worth in 30 years has not been considered, and if it were to be invested it normally would have doubled returns in 10 years, as it exponentially grows if invested. Mr. Deason agreed, adding the \$64 million is a discounted number, which is appropriate to bring it to a present value basis, and the \$64.5 million would be much larger.

Mayor Barefoot said they are discounting it at the presumed cost of debt rate but it is viewed as return on equity. Mr. Deason discussed this with the Mayor briefly, and agreed with Mr. Auwaerter that they are mixing apples and oranges.

The next chart showed the fair market value of the City's entire system, which if multiplied by the 8.7% you get \$15.6 million. This was the offer that was accepted by the City, Mayor Barefoot added, until the FMPA and OUC obstacles surfaced. The FPL initial cash offer was \$13 million, based on Mr. Deason's critique of the requested \$64.5 million it is now adjusted to \$14.2 million as a fair mid-range estimate for FPL to pay for the Town's share of the full utility system at 8.7% of the customer base. Mr. Deason said the \$13-

\$15.6 million range is much more reasonable to be discussing than \$64 million, and hopes this will open the opportunity to be able to engage in discussions with FPL

Mayor Barefoot asked Mr. Deason about taking the \$15.6 million compared to \$64 million and determining what FPL is willing to pay per customer, or what the City is asking FPL to pay for each customer, and what the PSC would say about the per-customer value. He followed that with questioning what value per customer has been successful in recent transactions in the State. Mr. Deason said all he knows about is what was in the FPL letter, approximately \$4,500 per customer. That did not include the costs associated with transmission upgrades, etc. Using the City's requested \$64.5 million translates to about \$21,000 per customer. Generally other transactions have been under \$4,500. FPL would never enter into an acquisition with PSC approval for rate recovery at the \$64.5 million, Mr. Deason added. They have to present to PSC that there is no harm to existing customers and the estimate was fair and reasonable, as well as beneficial to everyone because the additional customers' revenues offset the acquisition costs. FPL could easily justify a \$13 million request to the PSC. Mayor Barefoot said other upgrades, T&D stations, other improvements are also added to this price. The Mayor continued that if he were a City councilperson of Vero Beach, he would want to justify that the numbers were fair and there was no harm to the residents. Somewhere in the low to mid-teens would seem to be fair to them, and would be net beneficiary of the sale. Mr. Deason said we don't know this because that discussion has not taken place.

Councilman Ochsner said we are a customer who is being harmed, and no one is looking out for us. Mr. Deason and the Mayor agreed, who continued that when we meet next Tuesday with the PSC, some thought should be given to the residents of Indian River Shores, of whom 80% have been paying an average of 30% higher rates than the other 20% of the residents who have FPL as their electric utility service provider. Municipal utilities are exempt from regulation because the municipality will react in the interest of the customers. The Town is in the middle, with no ability to have a say. Mr. Deason agreed, the Town's residents have no ability to elect decision makers to represent them for this utility.

Councilman Slater asked who has seen Mr. Deason's analysis, and Mr. Deason said it is public on the Town's website. Councilman Slater asked if we are going to the PSC on Tuesday with the question of who has jurisdiction over the Town. The PSC thinks they have the legal right to change territories, Mayor Barefoot said. We are reinforcing our case by going to them Tuesday, as PSC Staff has written that the Town could come back to them and ask specific questions on this constitutional issue of being able to provide services without permission. We have been trying to get this question answered. We are not trying to get the PSC to change their character, just make a determination of who has the jurisdiction to answer the questions we have asked. It should, in his opinion, be the PSD's jurisdiction. We have a group of customers who are being harmed, Mayor Barefoot added, and they could open an investigation. We all hope to avoid going all the way down this path. Only the City can invite FPL back to the table. We can't be any worse off than we are now. Our residents are paying \$2 million more *per year*, and the City has not made any effort in over two years to reduce the take off the top from 6%, and they think they can do this forever (another 30 years). This is what is not right. The process of dismantling "big blue" is another impetus, the Mayor added, which is an expensive effort. Mr. Deason said based on his analysis, the \$64.5 million number is not a reason not to invite FPL back to the table. There could still be a win-win situation, and do away with the litigation expenses.

Vice Mayor Weick received clarification on the number of meters in Indian River Shores, which Mr. Deason said were rounded to 3,000. He had used 34,124 including the Shores and rounded 31,324 meters without the Shores.

Mayor Barefoot asked if there were any questions of members in the audience:

Commissioner Tim Zorc, Indian River County, bolstered what City knew and when, stating that when they were negotiating a purchasing agreement with Piper, they had mentioned that they were looking at unplugging from the City's electric. Afterwards he attended a Vero Beach regular Council meeting and advised that they should be careful with how much electricity they committed to buy. Since then, at a Public Energy Forum in November, others were asking how to unplug from City. Piper has 5.6% of the customer base, the County is researching how to remove their 3% customer base, and the hospital its 8% of the customer base. The City will be stuck buying power they don't need with the take or buy clause. The number of meters and customers has been questioned, as there are some customers who have one meter for a large complex. Mr. Zorc concluded that this is great information that was disseminated.

Harry Howle, City of Vero Beach Council, asked Mr. Deason if anyone has taken into account if an 8% size group of customers unplugged, what would be the impact on the cost of maintenance of T&D that would also be eliminated. Mr. Deason said they were told that the City did take this into account, but neither he nor Mr. Auwaerter included it in their level of calculations. Mr. Auwaerter said all of their numbers came from the City's Finance Department for the purpose of this discussion.

7. **Town Manager**

a. License Plate Reader Status Update

Chief Rosell said they are moving forward with this, and had ordered the system. It is tentatively scheduled to be installed in March. They are looking for locations to install the readers, and will be meeting with Pebble Bay Estates to discuss possibly using that as a site. The server has been delivered, and the system may be operational by first week of May. Chief Rosell explained that the cameras capture both north and south bound traffic.

b. Town-Wide Master Stormwater Drainage Plan Update

Mr. Stabe sent out a letter via email to homeowner association presidents requesting copies of their stormwater drainage plans, and also to the St. John's River Water Management District (SJRWMD). Two responses have been received, from John's Island and Marbrisa, indicating they do have a plan. Vice Mayor Weick said he has found some information from Bermuda Bay that he will provide. Mr. Stabe introduced Aaron Bowles and Ryan McLean with MBV Engineering for questions by the Council.

Councilman Haverland asked Mr. Moller how many outlets go from John's Island to the Lagoon, to which he replied Island Creek and Indian Harbor are two, and the majority of the properties drain to the lake systems. A couple of lakes go to the Lagoon through a spill system. Councilman Haverland asked about the quality of water that enters the Lagoon, and Mr. Moller said to his knowledge it has never been tested. They are trying to direct everything from the golf courses and even the beach side drainage to the lakes on the West. John's Island is planning to eventually redirect drains from the river to the lakes. Part of the permitting process is to pump out excess from the lake to the Lagoon to prevent flooding.

Mayor Barefoot noted that we have \$30,000 in next year's budget for this, and asked Mr. Stabe to follow up with a phone call to those who have not yet responded. Mr. Stabe said that the intention was to provide this information to MBV, as we do not need to have them start from scratch. The Mayor asked for an update at the next meeting on Monday, March 28 in case we need to proceed earlier than planned.

c. Appraisal of Town 5-Acre Property

Mr. Stabe said we released an RFP, and four licensed firms respond. The second lowest quote was the firm of Boyle and Drake, who was selected to conduct the appraisal for \$2,950., who indicated they may be able to help with ideas on how best to market the property for its highest and best use. The oceanfront sliver of land that is not Town's property may also be investigated. The appraisal is anticipated to be completed by mid-March, and Mr. Stabe agreed to have it forwarded upon receipt to the Council.

d. Cell Tower Consultant Update

CityScape was hired to conduct the independent wireless study for the Town to determine the needs and identify all viable options. They have been placed in contact with Datapath, and have provided the information on hand regarding our research and process with the cell tower effort. A representative was here last weekend and conducted a partial analysis and will be back next week. We have a group of residents who have expressed interest in being part of this, and we are setting up a meeting when the residents will be able to meet with him.

e. Departmental Reports (Building, Financial Balance, Public Safety). No comments.

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

a. Planning, Zoning & Variance Board Meeting 2-8-16 (Chairman Chris Hendricks)

Chairman Hendricks was excused from the meeting, and no one had questions on the meeting or minutes.

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

EDC. Vice Mayor Weick said they approved \$177,000 funding grant for Parabel USA for 41 jobs at this aquaculture farm in Fellsmere. They grow algae (duckweed) for use as a protein additive.

MPO. Councilman Haverland went and there was nothing of significance to report.

TCCLG. There was nothing significant, Councilman Haverland reported.

Beach & Shores. Councilman Ochsner said there was a presentation for new technology to survey the Coast, and a lion fish tournament will be held in Sebastian for which Councilman Ochsner was selected to chair that committee.

TCRLC. No meeting this month, Councilman Slater reported.

9. **Call to Audience**

John's Island Garden Group President, Jeanne Manley, addressed the Council to update them on their activity on behalf of the Town. In celebrating their 25th anniversary, they are presenting a gift to the community with an enhancement project involving the flagpole and anchor area. This group also contributed the courtyard planting and its perpetual maintenance a couple of years ago.

Cassie Mennen, immediate past President, thanked the Council for all of their hard work on complex issues. She said they have been working with Brian Barefoot and Robbie Stabe on this, and the group wants to give back

to the Town of Indian River Shores, not just John's Island. There are 125 women in this non-profit group. Liz Gillick, Landscape Architect, has been instrumental in doing the courtyard project, where the Group invested about \$10,000 rather than the \$4,000 due to the necessary installation of French drains. They have recently increased the budget for weekly maintenance to compensate for the frequent storms that come through.

Their new project is the front of the Town Hall complex and courtyard benches. It includes a crushed shell walkway with low bushes, and focuses on the American Flag with a new lighting system. They are working with Adam on redoing the plaque with brushed bronze, and some anchor restoration to prevent rust. They will be starting in two weeks, and have received permission to remove the large oak tree or at least some of its branches, and relocate the holly tree. There will be some leveling of the area where Town Complex sign is. They are also donating one of four teak benches with a 25th Anniversary plaque on each.

They requesting that the Council buy the matching benches for under the covered walkway around the Council Chambers. The benches are \$778 each, with a total of five including the one by the anchor. The Garden Group is investing \$5,700 for the rest of the improvements, and is asking the Council for \$3,000 - \$3,800 total.

Vice Mayor Weick asked about the holly tree, and it was agreed that it can be moved. They discussed in the future possibly donating a living Christmas tree. Mrs. Manley added that this is their community, and they are frequently here for the Postal Center, bridge, etc., and truly want to give back to its beautification. Even the trash can by the Postal Center will be replaced.

The Council thanked them, and Mr. Stabe said he invited the Garden Group to come and let the Council be aware of the effort they have already put forth. He shared with them that the Town has some capital improvement funds to do what has been proposed with the benches, which truly need to be replaced. He really likes the well thought out design by the landscape architect, Liz Gillick, who, however, is not in favor of removing the tree. She is working on this pro bono also as a way for her to give back to the community as well.

The Mayor and Council gave direction to the Town Manager to purchase the benches. The Mayor also mentioned that there will be tearing down and rebuilding the Community Center in the near future, and landscaping around that will be later. Mrs. Mennen said the building has been increasing in use, and they love that it is here. There was more discussion about the Community Center and elections.

Mayor Barefoot and the Council thanked the Group for all of their effort, and on behalf of the residents.

10. **Adjournment.** With no further comments, the Mayor adjourned the meeting at 11:35 a.m.

Respectfully submitted,

/s _____

(Approved by the Town Council at the March 28, 2016 meeting)