

5. **Mayor's Items.**

a. Discussion Status of State-Mandated Mediation & Lawsuit (Mayor Barefoot/Bruce May)

Mayor Barefoot opened by stating that we had received the audit report on the Florida Municipal Power Authority (FMPA) on February 18th, and turned to Mr. May of Holland and Knight for discussion. He reviewed the five initiatives the City has underway to facilitate the sale to FPL and reduce the rates. The FMPA has declined to participate in negotiation efforts with OUC or the FMPA to reduce the City's costs over the long term power arrangements. A conference call was made between OUC, FPL and the City, but without the FMPA and bond trustees, nothing moved forward. The report stated the FMPA has been busy with response to the AG regarding the preliminary audit findings. The City believes the rate study, for which a preliminary draft is expected March 17, will be helpful. Their optimization study is taking longer than projected, and it is expected to cover a broad spectrum of efficiency options under review. These are anticipated by November, while one point dealing with the generation site initiatives may be available in April.

The City's efforts to renegotiate its contract with OUC may result in some action to amend the contract (Appendix E of the mediation report). The City's Utility Commission at their meeting on March 12 will have the opportunity to discuss the consultant's report. The City was also supportive of another mediation session, unless the Town and the City agree to continue the abatement of the lawsuit.

Mayor Barefoot said the report is long on studies and consultants and short on specificity, particularly what type of rate relief we can expect. He shared his concerns with Mayor Winger on Monday (February 23) with Mr. Clem and Mr. Coment present. The meeting lasted about two hours, and was cordial and professional. Mayor Barefoot had expressed his personal concern and frustration that the City's report did not reveal anything, and no agreement was reached. He left with a better understanding of the status of the initiatives to reduce the rates and the not-so-obvious challenges. The AG report is now the FMPA's excuse not to talk to the City, while OUC has three options on the table. He concluded that with so many things unsettled at the moment, he thought it best to wait 60-75 days and let things play out. That should give clear indicators what our action should be.

Councilman Slater was concerned with the \$200,000 per month in extra costs to the City as opposed to FPL rates, and it seems there is a perpetual stalling tactic. He was agreeable with the extension if our offer includes specific responses regarding rates and the possible options for lowering them.

Councilman Haverland opined that FMPA has a stronghold on their members, and they have no reason to make any concession. He was skeptical that the rates would be lower in the long term and was not in agreement with extending the abatement.

Councilman Ochsner asked Mr. May about the right to control access (by electric providers) to our Town, and Mr. May said we have already asked for declaratory judgment about the City's right to encroach on our soil with their equipment.

Vice Mayor Weick asked if the delay of 60-75 days would be harmful to our timeline, and Mr. May assured him it would not, as the lawsuit is ready to be filed anytime.

There was more discussion among the Council members. Mayor Barefoot noted that we are neighbors with Vero Beach, and they are appreciative of more time to explore potential resolutions. They are understanding of our right to not agree with potential solutions. He added two more months in abeyance is not long in the scheme of things, as the franchise agreement is in place until November 2016. He is in favor of the extended abeyance.

This resulted in more discussion among the Council, with the Mayor turning the gavel to the Vice Mayor to **make a motion to advise the City that: 1) the Town would accept the offer to continue the mediation and conduct another mediation meeting; and 2) we propose to continue the "cooling off" period through May 15, 2015 so we can hear from**

the City the specific rate relief and date that we can expect that rate relief; and 3) conduct the mediation meeting on or about May 1st to hear the progress. The motion was seconded by Councilman Slater for discussion, who added we would have to have the specific rate relief to the Town, the date for implementation of that specific rate and permanency of it. Mayor Barefoot agreed to amend the motion to include Councilman Slater's addition.

Mr. May noted it gives Mr. Alvarez and the two other parties time to schedule the mediation and time to determine the best course of action. Vice Mayor Weick noted there is a legislative session March 3 through May 3, which includes pending legislation that could have an impact.

Attorney for Indian River County, Dylan Reingold, said they are filing a notice of appeal by March 12th or 13th with the Florida Supreme Court, which may have resulting action.

Mayor Barefoot noted the only concern the Council has is for the Town's residents. Giving the City the opportunity to respond as aggressively as they can may be enough for the other customers, including the City residents.

Mrs. Linda Bolton, PZV Board and Council candidate, was delighted to hear discussion regarding stopping the transfer of funds from the electric utility to the General Fund. This displays the seriousness of the Town's intention, and that we are holding off on the lawsuit. Incremental reductions each month would help both the ratepayers and the City.

Mayor Barefoot noted that the delay would also allow time for him to continue to meet with Mayor Winger, which cannot happen after the litigation is filed.

The vote was called after more minor discussion, which **passed 3-2 with Councilman Haverland and Councilman Ochsner voting nay.**

b. Discuss Potential Consumer Protection Measures After Franchise With Vero Beach Expires

This is about life after November 2016, Mayor Barefoot opened, whether or not we are successful with litigation, the question is what control this Council and future councils have over anyone who provides electric service. We have had no ability or right to challenge this in any manner thus far, and the Mayor did not desire to have the Town face this again. He asked Mr. May and Mr. Deason for their thoughts.

Mr. May said after the franchise agreement expires, there is a mechanism to give a sovereign municipality control over services within the corporate limits. Existing powers of the Town is home rule and statutory to insure the residents are protected from abusive or excessive practices and rates. Under Florida law, the municipality has the right to regulate the rates if it is not otherwise regulated by the PSC in Florida. The investor owned utility right is given to the PSC. He has reviewed the Town's existing ordinance, 50.02, which expressly reserves the Town's right, duty and obligation to govern and control rates charged by public or private utility operations. It was adopted in 1978, eight (8) years before the franchise agreement. In Section 5 of the Franchise Agreement, the Town temporarily agreed to waive this. After November 2016, we have the right to reclaim this authority.

Mr. Deason said a regulation structure specifically delineated by an ordinance would further protect the consumers. It has to be fair to all parties, with due process procedure to the utility and the ratepayers. Rates should be based on the cost to provide service, and regulators have the duty and right to properly set the rates. Types of reports, access to information, what has to be filed with the regulatory agency, how the agency will be funded, and what the source of funding will be are items to be delineated. Both Mr. Deason and Mr. May can provide this structure in the form of an ordinance, and offered their assistance to the Council.

Mr. Deason is the past Chairman of the Public Service Commission, so he can greatly assist with this, Mayor Barefoot added. He clarified that this has nothing to do with the lawsuit. If we lose the lawsuit, this process would help the Council to apply fair and reasonable rates next year after the franchise agreement expires and in the future.

Mayor Barefoot suggested that we schedule a workshop to further explore this option. Mr. Clem advised that this is an extremely major undertaking. There would have to be hearings with experts for the Town to determine if the charges are reasonable, and it is a very complex matter. Mr. May answered that this would certainly be an undertaking by the Town, but it is not unprecedented. Water/wastewater utilities routinely have this type of arrangement all over Florida. He added they could have a rough draft for discussion purposes within the next couple of weeks. The Mayor said there is no vote needed at this time, and asked the Town Manager and Town Clerk to schedule a workshop within the next few weeks to further explore this.

Mr. Glenn Heran asked about stranded costs if we are able to exit from the obligation to the FMPA. Mayor Barefoot said this is part of his conversation with the City. We are 8.5% of their customer base, so the question is, are we also 8.5% of their liability. This portion of the meeting concluded at 10:15, and several members of the audience departed.

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

a. February 9, 2015 Meeting Report – Planning, Zoning & Variance Board (Bill Beardslee)

1) **Variance for Garage Opening.** Mr. Bill Beardslee reported that they approved a **side entry garage** at 1201 Isla Verde Square, which was determined not to be contrary to public interest as it had been approved by the HOA, the PZV Board, and the Building Official. They asked for the **Council’s approval of the variance**, which was in the form of a motion by Councilman Ochsner with support from Councilman Slater. The **motion passed 5-0**. Mayor Barefoot asked if this was being addressed in the LDC revision, and Mr. Beardslee said it was not, but circumstances are that sometimes you just need to have a variance.

2) **Permissible Retail Uses at Spectrum Building.** Bill Beardslee said the Board looked long and hard at the Land Development Code, especially 160.05, C1A Limited Commercial Districts. It is similar to the Comprehensive Plan, and restricts the tenants to small retail stores serving the local customer base. The applicant’s requested list included the following, which basically mirror the types of businesses at the Village Shops: • apparel, accessories and footwear; • jewelry, glassware, china/silver, stationary, paper products & wedding registry items; • bookstore, art and handcrafted items; • day spa and personal services, by appointment only; • housewares and home furnishings; • florist; and • custom audio/visual.

The process would be by application by the prospective tenant to the Building Official, who has the right to approve the tenant. If the request is for a tenant who proposes something outside this criteria, it has to be presented to the PZV Board and then the Town Council. This process is designed to keep a tenant from waiting three months to get into the building. Ample time was allowed at the PZV Board for public opinion, at which six (6) of more than 25 present spoke.

There was brief discussion about the zoning, the commercial designation, and the type of businesses. A **motion to adopt the specific list (above) of permissible retail uses of retail space as presented** was made by Vice Mayor Weick with a second by Councilman Haverland, which **passed 5-0**.

Mayor Barefoot asked if this should be formalized by a resolution, and Mr. Clem affirmed, stating it would be ready to present at the next Council meeting.

b. Request to Reconsider Dog-Friendly Dining (Joan McLaughlin)

Mrs. McLaughlin said they have applied for a variance, as there are a limited number of dogs who come with their owners to the Village Shops. Many have asked if they could bring their dogs when they have breakfast or lunch at Citron Bistro. Others have asked to bring their dogs in from the vehicle. They are requesting that a small section on the side of the restaurant

be allowed to have dogs on a leash with their owner. There are no plans to announce that it is pet friendly, and there have been no incidents with the few small dogs that have come to this area of the restaurant.

The Council voiced no concerns, other than the Vice Mayor, who was not in favor as he has witnessed confrontations among dogs in public places. Mr. Clem said the drafted ordinance could be brought back before the Council.

A motion to bring back the Dog Friendly Dining ordinance was made by Councilman Ochsner, with support from Councilman Slater, which **passed 4-1 with Vice Mayor Weick dissenting.**

c. Reappointment to Code Enforcement Board – Culver & Brady (Town Clerk)

Mrs. Aldrich asked for the Council to consider reappointing two members whose terms had expired. With no discussion, a **motion to approve the reappointment of Art Culver and John Brady’s terms on the Code Enforcement Board through March 2017**, which was made by Councilman Ochsner and seconded by Councilman Slater, **passed 5-0.**

d. Approval to Accept FDLE Grant (Town Manager)

Mr. Stabe said this is an FDLE JAG Grant, which has been offered to the Town on an ongoing basis for a number of years. The funds are available annually, and we typically have received \$1,000 per year for the replacement of or addition to equipment used by the Public Safety Officers. Councilman Haverland, with support from Councilman Slater, made a **motion to accept the FDLE Grant for \$1,000, which passed 5-0.**

e. OPEB Funds Withdrawal/Investment (Heather Christmas/Councilman Haverland)

Mr. Stabe said we received the Trust Joinder Agreement, which needs the Council’s determination of whether to have a full service agreement or investment only. Also the equity versus fixed income split needs to be determined.

Councilman Haverland said we do not need the full service agreement, investment only would be sufficient. He **made a motion to approve an investment only option for the agreement**, which was seconded by Councilman Slater and **passed 5-0.**

The split for equity and investment, currently 70-30 stocks/bonds for the Police-Fire Pension Plan, was recommended for this General Employee Pension Plan also. **A motion to approve the 70-30 split for stocks/bonds investments** was made by Vice Mayor Weick with support by Councilman Haverland, which **passed 5-0.**

Ms. Christmas also asked that they **approve withdrawing \$100,000 the from FMIvT and deposit it into the FMPTF trust fund as set aside in the assigned fund balance**, which was stated in a **motion** made by Vice Mayor Weick and seconded by Councilman Haverland, **passing 5-0.**

f. Funding of Police & Fire DB Pension Plan

Councilman Haverland said we were waiting for a revised actuary study, which was received late yesterday. He discussed the assumptions used at hire date and retirement. His recommendation is that we continue to fund the plan at the rate we currently have. The poor performance of the stocks in comparison to the market was mentioned by Vice Mayor Weick. Councilman Haverland said that Manning and Napier has a very conservative approach to investing. The fees are definitely higher, and the Pension Board moved the administration from the Florida League of Cities to the diversified management because they didn’t like the performance there. The actuarial report, however, did indicate a 11.2% return net of fees for the Police-Fire investments.

7. **Town Manager**

a. Public Safety Director Announcement

The Town Manager announced that Richard “Rich” Rosell has been hired, and he will begin work for the Town on March 20. He is relocating from serving at the Dover, NJ Public Safety Department and Point Pleasant, NJ. Mr. Rosell has a Master’s degree from Naval

Homeland Security, a BS in Administration of Justice, is a graduate of the FBI National Academy, and a former US Marine. Not only is he extremely well qualified, Mr. Stabe continued, he also brings a fresh perspective and new ideas to the table. We fully expect him to be an asset to the Town and to our Public Safety Department.

Mr. Stabe thanked Acting Director Lt. Tony Dudley for his willingness to step up and take the helm, and he has done an admirable job. We owe him a debt of gratitude, he concluded, and the audience applauded. Councilman Haverland congratulated Mr. Stabe for completing the hiring process quickly and inexpensively, offering him “kudos.”

b. **Departmental Reports (Building, Financial Balance, Public Safety)**

The Council commented briefly about the expenses associated with the electric issue.

Mr. Stabe mentioned the PSD received its second reaccreditation, which is one of the 181 in over 500 agencies in the state. He recognized Accreditation Manager Kim Wall, who has kept things on track for the three years between accreditation.

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

a. **Council Committee Reports (MPO, EDC, TCCLG, TCRPC, Others)**

Treasure Coast Council of Local Government (TCCLG). Councilman Haverland reported that he attended the meeting this month, which focus of discussion was All Aboard Florida. The sense was that the program expanding north of Palm Beach will be delayed. He also mentioned the financial guarantees could have an impact if they can be stopped. Mayor Barefoot noted that when he heard Senator Rubio speak last month, he sensed that the Senator is less committed to the project. He added that there is not a passenger railway in the nation that makes money.

Councilman Haverland also noted that he had taken the State-required ethics course and passed.

Economic Development Council (EDC). Vice Mayor Weick said the Economic Positioning study has been completed, showing the County now has 7.5% unemployment, which is down from 14% in 2010. In Indian River County, 4,500 new jobs were added.

Beach & Shores. Councilman Ochsner said the beach restoration project is 70% complete, with Sea Grape access and Wabasso Beach still closed. Next month the Army Corps of Engineers will be at the meeting.

Treasure Coast Regional League of Cities (TCRLC). The All Aboard issues was also the main topic by this group, Councilman Slater reported. The opposition is very strong, but the right-of-way is owned by the railroad. A financial stop seems to be the only hope. He and Mr. Auwaerter discussed bonds through an entity that would not be guaranteed by the underlying counties or cities, who would be paid a fee. The bondholder would have to look to All Aboard Florida to be paid. They have access to the tax exempt market. There is a limit on private activity bonds by the State, and there is an exception for the railroad. When the FEC issued junk bonds, they did sell out. Only one county can be named on the prospectus, which would be Brevard.

Phyllis Frey, Date Palm Road Vero Beach, spoke as representative of *Citizens Against the Train*, that bonds cannot be expensed until the comments on the Environmental Impact Study (EIS) are mitigated. The expiration date on the bonds is July 1st, so if we stop the funding we can stop the train.

9. **Call to Audience**

Phyllis Frey spoke again, stating that as of February 17, the Indian River County Commissioners had voted to support efforts to stop the train by committing \$2.4 million, with an additional \$1.4 million from Martin County, St. Lucie Village, and St., Lucie County towards the effort. Citizens Against the Train raised an additional \$140,000. She said the Treasure Coast is committed, funded and lawyered up. It will take about \$2 million more, she and invited anyone interested to visit

www.saveourfl.com for donations to stop the train. There was more discussion including talk for moving the trains further west.

Karen Gandolfo had two questions regarding relocation of the dumpster, and invasive pepper trees, poison ivy and kudzu on the lot next to them. They want the offensive plants removed and the dumpster relocated from next to their driveway.

Mr. Clem said everything related to this project is on hold at this time, as there is pending litigation. He asked that any questions or suggestions be put in writing and directed to the Town. All concerns should be a matter of record.

Mr. and Mrs. Gandolfo further discussed the new building, with concerns about the types of businesses that were allowable. Mayor Barefoot reminded them there was a list, and anything not on the list would have to go before both the PZV Board and the Town Council for a variance approval.

10. **Adjourn.** Mayor Barefoot adjourned the meeting at 11:31 a.m.

/s _____
Laura Aldrich, MMC, Town Clerk

(Approved by the Town Council at the March 26, 2015 Meeting)