

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

REGULAR TOWN COUNCIL MEETING

Thursday, April 28, 2011

3:30 p.m.

PRESENT: Thomas W. Cadden, Mayor
Gerard A. Weick, Vice Mayor
Frances F. Atchison, Councilmember
Richard M. Haverland, Councilman
Michael B. Ochsner, Councilman

STAFF PRESENT: Richard Jefferson, Town Manager
Laura Aldrich, Town Clerk
Chester Clem, Town Attorney
Judith Lewis, Town Treasurer
Bill Schauman, PSD Director
Robert Stabe, PSD Captain

OTHERS PRESENT: Bill Beardslee, PZV Chairman
16 Indian River Shores Residents
IRC Commission Chairman Solari & Commissioner Flescher
4 IRC Representatives including Atty. Polackwich & Mgr. Joe Baird
City of Vero Beach Mayor Kramer, Rob Bolton, & John Ten Eyck
3 Guests
Reporters from Vero Beach 32963 and the Press Journal

1. **Call to Order**

- a. Pledge of Allegiance
- b. Invocation (Councilman Ochsner)
- c. Roll Call

Mayor Cadden called the meeting to order at 3:30 p.m., with the Pledge and Invocation given. The Town Clerk called the roll for the Council as reflected above.

2. **Consent Agenda**

- a. Acceptance of Planning, Zoning & Variance Board Minutes dated January 10, 2011
- b. Approval of Regular Town Council Meeting Minutes dated March 24, 2011
- c. Approval of Invoice from Town Attorney Chester Clem dated March 31, 2011
- d. Approval of Pension Board Workshop Meeting Minutes dated April 19, 2011

A **motion** by Councilman Ochsner, seconded by Councilmember Atchison, **to approve the consent agenda** was made. There being no comment or questions, the **motion passed unanimously**.

3. **Mayor's Items**

- a. Presentation of Certificates of Appreciation to Exiting Finance Committee Members
Mr. John Godfrey received a plaque given with appreciation and gratitude for serving on the Finance Committee from May 22, 2003 until April 28, 2011. Mr. Frank Beam was not able to attend.

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.

b. Presentation of Water/Sewer Offer from Indian River County (Erik Olson)

Mr. Olson stated that the Board of County Commissioners has affirmed that they want to serve the Town, and the Town will be treated like any other entity. The exact same rates that are extended to other County customers would be extended to the Town.

He addressed a question asked by Councilmember Atchison at the last meeting about necessary infrastructure costs in order to serve the Town, and they have found that it could cost as much as \$6.5 million without the City's cooperation. Staff made a presentation to the County Commission regarding the possibility of a rate structure that would allow them to recoup at least part of the costs, and the County Commission said "No, they will either be a customer of the County or they are not. The rates are the rates." Whatever the cost to bring the service, the Town gets the same rates.

The major element he recommended that the Town consider as a customer is that the rate predictability is historically stable, with no increases in the past 12 years or any projected increases. About three weeks ago, the bond rating agency reviewed the County's finances and found that they are as financially stable and strong as they were three years ago. The County is able to provide water in the future with the existing infrastructure through 2025 and beyond.

Regarding the reuse water, the best solution is to use a cooperative structure with the City of Vero Beach (COVB). They have asked John's Island East if they would like to receive supplemental reuse water from the north end, as the County is working on that infrastructure. The County is assuming that the infrastructure that will revert back to the Town at the end of the franchise agreement would continue to serve the Town. The County Attorney is here to receive suggestions in order to prepare a document (agreement) from the County.

Councilman Ochsner asked if the limitation to supply reuse water was a function of connections or capacity, to which Mr. Olson required it was connections. There is a supply deficit from the COVB, which the County could supplement very quickly with an additional million gallons a day at a lower rate.

Mr. Olson mentioned the meeting scheduled for the next morning between Indian River County and the COVB to talk about a water utility merger. The County will propose that they purchase the utility by paying off all of the City's \$25 million of debt and acquire their infrastructure. If this merger was accomplished by 2016, the infrastructure for reuse and piping becomes moot, the rates stabilize, there is no need for additional capital, and some of the water and wastewater facilities will be decommissioned. The economies of scale come into alignment, Mr. Olson concluded.

Councilmember Atchison asked how much lead time the County would need (to put infrastructure in place) in the worst case scenario, with no cooperation from the City, and he said it is a one year, very simple project, nothing new or unusual. Also helpful is that the construction costs are half of what they were four or five years ago.

Councilman Haverland asked about the talk of Sebastian paying a fee on top of regular rates. Mr. Olson said that there was no acquisition charge, they get a rate equalization charge which everyone in Indian River County pays, which is an additional 6% franchise fee that goes to the (County's) General Fund. The City of Sebastian has elected to charge their residents a 10% utilities surcharge, so the County collects it and remits it to the City of Sebastian. Councilman Haverland and Mr. Olson further discussed that there would not be an acquisition charge, just the standard County rate comprised of a base charge, volume charges, and a 6% franchise fee. Councilman Haverland said that every rate comparison schedule they have seen did not include the 6% fee, so it appeared that the rates were that much lower. Further clarifying, Mr. Olson briefly recapped the inclining rate structure for using excessive amounts of water per the County's conservation policy, and that both the COVB and the County have penalties for exceeding normal usage. The County does not charge based on meter size, just on the volume of use.

Councilman Ochsner asked how the penalty for excessive use differs between the COVB and the County, which Mr. Olson explained that they start with \$2.20 as a base rate, and then it inclines. Over 13,000 gallons of usage gets a \$7.70 penalty rate structure. He mentioned that construction is underway to provide pressurized reuse water on 77th Street with lines, pump stations, a \$2 million tank, and \$1 million to cross the bridge to deliver reuse water to the north end of the barrier island.

Councilman Haverland discussed the rates for the COVB versus the County, with Mr. Olson stating that the County reuse rates are projected to increase from sixty-five cents to eighty five cents over the next five years to cover recouping some of the costs associated with the 77th Street project. The negotiations with John's Island East to use their infrastructure to bring an increase in capacity for reuse water are underway. Councilman asked how susceptible to rate increases the County is. Mr. Olson said for many years, maybe 15 or 20 years, the rate was fifteen cents per thousand gallons. There is some catch-up in the rate structure that is approved by the Board of County Commissioners.

Councilman Haverland asked if it was the County's intent not to make a profit, and Mr. Olson said yes, to operate an Enterprise Fund in the purest sense as a business. At the end of the year they want a balanced budget with Reserve Funds to make improvements, in addition to covering normal General and Administrative (G&A) costs like anyone else does. According to the audited CAFR, the County made money last year, and they were able to put money in the escrow fund. This funds the projects. In 2001, they had a balance of \$50 million in the three funds, and in 2010 it was \$60 million, with projects fully funded in between. Councilman Haverland questioned the raise in reuse rates, and Mr. Olson said that they only make about \$200,000 in revenue a year (from the reuse water), with a budget of approximately \$40 million.

Vice Mayor Weick said most of his questions have been answered except if there is a hydrant fee, to which Mr. Olson said there was not. The County determined about eighteen months ago that their costs are part of the infrastructure costs. He asked if the rates are regulated by the Public Service Commission, and was told that they are regulated solely by the Board of County Commissioners. The rate structure for wastewater was discussed as \$2.86 per thousand base rate for 0-12,000 gallons, and then a tiered structure steps in. Potable water charges are \$2.20 for the first 3,000 gallons, then \$2.42 per thousand up to 7,000 gallons usage.

Mayor Cadden said that Mr. Olson stated they will need the City's cooperation for reuse water only, and instead explained that they also need it for potable water. The pipes in the ground are owned by the City and the Town, and there can't be duplicate pipes since it is parallel piping which is against the law. Councilman Ochsner said according to the franchise agreement, the pipes would be the Town's at the end of 2016. Mayor Cadden was concerned about the potential for litigation. Mr. Olson recapped the assumptions today, that the existing franchise agreement explicitly states that at the termination of the contract, whose infrastructure goes to whom. From Fred Tuerk Drive north, everything in the Town reverts back to the Town of Indian River Shores. South of Fred Tuerk Drive, everything reverts back to the Town of Indian River Shores. The only things that go back to the COVB are the underwater crossing, the water tank by the Fire Station, and the transmission lines south of Fred Tuerk. He did not foresee any potential concerns. The 16" water line that goes north from Fred Tuerk is owned by the Town, and the City uses that line. At Baytree, that line ties into the 16" County line. If the City doesn't desire to sell the underwater crossing, the County would just need to construct directional bores at Fred Tuerk from the mainland. Mayor Cadden said he agrees with what Mr. Olson says, and is hopeful but not certain that the Franchise Agreement is ironclad. He is anxious to attend tomorrow's meeting for regionalization. Mr. Olson said that regionalization makes very good sense, and the Town will never lose. This is a business decision, and yes, the devil is in the details. Mayor Cadden thanked Mr. Olson, and opened the discussion to the audience.

John Higgs, 45 Wax Myrtle Way, said it seems the County has offered the Town a very good deal today. He reiterated that the County sets the rates, and any profits are determined to go to the County residents, which includes the residents of the Town. The residents vote for the commissioners. He then compared it to the COVB actions of transferring money to the General Fund and the Town residents not having a vote in their operations. He encouraged the Council to make an aggressive decision soon so the County will get ready to take care of us and the City will accept regionalization. He was convinced that the rates will be better for everyone, and concluded that the taxation without representation goes away.

Councilman Ochsner made a **motion to send a letter to the City of Vero Beach stating that the Town will not be renewing the Water/Wastewater/Reuse Water Franchise Agreement**, which was

seconded by Councilmember Atchison. Discussion among the Council ensued, with Mr. Clem asserting that no action has to be taken with the City until October on this 30-year franchise. This is something that should be an agenda item. Councilman Ochsner said the reason for his motion was to encourage regionalization, providing an incentive to the City. We are essentially in parallel negotiations, Mr. Clem assured Councilmember Atchison. Verbal presentations are nice, but as Mr. Olson said, the devil is in the details. The **motion failed 4-1**, with Councilman Ochsner approving and the other dissenting.

(at the conclusion of this topic, 13 members of the audience departed at 4:35 p.m.)

4. **Planning, Zoning and Variance Board Report**

Bill Beardslee, Chairman of Planning and Zoning, said at the meeting on April 11th a request for a four-foot fence at 131 Shores Drive, proposed in accordance with the new ordinance as fully landscaped, was approved.

5. **Town Attorney**. Nothing to report.

6. **Town Manager** (Nothing to report)

a. Finance Committee Appointment (Bill Cairns)

Mr. Jefferson said that Mr. Bill Cairns has submitted an application for consideration to be appointed to fill the vacancy on the Finance Committee. He has been a managing partner of his own CPA firm, and Mr. Jefferson added he would be a good addition to the Committee. Councilman Ochsner, Chairman of the Finance Committee, concurred with him, making a **motion to approve the appointment of Mr. Bill Cairns to the Finance Committee**, which was supported by Vice Mayor Weick. Councilman Ochsner said that he had spoken with Mr. Cairns is comfortable with the appointment.

Councilman Haverland asked if Mr. Cairns has been on the Pension Committee, and was told that he has not. He discussed the procedures of appointing members to committees in general, wondering if there are not a lot of qualified residents who may be willing to serve who have no idea there is an opening. He suggested a more aggressive means of getting the word out so they could select from a larger group. He found three extraordinarily well-qualified candidates himself this week for the Pension Committee. Mr. Jefferson said we have asked everybody for recommendations, posted it on the bulletin board and on the website, and we did not get a response. Vice Mayor Weick suggested that we post all committee openings in Vero Beach 32963. Councilman Haverland recapped that an interested person is to fill out a form, present it to the Council, and the Council chooses. Mr. Jefferson said that heretofore we've had just enough volunteers to fill a vacancy. Mayor Cadden called for the vote on the **motion, which passed unanimously**.

b. Firefighters and Public Safety Officers DB Plan Pension Board Appointees from Council (Rubin Skyler)

Mayor Cadden continued that after the last meeting, he researched if it might be part of the Mayor's duties to be a Pension Board member, and found out from Tallahassee that it would have to be a charter change for anyone on the Council to hold dual offices. Mr. Clem added that there is a constitutional provision in the State against this, although some cities allow them to become an ex-officio (non-voting) member. Liability insurance for members on the Pension Board was discussed, which is provided by the Town.

Councilmember Atchison asked what "full time resident" refers to on the form, and Mr. Jefferson said that it must be someone who could attend the quarterly meetings. Councilman Haverland asked if someone could attend the meeting by phone. Mr. Clem said generally, no, but in the case of an emergency or extreme inconvenience, the Council or committee would determine whether it would be considered excused or unexcused.

Mayor Cadden continued that there is an applicant for the Pension Board, Rubin Skyler. He has been a long-time volunteer in this Town. Councilman Haverland asked if this was the Council's appointee, and Chief Schauman affirmed, reviewing the Board composition as: two from the Public Safety Department, one representing the police and one representing the fire plans; two from the

Council; and the fifth Pension Board member is appointed by those four. Councilmember Atchison asked if Mr. Skyler was going on the Finance Committee, and the Mayor said he is already a current member there; this is his application for the Pension Board.

Mr. Jefferson said that there are three openings on the Pension Board, two for the Council to fill plus the fifth member. **Vice Mayor Weick made a motion to approve the appointment of Rubin Skyler to the Pension Board. The motion died for lack of a second.** Councilman Ochsner said since there seems to be some discomfort in leaving members on multiple committees, he suggested that they leave Rubin Skyler and Bill Cairns on the Finance Committee, and Mr. Clem recommended that they not take action on the Pension Board appointees until he had an opportunity to research the definition of an officer for dual appointments on these boards. Mr. Jefferson said that in the meantime, we will continue to pursue applicants.

c. Code Enforcement Resignation (Rubin Skyler)

A motion to accept the resignation of Rubin Skyler from the Code Enforcement Board was made by Vice Mayor Weick, supported by Councilmember Atchison, which **passed unanimously.**

d. Finance Committee, Pension Board and Code Enforcement Board Openings

Bill Beardslee mentioned that he is also on the Code Enforcement Board, and may need to resign since he sits on the Planning and Zoning Board as well. The Town Clerk said that historically, members have occasionally served on more than one board or committee due to lack of volunteers. Chief Schauman suggested that they send a text alert to residents, homeowner associations and members advising of board and committee openings, which was acceptable to the Council.

e. Utility Update

Mr. Jefferson said that Town staff has been working with the City and County staff, and at the City's meeting on May 17 we should find out how the City Council stands with our proposal. Most of the questions have been ironed out. Councilmember Atchison asked how often he has met with each entity, and he said several times with each.

f. GAI Proposal for Additional Consulting Services

There is a proposal from GAI that has been received to sit with each Council member one-on-one to explain both sides of the City and County proposals on water/sewer and reuse water. Mayor Cadden interjected that at our workshop meeting here in February, he had proposed to Mayor Kenyon that Mr. Hartman should have individual meetings with each Council person separately and go into great detail. This is a very important and very complex issue, and so far Mayor Cadden and Mayor Kenyon are the only elected officials who have sat with Mr. Hartman. He is an extraordinarily good engineer, and the Mayor encouraged the Council to consider this.

Councilman Haverland, Councilman Ochsner and Councilmember Atchison all quickly objected to this, citing discomfort with the perceived conflict of interest. Mayor Cadden reminded them that in Mr. Hartman's letter to the then City Manager (Mr. Gabbard) he said he will work with the City on South Beach water issues, but not where there is a conflict with the Town of Indian River Shores, as he had the prior commitment with us. Councilman Haverland asked if it would not be better to have him come to an open meeting rather than individual meetings so they might learn from each other's questions.

Councilman Ochsner disagreed with the Mayor about the service that has been provided by GAI thus far, citing several instances of dissatisfaction and unwillingness to spend any further funds. Mayor Cadden was firmly convinced that the Council is not dealing with as much data as is needed. Comments regarding work-shopping the issue, that they have enough information now, that Mr. Hartman come as a goodwill gesture were mentioned. Waiting until there was something more definitive from the COVB seemed to be the consensus of the Council.

Mr. Clem said that from the beginning, he has been asking for expertise, and thought Mr. Hartman has given a great deal of information. Even though everything hasn't been handled the best, we need his or someone's expertise to give an analysis of the County's and the City's proposals. After the City acts might be the better time to bring him back in.

The possibility of scheduling a workshop if needed after next month's meeting on the 17th was left to Mr. Jefferson to arrange, which was tentatively decided for 1:30 p.m. on May 26 before next Council meeting.

7. Call to Council

a. Committee Reports

TCRLC. Councilmember Atchison reported that they did not meet this month.

TCCLG. Councilman Haverland said they had an interesting report about what St. Lucie County is doing to reduce expenses related to detained criminals in the system.

MPO. No meeting this month, Councilman Haverland reported.

Beach & Shores. Regarding Phase 2 of the Sector 3 Project, Councilman Ochsner reported that as of April 15, 49% had been completed, and by tomorrow 60% of the project should be done. The other 40%, which is the area North of Windsor, will be Phase 3 that may start in December. Planting along the dunes after the renourishment is completed begins on May 1. Phase 3 has been conceptually approved by FDEP. They need a notice to proceed (NTP), a special use permit from Archie Carr National Wildlife Preserve, and additional services from County staff and Coastal Tech. Since they didn't finish, they will save on some monitoring costs and pick up other additional costs, which may be a wash. Golden Sands and Treasure Shores are closed through the end of the month.

EDC. Vice Mayor Weick reported that the meeting was cancelled.

Affordable Housing Advisory Committee. No scheduled meeting.

Indian River County Mayors. Mayor Cadden said that the Town hosted this meeting in the Public Safety Department Conference Room, with the primary topic being to use PEP (cement) blocks to preserve the beach sand. It was brought up by Orchid's Mayor Dunlop, who thought the Beach and Shores Committee might want to also discuss this. Recent data has shown that it does an excellent job. It will be discussed at the next Mayor's meeting in Orchid.

b) Other Matters

1. FY11-12 Budget Guidelines Direction to Staff (Councilman Haverland)

Councilman Haverland asked for clarification on the budget process guidelines, thinking it might be appropriate to provide guidance to staff such as no new taxes, zero based budget, or tell us what you need. He has heard from some residents who are upset with their taxes and want to know what the Council is going to do about it. He is aware that the Town only represents eight (8%) percent of their taxes. Mr. Jefferson said that he proposes starting in June, with public workshops to review each department line item by line item. Councilman Haverland said he was concerned about the big picture, like making the budget come out the same this year or whatever, as a group, direction from the Council for their anticipation. The Town Manager suggested that they bring any ideas to next Council meeting. Mayor Cadden said that the Council has always allowed the staff to set the budget, and then review it. Ten years ago, he was stunned that the previous Council had held the millage rate flat and left a deficit. The Council had to take \$250,000 to \$300,000 from the Reserves to balance the budget.

Vice Mayor Weick said that we have to see what the estimated property tax assessment will be. Last year they were very close to the prior year, and we may be as fortunate this year. Problems such as fuel costs and the pension costs were discussed. Councilman Ochsner interjected that the Finance Committee works with Judy Lewis and Richard Jefferson to address the issues before they come to the Council. Anyone can come to these meetings, including the residents who have concerns. The largest portion of the budget is our PSD, which is derived from the contract with negotiated pay increases. Councilman Ochsner said that the Town Staff is sensitive to running lean and mean, and no one tries to inflate anything. Councilman Haverland suggested offsetting the known increases, which Councilman Ochsner explained that the Reserve Funds have been utilized since they seemed to be set higher than where it was determined they needed to be for hurricane emergencies.

Chief Schauman said that one issue that is not mentioned too often is the major equipment issues, and the PSD is in the process of preparing an Annual Report of the equipment. It will be finished by mid-May.

8. **Call to Audience**

Bill Beardslee, 621 Tomahawk Trail, said he has been keenly interested in the water/sewer issue, and is concerned that they are running out of time. He wondered if it is appropriate to have Erik Olson draft an agreement so there is something with a set date in our hands for the consultant to evaluate, and then have the data to go forward. Setting a date for a formal agreement, say July 15, gives us the time to review and make the final clarifications. Mr. Olson offered to do an agreement today, but the Council did not give the instruction to proceed. Mayor Cadden said the understanding is that he will do it, and there is a formal agreement going before the COVB Council on May 17. Councilmember Atchison asked where the County's formal agreement is, and Town Manager Jefferson said they have been working on it. Once there is indication from the City Council that they are interested in negotiations with the County for regionalization, it will be formalized. Mr. Clem asked for clarification from the Council that they wanted Mr. Jefferson and him to start on a formal agreement, to which the reply was that they want the agencies to produce a document for the Town Council to review, and then have the staff work on it. Councilmember Atchison asked if Town Manager Jefferson is making this clear to the BCC, and he affirmed.

Councilmember Atchison commended the wonderful letter to Public Safety, and two other compliments she has received that are not in letter form that the Department is doing a fabulous job. Mayor Cadden asked the Town Clerk to put it on the website and Bulletin Board.

9. **Adjournment**

There being no further business, Mayor Cadden adjourned the meeting at 5:30 p.m.

Respectfully submitted,

/s
Laura Aldrich, Town Clerk

(Approved by the Town Council at the May 26, 2011 meeting)