

MAYOR
THOMAS F. SLATER

VICE MAYOR
MICHAEL B. OCHSNER

COUNCIL:
ROBERT F. AUWAERTER
RICHARD M. HAVERLAND
DEBORAH H. PENISTON



TOWN MANAGER
ROBERT H. STABE, JR.

TOWN CLERK
LAURA ALDRICH

TOWN ATTORNEY
CHESTER CLEM

MINUTES REGULAR TOWN COUNCIL MEETING

Thursday, July 26, 2018

9:00 a.m.

6001 SR A1A, Indian River Shores, FL 32963

1. Call to Order 9:01 AM

- a. Invocation
- b. Pledge of Allegiance
- c. Roll Call. The meeting was called to order at 9:00 a.m., with the Invocation given by Vice Mayor Ochsner followed by the Pledge of Allegiance. Those present are listed as **TOWN COUNCIL** Mayor Slater, Vice Mayor Ochsner, and Councilmembers Auwaerter, Peniston and Haverland; **STAFF** Town Manager Stabe, Town Attorney Clem, Town Clerk Aldrich, Town Treasurer Christmas, HR Director Wiltzius, Executive Assistant Fentress, PSD Director Rosell (*arr. 9:13*), PSD Capt. Shaw, Officer Iovino, and Building Official Perry; **RESIDENTS** Linda Bolton (**PZV Board**), Joanne Sardella (**Finance Committee**), Nancy Auwaerter (**MPO CAC**), Melissa Mittag, Jerry Weick; Chris Hendricks (**PZV Board 10 - 10:07**), Ralph McCrea and Paul Bloomhardt; **GUESTS** Tim Day and Ben Newhouse with wife Barbie (Town Manager Candidates); 8 associated with the Surfledge project; Dylan Reingold (IRC Attorney), Jim Moller & Sam Nelson (John's Island); there were no **REPORTERS** present.

2. Agenda Reordering, Deletions, or Emergency Additions 9:02 AM

Mr. Stabe asked to **remove 7-a.** to be discussed at the next meeting, which was **done by motion** made by Councilman Auwaerter which was seconded by Vice Mayor Ochsner and **passed 5-0.**

3. Presentations/Proclamations - None

4. Consent Agenda

- a. Acceptance of June 11, 2018 Planning, Zoning & Variance (PZV) Board Minutes
- b. Approval of June 28, 2018 Budget Workshop Meeting Minutes
- c. Approval of June 28, 2018 Regular Town Council Meeting Minutes
- d. Approval of Invoice Dated July 17, 2018 from Holland & Knight
- e. Approval of Invoice Dated June 30, 2018 from Town Attorney
- f. Approval of Old Winter Beach Road Invoices
- g. Approval of License Plate Reading Camera as Budgeted for Jungle Trail

Councilman Haverland asked to discuss item 4g. regarding the Jungle Trail camera. A **motion to approve all but 4g. of the consent agenda** was made by Councilman Auwaerter with support from Vice Mayor Ochsner, which **passed 5-0.** Councilman Haverland opined that there was no justification in spending \$40,000 for the license plate reading camera and questioned the need for it with low traffic counts there, and the likelihood of a thief being aware that it exists. The Vice Mayor disagreed, stating we have signs to alert them and since the cameras on A1A cover the remainder of the roadways through town, it seemed silly not to close the only other open door. The Mayor agreed with the Vice Mayor. Councilman Auwaerter agreed that area has occasional suspicious activity, and Captain Shaw likened not having one there as to getting a home alarm system on the front door and not on the back door. A **motion to approve item 4.g. license plate reading camera for Jungle Trail** was made by Councilman Auwaerter with support from the Vice Mayor that **passed 4-1** with Councilman Haverland dissenting.

5. Town Attorney

- a. Ordinance 539, Noise Regulations, 2nd and Final Reading

Read by title by Mr. Clem as printed below, who preceded that by stating that it had first reading last month and has been properly advertised.

This is a Public Meeting. The Town of Indian River Shores does not transcribe verbatim minutes. Should any interested party seek to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs any type of special accommodation for this meeting may contact the Town Clerk at 231-1771

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, FLORIDA, A MUNICIPAL CORPORATION, REVISING ORDINANCES RELATING TO NOISE REGULATION WITHIN THE TOWN LIMITS AND PLACING ALL SUCH ORDINANCES IN ARTICLE IV OF CHAPTER 96, CODE OF ORDINANCES; ORDINANCES COVERED HEREIN ARE: SECTION 96.30, SPECIFIC NOISES PROHIBITED; SECTION 96.31, EXCESSIVE NOISE PROHIBITED and ENFORCEMENT; SECTION 96.32, CONSTRUCTION SITE NOISE; AND 96.33, SPECIFIC NOISE LEVELS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Clem reiterated what he had explained at the last meeting, it consolidates where our ordinances address noise into one place, gives us power to regulate noise, and sets limits to noise levels at 65 dB during the day and 60 dB at night. With no further discussion, a **motion to approve the second reading of Ordinance 539** was made by Vice Mayor Ochsner with support from Councilman Auwaerter that **passed 5-0**.

b. Quasi-Judicial: Surfsedge Development (9:13)

Mr. Clem had outlined formal proceeding below, and asked for the Building Department to begin.

1) Recommendation from Building Official/PZV Board. Mr. Perry said that the initial drawings had to have some minor revisions with the PRD plans versus what doesn't match our code. Mr. Perry said all of his concerns were addressed in the new design (more pavers, improved aesthetics, landscaping around shorter walls, less concrete, some setback violations, etc.) provided.

2) Developer (Lutgert) Presentation

Mr. Mike Hoyt, Lutgert, explained that they revised the proposed maximum multi-family zoning allowable of 6 units/acre on the 5+ acre parcel (32 units) to a planned mixed-use residential development with 24 units in total. Six single family homes line the entrance road into the complex, and a condominium building stretches across the width on the east side. There are two levels of living over parking for a total of 12 units, six on each floor in the condominium building, with an HOA master association, a condominium association, fitness space, a swimming pool for the community, and a rooftop terrace amenity space for the entire community. Residences are 2,600-3,500 square feet. The Town's 5' access walkway on the south is shown on this drawing, with a 6' wall and an ornamental fence along the back of the property that borders the County's Tracking Station property. An agreement is being prepared by the County for the construction of the crossover to connect to the Tracking Station Park. The 5' walkway as well as the ocean frontage walkway will be usable by the public, and invasive exotic plants will be removed. Councilmember Peniston asked about access by the residents, and Councilman Auwaerter asked about placement of the wall and the landscaping between it, which Mr. Hoyt answered satisfactorily before introducing the architect, landscaper, and attorney. Mr. Hoyt said the Town's engineering plans are nearly completed, a site development plan should be submitted within two months, and the DEP permit will take longest, into the first of the year. Councilmember Peniston asked when it will be completed, which Mr. Hoyt said will roughly begin with a model home in fall 2019, and after about half of the condominiums are presold the condominium building will be built, with a 16-18 month build. They are hoping for a three-year sell out.

3) Council Questions (*asked during the presentation*)

4) Public Questions (9:24)

Linda Bolton spoke as the only person on the PZV Board who voted negatively on this project. She mentioned the Town's recently revised LDC, and while that this beautiful project will be an asset to the Town, it doesn't match our definition of a 50-acre minimum for a PRD. One such variance was given in the past for 47.5 acres, which is close to 50 acres. This small development also waives front loading garages, but her biggest concern is the height issue. We have set it at 40', and this project goes 11' higher for the rooftop amenities, which is not residential space, but has towers. Ms. Bolton's concern is setting a precedence, and this is a slippery slope. She suggested a Town meeting to have a vision process for what we want to look like when we grow up. Our LDC is a suggestion, not a guideline, in this case. She also recommended that a statement for conflict of interest be completed. Councilman Auwaerter questioned if this applied to the PZV Board or Council, and she said both. He said they are required to disclose any conflict of interest by law, which Mr. Clem affirmed, and she said it is not part of the procedure and could be so stated as an opportunity for people to come forward if there are any grounds for recusal.

Councilman Haverland questioned where the excess height over 40' is located. Mr. Hoyt showed the elevation of the front of the building including the roof line, which shows the 19' x 19' elevator shaft is 5'2" taller than 40' in the middle of the building. Nothing is visible from the beach.

Jerry Weick, 20 Southampton Terrace, questioned the sidewalk connecting with the new FDoT sidewalk and it will. He also asked what the height inside the garage was, which Mr. Hoyt said is 18', with elevation for views inside the first level. Mr. Weick suggested they could lower the garage height. The County height limits were briefly discussed with Mr. Clem.

Ralph McCrae, Pebble Beach Villas, discussed the 5' pathway and reminded the Council again that this will be the Town's property and their responsibility to make sure the pathway is properly cared for and maintained. There will be a fence provided by the Town to separate it from the Pebble Beach Village property, with maintenance for the safety and security of the Town residents and PBV residents as the Town's responsibility. The Town's current 40-year old chain link fence will be gone.

- 5) Motion Received to Approve or Reject the Development Plan. A **motion to approve the waiver of 50-acre requirement for a PRD and to approve the Surfsedge Development Plan** was made by Vice Mayor and seconded by Councilmember Peniston **passed 5-0**.

- c. Ordinance 540, 2nd and Final Reading for Rezoning Land Owned by Lutgert Vero, LLC as PRD

Mr. Clem read by title for the second time Ordinance 540, rezoning the 5+ acre parcel owned by Lutgert Vero, LLC as PRD as follows:

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, FLORIDA, A MUNICIPAL CORPORATION, FOR REZONING OF A PARCEL OF LAND OWNED BY LUTGERT VERO, LLC, FULLY DESCRIBED IN THIS ORDINANCE; PROVIDING FOR LAND USE OF PLANNED RESIDENTIAL DEVELOPMENT (PRD) WITH ZONING OF PRD AS DEFINED IN SECTION 160.11 OF THE TOWN'S LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

With no further discussion, a **motion to approve the second and final reading of Ordinance 540 rezoning the parcel owned by Lutgert and known as Surfsedge development** was made by Councilman Auwaerter with a second from Vice Mayor Ochsner that **passed 5-0**.

(The Lutgert team and two Pebble Beach Village residents left at 9:43)

- d. Easement for DataPath Towers Ingress and Egress

Mr. Clem explained the pie shape boundaries from Fred Tuerk Drive to the cell tower site, as shown in the drawing. A **motion to approve the ingress and egress easement for DataPath Towers, LLC as recommended** was made by Vice Mayor Ochsner with support from Councilmember Peniston that **passed unanimously 5-0**.

- e. Corrective Easement for Utilities for Grantor's Name RE: AT&T Fiber Optics

The language in the original easement that was passed by the Council wasn't quite correct in the name of the Town of Indian River Shores, and it was to be signed by the Mayor rather than the Town Manager. A **motion to approve the corrective easement for utilities for AT&T Fiber Optics** was made by Councilmember Peniston with support by Vice Mayor Ochsner that **passed 5-0**.

6. Mayor's Items (9:46)

The sale of Vero Electric was unexpectedly challenged, Mayor Slater discussed, which will be addressed by the PSC before October. There is not much the Town can do, it's in the hands of the City of Vero and FPL. The County is following this as closely as we are. Councilman Auwaerter added that the Florida Industrial Power Users Group is the important challenger, and minor challengers are one civic association of Indian River County and two individuals. Mayor Slater added that he understood that each day costs \$55,000 a day in higher rates to all of the users. The School District will save about \$300,000 each year, Councilman Auwaerter interjected, and the Mayor said it costs the Hospital \$700,000 a year. Councilmember Peniston asked if the Town's portion of the purchase and sale agreement is still going through, and the Mayor said yes, it will be carved out if the entire sale fails as a partial sale, subject to the same review process.

- a. Introduce Candidates for Town Manager Position

Mayor Slater said that at the last Council meeting, the process for finding a manager to replace the retiring Mr. Stabe began. Council individually interviewed two of the five candidates, who are here today. Mr. Tim Day thanked the Mayor and the Council for their time and hospitality yesterday and today. The Staff was also tremendous, very open with him, and he had the opportunity to meet one of the law enforcement officers when he arrived, who was extremely professional and courteous. He was very impressed with the agency itself. The second candidate, Ben Newhouse, reiterated the staff and Council meetings yesterday were excellent and very informative. The community is gorgeous and very well-run. He has the feeling that the staff truly cares about the residents and elected officials. He is from Hurricane, West Virginia, and has been managing communities for over 20 years, every day is an adventure. He said he looks forward to their decision next month.

7. **Discussion with Possible or Probable Action** (9:55)

- a. Old Winter Beach Road Contract - Oversight Coordination & Completion of DEP Tasks 5, 6, 7, 8 (*Pulled from Agenda for August meeting*)
- b. Recommendation to Accept Bid for Generator Enclosure & Two Replacement Generators

Mr. Stabe said they did an Invitation to Bid that was properly advertised over time. Two companies, Summit Construction and Complete Electric submitted a combined bid for generators and enclosures. The generator quotes were within reason, although at a slightly higher price than two years ago. The generator enclosures for bid item number 2 was a disconcerting \$50,900. The Vice Mayor said he also had concern over the amount. Mr. Stabe said this is designed to be a well-built structure, but isn't a \$50,000 venture. Councilman Auwaerter originally brought the idea forward because the generator sits amidst oak trees, and having it destroyed during a hurricane defeats the purpose. Several comments followed from the Council, with Councilman Auwaerter asking Mr. Perry to reach out to his contacts in Brevard County or south of us for bids. Mr. Stabe said we did for the generators, and suggested that rather than using the expensive aluminum panels that have to meet wind load requirements, we just use concrete block. The current generator sits in a flood plain, and the new one has to be 3' higher. Mr. Stabe asked if they could *continue to research how to protect the generators in a cost-effective manner*, which was agreeable to the Council. A **motion to approve the replacement of the generators as item 1 in the bid and to reject bid item 2** was made by Councilman Haverland, seconded by Vice Mayor Ochsner, that **passed 5-0**.
- c. Memorandum of Understanding – IRC Solid Waste Disposal District Partial Landfill Fee Reimbursement (10:06)

Mr. Stabe had met with County Administrator Jason Brown and his staff of the Solid Waste Disposal District (SWDD) and successfully negotiated a rate of \$2.03 a month to be reimbursed of the \$2.59 per single family residential unit fee currently assessed and \$1.53 to be reimbursed of the \$2.07 per month for multi-family residential units, which is an annual reimbursement for this specific year of \$71,042. Those funds will be paid to the successful bidder for recycling services. The County will pay the Town monthly, and the Town will forward those funds to the recycling provider. This will reduce the cost to our residents for recycling for services not rendered the past three years. Councilman Auwaerter expressed appreciation to the Town Manager, the Town and County Attorney and Jason Brown for coming to an agreement. We have a revised agreement also, and a Memorandum of Understanding that the Town will be switching to cart-based recycling service, the County will be providing 3,000 carts free of charge, and the \$2.03 and \$1.53 will be reimbursed on a monthly basis. The Vice Mayor asked about participating in the County-wide bid process for recycling in the future, and Mr. Stabe said that was part of the recycling bid, to change the end date to coincide with the County's SWDD renewal dates. If we fold into the County's bid process, we will be able to take advantage of economies of scale and for additional fees, still enable the service levels the residents expect for curbside or backdoor service for Council's decision at some point. A **motion to approve the Memorandum of Understanding with the County's SWDD** was made by Councilman Auwaerter, seconded by Vice Mayor Ochsner, that **passed 5-0**.
- d. Interlocal Agreement IR Shores & IRC Solid Waste Disposal 20-Year Agreement for Recycling Service (Discussed above). A **motion to approve the Interlocal Agreement between the Town and the Solid Waste Disposal District for 20-Year Agreement for Recycling Service** was made by Councilman Auwaerter and seconded by Councilman Haverland that **passed 5-0**. Mr. Reingold thanked the Town for coming to a conclusion that was good for them all.
- e. Amendments to Cell Tower Lease Agreement, Section 3 and Section 8 (10:16)

Mr. Stabe said these are very minor changes in verbiage that were requested from DataPath, which in the first agreement didn't mention in Section 3 the \$300,000 as a total cost for the lessor. We have not been invoiced, but the original estimate of \$150,000 for upgraded branches is now expected to be \$70,000. A **motion to approve the amendments to the cell tower lease agreement** was made by the Vice Mayor and seconded by Councilman Auwaerter, **passing 5-0**.
- f. Voting Delegate to FLC Annual Meeting in August (Town Clerk) (10:17)

Town Clerk Aldrich asked if any councilmembers were interested in attending the Florida League of Cities Annual Meeting August 16-18. Councilman Auwaerter said being a voting delegate is not as important as other opportunities to learn, network and explore the marketplace of services. If a hotel room is available at the resort, he offered to go.
- g. Holiday & Council Meeting Schedule for 2019 (Town Clerk) (10:20)

The Mayor said he has already put them on his calendar, and the Vice Mayor and Councilman Auwaerter had no conflicts noted. With no other discussion, a **motion** was made by Councilman Auwaerter, seconded by Councilmember Peniston **to approve the tentative 2019 meeting and holiday schedule**, which **passed 5-0**.

- h. Request to Move September 27 Town Council Meeting to September 20 (Mayor Slater) (10:21)
Mayor Slater and the Vice Mayor both had a conflict with the September 27th meeting date, and a **motion was made to move the September meeting and 2nd Budget Public Hearing from the 27th to the 20th** by Vice Mayor Ochsner and seconded by Councilmember Peniston, which **passed 5-0**.

A1A Re-milling/Resurfacing Meeting. A meeting was held here on July 10th, which Councilman Auwaerter attended and updated them that the Project Manager, Linda Bell, and FDoT representative Donovan Pessoa had explained that this was a resurfacing and re-milling of A1A from Tides Road just south of Town to Coco Plum Lane north of County Road 510 by Disney. This was last done in 2001, and they will be upgrading the signage and installing a 6' wide sidewalk on the east side of A1A. It is not a widening project. About 25 residents were there to listen, and some expressed dissatisfaction with the proposed eastern sidewalk. FDoT claims they only have to remove 6 trees, as this is a new standard by FDoT to promote bicycle and pedestrian safety with sidewalks and a deeper swale. The proposed start date is mid-summer 2019 with the southern portion. Turtle Trail and Seagrape Beach accesses will have flashing crossings for pedestrians. Mayor Slater ascertained there is no widening of the bike lanes proposed, which was affirmed except one place where the vegetation had encroached into the bike lane that would be fixed. Also, FDoT told them that the irrigation and plantings on the east side that may be in the right of way where the new sidewalk goes will be the responsibility of the developments to remove it if they choose and replace it, hopefully *not* in the right of way. The Town Clerk said she had already mentioned this fact in a news alert, and would reiterate it again.

8. **Town Manager Updates** (10:25)

- a. Public Safety Salary/Benefit Study – Municipal Services Consultant Update

Mr. Stabe said he has received nothing further from Mr. Evertsen, who was to send updated spreadsheets. The Council had directed at the last meeting not to pay the final invoice.

- b. Cell Tower – AT&T and Verizon Update

Michelle has been diligent in keeping up with Datapath's staff and contractor, a "NEMA" box was installed, as well as an H-frame waterproof enclosure and the fiber conduit, and the cables are being pulled. The entire ATT array is installed, but the final adjustments and camouflage socks need to be added before the branches are replaced. AT&T will be the first to become active, possibly as early as October 2018. Verizon has not yet begun anything.

- c. Traffic Camera Statistics (10:29)

Councilman Auwaerter reminded Chief that the data backfill of data needs to happen. Chief Rosell noted the increase shown in sex offenders traveling through town could be as simple as just one employee of a contractor travelling though the cameras could be 60 instances in a month. There are signs up at the ends of Town now that traffic cameras are in use. There were three stolen cars one night in John's Island, and the IRSPSD Officer found an abandoned car, still warm, parked outside the gate, ran the plate, and as this was going on as the stolen cars were coming out of the gates. Chief is confident that they will catch the suspect and cohorts, as our cameras have been useful to catch criminals in ours and another's jurisdiction.

- d. Departmental Reports (Building, Finance, Town Clerk, Public Safety) (10:33)

Councilman Haverland asked if the Old Winter Beach (OWB) Road project and cost were on schedule, and Mr. Stabe said it is about 35% complete and everything is looking good.

A page was added by the Treasurer to her report about OWB per Councilman Haverland's request.

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

(MPO, EDC, TCCLG, TCRPC, IRC PSC Citizen's Oversight Committee, CoVB Utilities Commission)

- a. Committee Reports. Only Vice Mayor Ochsner reported that he attended Beach & Shores, and nothing of significance to the Town was discussed.

- b. Reuse Water (Vice Mayor Ochsner)

The Vice Mayor brought up the agreement with the City a number of years ago that was for 50 psi continuously, finalized at 40 psi with the exception of possible outages. The Estuary has no water pressure except for Tuesday, and 2.6 MGD is supposed to be delivered and we are only getting 1.4 million gallons per day. The City is not delivering, and he believes it is a significant breach of the agreement. The Vice Mayor continued that with the County line coming across, it may be a solution for reuse, or the City needs to deliver.

Mr. Clem agreed it is an appropriate time to understand the situation and see if there are changes that can be made. Mr. Nelson said John's Island got almost a million gallons last night, they have two direct feeds, one for the oceanside about 100,000 and 900,000 for the lake. Mr. Moller said the City tells them they just don't have the water available. More discussion with Mr. Clem and Vice Mayor Ochsner followed. The Vice Mayor

added we did agree with continuing with the City rather than going with the County as it would have taken two or three years for the County to be able to supply enough reuse water. We received the County rates from the City at that time. Jerry Weick said that Bermuda Bay is guaranteed certain days, which isn't working well, pressure problem shows on their own gauge, too high, too low, too inconsistent. Mr. Stabe said the solution discussed is looping the system at a cost of \$3-4 million. Mr. Haverland asked for rate consideration and Vice Mayor Ochsner said they should supplement with potable water, or let us out of the contract. The timetable for John's Island reuse water was briefly discussed with Mr. Moller, who is working through DEP permits, with Corps of Army Engineers and other permits in hand. Mr. Weick asked if Mr. Moller has possibility to use the pipe, which could supply 3 million gallons. The County could go north or south, which Mr. Reingold said they were planning to add customers. Mr. Clem said this is an important issue, but it is not the time to address this, maybe later. More discussion followed, with Councilman Auwaerter stating they haven't had a CoVB Utilities Commission meeting in months, and as Chairman may have one with a public forum to discuss this. It may be a difficult time with the electric issue right now.

10. **Call to Audience** No response.

11. **Adjournment**. The meeting adjourned at 10:49.

Respectfully submitted,

/s
Laura Aldrich, Town Clerk