



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

REGULAR TOWN COUNCIL MEETING
Thursday, September 22, 2016
3:30 p.m.

PRESENT:

Brian M. Barefoot, Mayor
Gerard A. Weick, Vice Mayor
Richard M. Haverland, Councilman
Michael B. Ochsner, Councilman

TELEPHONICALLY PRESENT:

Thomas F. Slater, Councilman

STAFF PRESENT:

Robert Stabe, Town Manager
Chester Clem, Town Attorney
Laura Aldrich, Town Clerk
Chief Rich Rosell, PSD Director

OTHERS PRESENT:

Residents **Bob Auwaerter**, Council-Elect & Chairman, Finance Committee; **Debbi Peniston**, Council-Elect; Chris **Hendricks**, PZV Board Chairman; Residents **Nancy Auwaerter**, **Matt Sitkowski**, **Patty & Bill Gundy**, & **David King**; Reporters **Janet Begley** and **Lisa Zahner**

a. **Call to Order**

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

Mayor Barefoot called the meeting to order at 3:36 p.m., followed by the Pledge of Allegiance and Invocation. The Town Clerk called the roll as reflected above.

2. **Proclamations or Presentations**

None.

3. **Consent Agenda**

- a. Acceptance of August 8, 2016 Planning, Zoning & Variance Meeting Minutes
- b. Approval of August 25, 2016 Regular Town Council Meeting Minutes
- c. Approval of September 9, 2016 1st Budget Public Hearing Minutes
- d. Approval of Invoice from Town Attorney dated August 31, 2016
- e. Approval of Invoices from Holland & Knight dated September 19, 2016

With no discussion, **a motion was made to approve the consent agenda as presented** by Vice Mayor Weick and seconded by Councilman Ochsner that **passed 4-0**.

4. **Town Attorney**

- a. Ordinance 529, Commercial Parking, Second and Final Reading

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, FLORIDA, A MUNICIPAL CORPORATION, ADDING SECTION 71.13, TRAFFIC SAFETY AND PARKING OF CONSTRUCTION, CONTRACTING, AND OTHER VEHICLES INVOLVED IN COMMERCE TO THE TOWN'S CODE OF ORDINANCES; PROVIDING FOR CONTINUITY; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Clem said this is the second reading of the Ordinance, and proceeded to read it by title as printed above. Chief Rosell, the Town's Public Safety Director, had brought it to them for consideration, and it was changed as per instructions from the Council at the August meeting to add that the permit would be provided with no charge to the applicant. Councilman Ochsner said that in Section B, Permit Required, sentence 2 it said "when purchased" and suggested it should read "when acquired." This was noted as a scrivener's error to correct.

Councilman Haverland opined that this is essentially totally unenforceable, as we are asking people to get a permit when coming from 40 states to drop cars off here. We will identify that they are in Town within minutes,

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.

and can direct them if there is a problem. There is a much smaller total percentage of local drivers who may cause traffic hazards. He believed our Public Safety Officers could easily solve this problem. He believed it could be as many as half of the car delivery trucks that would possibly be in violation of this ordinance.

Councilman Ochsner asked if there is any data about the number of trucks this could apply to, and Chief said there is no data, but this Ordinance is primarily directed at those who come here consistently. As a former truck dispatcher years ago, Chief said he was accustomed to making sure the driver had all permits necessary and knew the rules of each town before they leave for the road. He respectfully disagreed that they won't know the laws beforehand, and added that his department just wants it to be safe. Councilman Haverland discussed this further with Chief Rosell before asking if they disobey our Ordinance, if they will be forced to leave and bring back the equipment. The Chief said they would be given a warning first, and then with a subsequent violation a ticket would be issued. It's to get people to comply with State regulations. Having something in writing is enforceable to have A1A be as safe as possible. **A motion to approve the final reading of Ordinance 529 was made** by Councilman Ochsner and supported by Vice Mayor Weick, which **passed 3-1** with Councilman Haverland dissenting.

b. Ordinance 531, Election Signs, Second Reading

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, FLORIDA, ADDING SECTION 164.15, ELECTION SIGNS, TO THE TOWN'S LAND DEVELOPMENT CODE; PROVIDING FOR CONTINUITY; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Clem read the Ordinance by title as printed above, and said if you look at our comprehensive sign ordinance that has been in place for years, there was nothing that addressed election or political signs. This limits placement time to 30 days and requires permission from the property owner. The size is reduced compared to other areas in the County and the City of Vero Beach, and it stipulates that the signs must also be removed. He added that he does not envision any fines on this, and our Public Works Manager will still be picking them up if improperly placed.

Vice Mayor Weick asked why we differentiated between residential and non-residential districts, and suggested that all of the signs be limited to one square foot. Mr. Clem agreed that the change could be made at this point, removing paragraph 2. Councilman Ochsner agreed, and all agreed that removing the heading and eliminating one paragraph would effect this change. **A motion to adopt Ordinance 531 as final with amendments as discussed removing the differential between residential and non-residential so that all signs will be a maximum of 1 square foot** was made by Vice Mayor Weick and supported by Councilman Ochsner, **passing 4-0.**

c. Ordinance 532, P-F DB Pension Revised Plan Document, First Reading

This was read by title by Mr. Clem, who then turned the discussion to Mr. Stabe.

AN ORDINANCE OF TOWN OF INDIAN RIVER SHORES, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE TOWN OF INDIAN RIVER SHORES' POLICE-FIREFIGHTER'S DEFINED BENEFIT PLAN TO PROVIDE FOR AN OCTOBER 1, 2015 EFFECTIVE DATE; PROVIDING FOR CONTINUITY; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

It was explained that this was recently amended, and after adoption at the second reading the Plan Pension Attorney, Bonni Jensen, contacted Mr. Stabe to say that she was approached by a person who wanted to enter the DROP retroactive to October 1, 2015 as per the negotiated Collective Bargaining Agreement. This was not previously considered, and it is cost neutral, Mr. Stabe added. It does require the modification by ordinance, and as explained in Section 2, it allows a current participant who is at normal retirement age 90 days from the effective date of this ordinance to enter the DROP retroactive from October 1, 2015. Ninety days forward from the effective date, entering the DROP is from a prospective basis only.

Councilman Haverland ascertained that there were only two changes to this document, on page 20 and 21, as affirmed by Mr. Stabe. The other change is that earnings will be credited or debited using the calculation methods set forth by the trustees in its investment policy.

Mayor Barefoot commented about these changes are becoming expensive in attorney fees. **A motion to approve the first reading of Ordinance 532** was made by Councilman Haverland and seconded by Councilman Ochsner, which **passed 5-0.**

5. Mayor's Items

a. Electric Utility Litigation Update

The Mayor commented regarding the litigation with the City and the hearing before the PSC for the record. He said "the Town is disappointed that the Public Service Commission voted last week to deny our request to modify the territorial boundaries that divide our Town to comply with the Florida Constitution and to protect disenfranchised customers in the Town from excessive rates, taxation without representation, inferior service offerings and other unregulated monopoly abuses by the City's electric utility. I would urge you to read the letter that Senator Jack Latvala and Representative Debbie Mayfield submitted to the PSC. (Laura has copies) Those legislators stated our case eloquently and succinctly – **'it was never the intent of the Legislature that a group of Florida's consumers would be subject to the whims of an unregulated utility provider acting as a monopoly and lacking any accountability to its customers.'** Notwithstanding the PSC's vote, I continue to believe that the Town has constitutional right to be protected from Vero Beach's unilateral exercise of unregulated monopoly powers, and the territorial boundaries should be modified to reflect that constitutional limitation. An order memorializing the PSC's vote should be issued on or around October 3." The Mayor continued with a suggested **motion that we authorize our legal counsel to closely review the PSC's upcoming order and to take appropriate, cost effective steps to preserve and protect the Town's rights under Florida law and under our Florida Constitution**, which was made by Vice Mayor Weick and seconded by Councilman Ochsner. **The motion passed 5-0.** Meanwhile, our Town Council will have an opportunity to continue to monitor the situation closely, the Mayor added, assuring them any new developments would be discussed during the upcoming Council meetings in October and November.

6. Discussion with Possible or Probable Action

a. PZV Board Action September 12, 2016 (Chairman Chris Hendricks)

Chairman Hendricks said at the September meeting they reviewed three variance requests. At **1102 Baywood Drive in River Club**, a tree of special concern was requested to be removed, which was approved due to its poor condition and the home's designed footprint was reversed to preserve the remaining trees on the property with no mitigation required.

Their second request for a 9.47' variance on the north side yard and 3.02' in the south side yard setbacks for the home at **141 Mariner Beach Lane**. This was tabled initially but subsequently was found to be a zero lot line home, therefore no variance was needed.

The third request reviewed was for a new home construction for a side variance at **512 Feather Palm Drive, Palm Island Plantation**. Through no fault of the owner, the required setback of 12.5' was short by 3' due to an error by the surveyor. This was unanimously approved as it showed correct setback, but actual measurements were off on the certified plan. The surveyor reported the boundary issue, and the Board forgave the error.

b. Appoint Barbara Tilney for Another Term on the Code Enforcement Board (Town Manager)

Mayor Barefoot said that Ms. Tilney had agreed another 3-year term on this Board, and Vice Mayor Weick, with support from Councilman Ochsner, **proposed a motion to reappoint Barbara Tilney for a second term to the Code Enforcement Board**, which **passed 5-0**.

Future election-related committee changes were discussed with no resulting action.

7. Town Manager

a. License Plate Reader (Chief Rosell)

Chief Rosell provided a memorandum with August statistics, which shows vehicles twice as they come and go through Town. Of almost 150,000 total vehicles that were counted, there were 82 traffic stops, 20 citations issued, and two stops resulted in seized license plates (the owner pays for the car to be towed for impoundment). Councilman Ochsner asked if they have enough time to read, analyze and perform a stop on the vehicle while they are within Town limits, and Chief Rosell said they do usually have enough time before the driver reaches the South end of Town. They have mutual aid agreement that allows them to stop the vehicle if they are outside of the boundaries. Our officers have been instructed to not exceed speed limit when in pursuit.

Councilman Haverland said this is a great start for a report, having had the privilege of spending four (4) hours with Officer Iovino yesterday (5-9 p.m.). The alarm goes off reasonably regularly, and he asked if this could be incorporated in the current report. Having witnessed how it operates, he wondered if he might be good to have the Chief and Lieutenant and everyone on the road and pull every vehicle that causes the alarm to ding over to see what we have. As he sat in the car with Officer Iovino, there is a "ding" on the computer, the license plate pops up, a picture of the car comes up, and several minutes later the car shows up. He called it a remarkable experience, even being able to witness an arrest and transport to jail. He did note that at night it is difficult to get a photo of the car, although the license plate is clear. The Vice Mayor asked if the officers prioritize the stops to go after the more serious offenders, and Chief said absolutely.

b. Election Update (Town Clerk)

Mrs. Aldrich announced that there were three open positions for Council, and initially we had four candidates. One, Andrew Sowers, withdrew within the allotted time frame, and has since expressed interest in serving on the Finance Committee. That eliminated the need for elections, the Town Clerk concluded, congratulating Mr. Auwaerter and Mrs. Peniston on their Council-elect status. Mayor Barefoot would also be remaining on the Council.

Councilman Haverland asked about the Organizational meeting that would follow elections, and Mayor Barefoot asked about scheduling a Shade meeting also. This should be requested in October for November. It could be following the Organizational meeting so that the newly elected officials would be included.

Since the Elections are November 8 and the Regular Town Council meeting is scheduled for November 17, everyone including the Council-elect was instructed to check their calendars so that both the Organizational and Shade meetings can be set at the next Council meeting in October.

c. NPDES Presentation

Mr. Stabe said the Town is part of the Indian River County Unified Local Mitigation Strategy (LMS) agreement, and this is an associated annual requirement of the Nationwide Pollutant Discharge Elimination System (NPDES) and the Community Rating System (CRS) as an update for our stormwater management system and stormwater management plan. The annual Progress Report for the CRS was distributed, as well as the Non-Point Source Management Program information regarding our Indian River Lagoon. Mr. Stabe gave the presentation to eight (8) residents present at this meeting and to 12 others at the preceding Electric Litigation Update meeting. There has been no significant flooding within the Town since the last report on October 22, 2015, although one significant rain event resulted in over 11" of rain here. The Town currently maintains a Class 6 rating as part of the CRS program, which qualifies residents for a 20% reduction on their flood insurance.

To keep our citizens engaged and informed, the Town sends out email alerts and provides additional information on the Town website regarding storm water drainage issues. He reminded them that the Town successfully obtained a \$78,500 grant in 2015 for purchase and installation of a stormwater baffle box that was installed on Indian Lane. This is designed to reduce nitrogen and phosphorus from the stormwater before it enters the Lagoon.

A long term flooding issue in front of the Public Safety Department has been resolved when the Florida Department of Transportation (FDOT) granted permission for us to connect to its stormwater drainage pipes that discharge into The Estuary retention pond, which was all permitted and approved through the SJRWMD.

Funds for a Town-wide Stormwater Master Drainage Plan have been included in next year's budget, which will provide specific locations of all stormwater drainage outflows within the Town, including those in private developments, and allow us to develop strategies necessary to meet any current and future regulatory pollution reductions and identify any areas of concern for the Lagoon.

Our Public Works Director, Adam Brobst, works closely with the property owners, contractors and County personnel in maintaining the drainage systems and in keeping swales and structures free of debris within the Town. He regularly inspects the baffle box and ensures debris does not impede its proper function. Our Building Official, Jose Guanch, conducts routine inspections of open job sites to ensure contractors are following proper procedures regarding erosion control and site-specific drainage issues during construction.

Mr. Stabe concluded by encouraging the citizens to be diligent in helping the Town to reduce its pollutants by notifying us of any obvious drainage problems.

Councilman Haverland asked about the Old Winter Beach Road issue, and Mr. Stabe replied the County's desired improvements will be addressed by a new board of directors. He answered the Councilman's inquiry as to what the problem has been by explaining that this road was built, owned and is maintained by the County, and was initially constructed too low. Drainage has not improved but worsened, so much that an insignificant rain causes the flooding on Old Winter Beach Road and Jungle Trail. The County wants to redesign the entire road and its drainage. Mr. Stabe noted that he has been asked if the Town will consider taking ownership of the road and its future issues after this improvement. If this is done right and is functional, it should not be an issue, but we would be responsible for paving and other future costs, Councilman Slater added.

d. Update on 5' path and Maintenance in 5-acre property

An email thread from the appraiser was forwarded to the Council, whereby Mr. Boyle estimated that reducing the property by 5' x 650' is 3,250 square feet or 0.075 acres, has very little impact on the dollar value per acre so his appraisal remains \$7.7 million. Mr. Boyle noted that leaving the 5' path along the south would be a better idea as it could be used for site planning purposes and it connects to the current access. Councilman Haverland said the other interesting point was that the best value may not be condominiums as originally assumed, but single family homes may be higher and better use.

Councilman Ochsner said that **at the last meeting**, he brought up the issue of public access through this property, and the possibility that future councils may sell the property with no guarantee that public access will be maintained. A motion was made to carve off a 5' wide path at the south end of the property that will connect to the Tracking Station Beach Park access, which would eliminate the anxiety and concern by citizens in the area over potential loss of access to the beach. During that subsequent discussion, Councilman Weick, he continued, expressed concern that Pebble Bay Villas would object to the public access so close to their property. However, the President of the HOA said that they would welcome the access as it would prevent the public from actually attempting to gain access across their property. Councilman Haverland objected that by reducing the size of the parcel available for sale, that the value would likewise be reduced. Mayor Barefoot said that the land is an asset for the entire Town, suggesting that the path would only be a benefit to the residents adjacent to the path and that the remaining residents would lose out.

We now have the opinion of the appraiser that the value remains at \$7.7 million. Therefore, Councilman Ochsner concluded with a **motion that the Town dedicates a 5'-wide path at the southern edge of the subject property for public access to the beach through the Tracking Station Beach Park access point in perpetuity.**

Mayor Barefoot discussed the procedure with Mr. Clem if this were to be done, who said it would become dedicated as an easement by the Town Council, surveyed to the access point, and recorded on the property rolls. Councilman Ochsner said it would be a legal description change with no action required to improve anything at this point until or unless something happens to the property whereby we would need to improve the easement.

Councilman Haverland discussed making the path a street with access, which requires maintenance. Councilman Ochsner pointed out that this would be the developer's decision on how to lay out the community, and having the street there already could be a hindrance. Councilman Slater said as part of a future transaction, we can commit that a requirement is to have access available at the time of the sale. Let the purchaser determine with the Council's approval, how it best fits in to the plan. Leaving the access as it is now seemed best to him.

Councilman Ochsner noted there have been promises with nothing really done for 20 years.

Mayor Barefoot asked Mr. Clem what ramifications would be if this Council approves an easement, and two councils from now the property is determined to be sold. It is difficult to unwind a dedicated easement, Mr. Clem said, and this would be a formal action to dispose of Town property which should be an agenda item. He was not comfortable with taking any formal action today.

Mayor Barefoot reminded them that there was a motion on the floor to create the easement now or take steps to create it, and **the motion died for lack of a second.** Mayor Barefoot thought it was smart to maintain the flexibility, there is access now and it is not going away.

Mr. Stabe said he was asked about maintaining the property to clean up some of the invasive peppertrees, and he has contacted several tree companies. The verbal estimates to remove the peppertrees was very expensive, so he didn't recommend that the Town proceed with this. Land clearing companies may be a better option than the tree companies, so he has estimates. Councilman Haverland asked why we would do this, and Mr. Stabe said the peppertrees are highly invasive. The Councilman recalled cleaning some of the property years ago, and Mr. Stabe said there was an expense to clean up the 5' walkway of palm and peppertrees. To dress up the frontage along A1A, including taking out some peppertrees along the highway, was at least \$12,000.

Councilman Ochsner asked if Kempf Site Construction, who did the Fred Tuerk drainage project, had been contacted, as they had done some very good work quickly for him at a very good value. Mayor Barefoot recommended that *when* the Council decides to sell it, they follow the process of selecting who will be listing it, and then determine what restrictions the Council would like to have included in the transaction for development. They all agreed to leave it alone at the moment.

e. Cell Tower Update

Town Manager Stabe met with Datapath yesterday, and they have one complete application from one of the major carriers who is ready to commit as soon as the land lease agreement is signed. We have completed the site environmental review and it has been approved, the State Historical Preservation Assessment Office review is completed and approved, and we are awaiting completion of the Tribal review and the Flood Plain Final Environmental Assessment Review. Once these two reports are complete DataPath will file the Antennae Structure Registration (ASR) through the FCC, then come to the Building Department with plans in hand to file for a permit to construct within the Town. They will request to be heard by the Planning, Zoning and Variance Board. Once the permits and PZV Board approval has been granted, the tower will be up within 90 days.

Councilman Haverland asked Mr. Stabe if he or Datapath has had any interaction with the agencies during the approval process. Mr. Stabe said he thought there were 9 different tribes, and it was described to him that they will have 4 or 5 back responses quickly and there is interaction with the others as reminders and offers to

assist. It is being done as aggressively as possible, Mr. Stabe assured him. The Councilman asked about the Flood Plain assessment, and was told that is at the mercy of St. John's Water Management District and the DEP. It is in process, and could be approved any day.

Councilman Haverland asked if we have a deal with Datapath regarding the cost or percentage of return. Mr. Stabe said they have an agreement to erect the 130' maximum tall monopine realistic tower, which was estimated at 135' would cost \$300,000, and the monopine will cost approximately \$150,000 from the Town's pocket (anything over \$300,000). This is a relatively firm estimate, Mr. Stabe assured him. The terms of income split was explained as fixed dollar payments based on milestones, and revenue share based on the rental structure of each carrier. The actual tenant leases will impact the payments and milestone payments, Mr. Auwaerter explained. Councilman Haverland said this is big money, and we haven't approved anything.

Mayor Barefoot asked for a draft agreement of what the land lease agreement and revenue sharing might look like, which should be concurrently developed while the approvals are in process. Mr. Clem said he has the same interest with the construction and profit sharing agreements, and is only beginning to receive information. It needs to be formalized first, he added. Mr. Stabe said that is why he had the standard commercial land lease agreement sent to Mr. Clem from Datapath, which is going to come before the Council. It has to be reformatted to municipal terms from the commercial format. This will be on the agenda and hopefully available at the next Council meeting.

f. Departmental Reports (Building, Finance, Town Clerk, Public Safety)

Mr. Stabe said that Heather Christmas was officially back at work today from her leave of absence. Mr. Haverland commented that he did not get the PSD report in his packet, which was given to him by Mr. Stabe.

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

- a. Council or Committee Reports (MPO, EDC, TCCLG, TCRPC, IRC, PSC Citizens Oversight Committee)
Vice Mayor Weick and Councilman Haverland had no reports.

Regarding the **November meeting**, Mayor Barefoot announced he will not be here November 14th, 15th or 16th, but is here the 9th, 10th and 11th if anyone wanted to schedule the Shade meeting and organizational meeting for then, and possibly move the regular Town Council meeting up to that week depending on the volume of agenda items.

9. **Call to Audience**

Patricia Gundy, Pebble Bay Estates, asked about the entrance to the 5-acre tract, believing that the large gate was locked and it is hard to get through the side gate due to the weeds. She asked that the entrance be weed whacked. Mr. Stabe said she can enter through the double gate and close it afterwards to keep vehicles out.

Lisa Zahner asked when the **short term rentals** would be discussed in a workshop, and Mayor Barefoot said maybe in November. He added that he spoke to John's Island Real Estate, and they do collect bed tax. A brief discussion about November and December months usually having a sporadic population in town due to the holidays, and that January, as the most residents are back for the season, would be better. Also having feedback from the homeowner associations would be helpful in the meantime, he encouraged. Mrs. Gundy said she had spoken with a few people who said they would be pleased to have something in writing. The Mayor said in Central Vero people are buying property solely to convert to bnb rentals.

10. **Adjournment**

Hearing no further comments, the meeting was adjourned at 5:08 p.m.

Respectfully submitted,

/s _____
Laura Aldrich, Town Clerk

(Approved by the Town Council at the October 27, 2016 meeting)