



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

REGULAR TOWN COUNCIL MEETING

Thursday, September 24, 2015

3:30 p.m.

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

STAFF PRESENT: Robert Stabe, Town Manager
Chester Clem, Town Attorney
Chief Rich Rosell, Public Safety

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

OTHERS PRESENT: Bruce May, Terry Deason, Dylan Reingold, Jason Brown, Dr. Steve Faherty, Bob Auwaerter, Chairman & John Porta, Finance Committee; Chris Hendricks, PZV Board Chairman; Village Shops Jay & Joan McLaughlin, Jessica Lawson, Liz Hallinan (Bermuda Bay); Harry Howle; Residents R.W. Bracken, Mike LaPorta, Randy Rogers, Joe Hickenbottom; & Lisa Zahner VB 32963

1. **Call to Order**

- a. Pledge of Allegiance
- b. Invocation – Councilman Ochsner
- c. Roll Call – Town Clerk

The meeting was called to order by Mayor Barefoot at 3:32 p.m. The Pledge of Allegiance and invocation were recited and the roll call is as reflected above.

2. **Proclamations / Presentations.**

Mayor Barefoot recognized October as Domestic Violence Awareness month, and read a proclamation of acknowledgement in its entirety. Lewana Dupree arrived shortly after the meeting began to receive the proclamation, which was **approved unanimously** by motion of Vice Mayor Weick with support from Councilman Ochsner.

3. **Consent Agenda**

- a. Approval of May 1, 2015 Mediation (Multi-Agency) Minutes
- b. Approval of September 11, 2015 Special Called Town Council Meeting Minutes
- c. Approval of September 11, 2015 1st Budget Public Hearing Minutes
- d. Approval of Invoice from Suntree dated August 28, 2015 (Baffle Box)

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

4. **Town Attorney**

- a. Resolution 15-04, Optional One Cent Sales Tax Continuation (County)

Mr. Clem introduced the resolution as requested by the County and read it by title. He said it was first passed in 1989 and again in 2002 as a 15-year agreement, and complimented the outline of good outcome from this sales tax as provided by Jason Brown, Director of Management and Budget for Indian River County. The Town has been able to use \$485,000 from this funding for infrastructure.

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.

Dylan Reingold, Indian River County, said this optional sales tax has been approved by the County Commissioners and the cities of Fellsmere, Orchid, Sebastian and Vero Beach. The goal is to have this on the ballot for the November 2016 election. If the Town also supports this, it offsets the ad valorem tax base. **A motion to approve Resolution 15-04 supporting continuation of the one cent sales tax for Indian River County** was made by Vice Mayor Weick and seconded by Councilman Slater.

Councilman Ochsner commented that this is a very good resource to keep things up to par, as the tax is borne by the users of the infrastructure rather than just property owners. Vice Mayor Weick asked if the extra 1% is on all purchases, and Mr. Brown said it only applies to the first \$5,000 for large purchases. **The motion passed 5-0.**

5. **Mayor's Items (Possible or Probable Action)**

Mayor Barefoot commented on the Electric Utility Regulatory Ordinance, which has had the first reading and will have the final reading tomorrow. A lot of questions and objections were made by City of Vero Beach Manager Jim O'Connor in a letter sent to Town Manager Stabe, and the Mayor asked the Town's Special Counsel to briefly address the letter.

Bruce May, Legal Consultant for the Town, said that Mr. Stabe provided him with a copy of the letter dated September 23 from Mr. O'Connor that contained serious, unspecified concerns with the regulatory ordinance. The analysis of the letter from both he and Mr. Deason was that it looks like they are focusing on the Town's authority to adopt this kind of ordinance, and if we do, we may incur some type of costs. They are also concerned that we could run afoul of accepted principles of utility law. Mr. May said all of these concerns are, in his and Mr. Deason's opinion, unfounded. He read these statements:

1) We believe strongly that the Town has broad statutory and home rule powers to ensure that the inhabitants of this Town are protected from unreasonable rates and unreasonable utility practices. The Town's Code of Ordinances gives the authority, right and responsibility to govern and control rates of utilities operating within our borders that are not otherwise regulated by the Florida Public Service Commission (PSC).

2) The franchise agreement with the City says that the Town has agreed to temporarily refrain from exercising any regulatory authority over the City's rates during the timeframe of the franchise agreement which expires November 16 next year. The ordinance was carefully crafted to respect the authority of the ordinance and the City's rights during the franchise agreement.

3) Recognizing that the former Chairman of the Florida PSC, Mr. Deason, worked closely with Mr. May in crafting this ordinance, and they agree it complies with the law and its fundamental regulatory principles. Mr. Deason added that it was constructed so as to not interfere with PSC jurisdiction. They have authority over investor-owned utilities like Duke Energy, FPL, Tampa Electric Company, and Gulf Power. They are not subject to this ordinance. The Florida PSC has no regulatory power over rates and revenue requirements of municipal electric utilities like the City of Vero Beach.

5) Mr. May and Mr. Deason agree that this ordinance should not be costly to administer, unless the City makes it so. It is structured to fairly, efficiently and cost effectively regulate the rates while minimizing rate case expense. It provides the utility subject to the ordinance the option of opting-in to a regulated rate approved by the PSC. The ordinance allows the Town to sit as the Utility Board, and prescribe rates that are fair, just and reasonable.

6) Finally, in lieu of adopting the ordinance, the letter suggests that the Town work with the City to develop a way for the City's rates to be submitted to the PSC for review. This creative suggestion is riddled with legal and jurisdictional problems that create more concerns than it solves. The PSC has no jurisdiction over reviewing the rates, revenue requirements or contracts of a municipal electric utility as just mentioned. It is expressly excluded by the Florida Statutes and upheld by FL Supreme Court. Even if the City submitted itself to a rate case by the Florida PSC, any decision by the PSC would be unenforceable.

Councilman Slater said his understanding was that if a utility supplied more than 30,000 customers, the PSC could oversee that. This was brought to his attention because the City of Vero Beach said they had 34,000 customers, which was quickly reduced to 28,000 customers. There is irony, Mr. May said, as the law does require adoption of a utility ordinance if there is a utility serving over 30,000 customers in one county. The City has held that they are not subject to the PSC regulation. Councilman Slater said now it appears that this would now be in their favor. Mayor Barefoot thanked Mr. May and said that there will be a second reading of the ordinance.

The Mayor continued the update by stating that there was a meeting between Mayor Winger, City Manager O'Connor and representatives from FPL in response to the offer by FPL to purchase the Indian River Shores customer base for \$13 million. They suggested the purchase price should be \$64 million. Mr. Deason was asked to analyze this offer.

Terry Deason said as requested by the Mayor, through Mr. May, he had done an analysis based on publicly available information found on the City's website. This calls their analysis into question if it is to be used to value the Town's system. It is called a rate impact analysis, and there is no discussion of rates at all. It would have to include a post-analysis after acquisition and a revenue requirement, which were not part of this analysis. It simply looks at five (5) categories to determine a cost impact, and does not look at a market valuation with a willing buyer and willing seller considering current economic conditions to arrive at a system value. These cost impacts the City wants to make whole is the prime focus. The City's suggested \$64.5 million basis was derived is almost \$22,000 per customer acquisition cost, and he has never seen a number of that magnitude submitted for consideration. The PSC would consider the book costs of the assets and impact on existing FPL customers, and Mr. Deason said this would leave the PSC not able to approve this transaction.

The five cost categories, Mr. Deason continued, would include a number of aspects that inflate to lead to the \$64 million. It requires a 2.5% escalation rate and cost categories being utilized for 30 years. There is some question as to whether all five of the categories should be included in this analysis. He came up with \$13.3 million personally, which is coincidentally close to the FPL offer of \$13 million. That is the market value of the IR Shores system. The \$64.5 million is certainly not the value of the Town's system.

Mayor Barefoot asked Mr. Deason, with the experience as the Past Chairman of the PSC, if this came before the Commission would it reach the light of day. Mr. Deason said he didn't believe FPL would present it as the value is not appropriate, but if it were submitted, they would be concerned about the impact to the current FPL customers. The cost to acquire the assets, acquisition premium, and other factors would not be reasonable to include in the rate base. Revenue from Indian River Shores is not adequate to compensate for these costs. Mayor Barefoot asked Mr. Deason about the number for the depreciated value of the assets of Indian River Shores on the City of Vero Beach's books rumored to be at \$3 million, to which Mr. Deason said they have not verified this. They don't have access to this detailed information, only what is publicly available.

Mayor Barefoot thanked Mr. Deason for his explanation, time and effort. He asked him if he had any feeling about how the City's rates could be affected by the rate ordinance. Mr. Deason said the City's rates have not been subject to an independent third party review, so they may or may not be unfair. The purpose of regulation is to make a determination that the rates are fair, just and reasonable. We do not have this assurance currently. This ordinance was drafted to be in compliance with Florida law, and consistent with principles as applied by the PSC in setting fair and reasonable rates. It is not intended to be punitive to the City.

The Mayor asked about the rate differential when we initiated the law suit last year between FPL and the City, which was about 25%, and today, Mr. Deason added, it has increased to about 30% higher. Mayor Barefoot said the City loves to refer to their utility as a profit center, and the usual practice with a not-for-profit is that the savings would go back to the customers. They discussed the City's financial matters further before the Mayor thanked them once again. He recognized the Chairman of the Finance Committee and member of the City's Utilities Commission, Bob Auwaerter,

who has spent a lot of time analyzing this and has done a really good job. He said Mr. Auwaerter will be involved with this, and he thanked him for his input.

At 4:09 p.m., Mayor Barefoot noticed Lewana Depree and presented the Proclamation (Item 2.a.).

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

a. Planning, Zoning & Variance Board Meeting 8-10-15 (Chairman Chris Hendricks)

Chairman Hendricks recapped the August 10 meeting, which included a request site plan revision to accommodate a **new pizza restaurant** which resulted in a long and thoughtful discussion by the Board. The requestor is proposing this for the south side of the Village Shops in order to bring more patrons to the businesses at that end where the flower shop had been. An upscale restaurant is planned to be open 7 days a week from 11-9 and serve pizza, salad, desserts with beer and wine available. There would be no delivery or take out service. The Board reviewed the C1A Commercial District to be certain that the traffic flow, odor and impact on the surrounding area were considered. Chairman Hendricks discussed the 14 criteria in detail, which the Council was given a copy of for reference and are *attached to these minutes*. No emission of smells was one of the key issues, which is the same requirement Citron Bistro follows. No swimsuits are allowed in the dining area, which includes 30 outdoor seats. Owners Jay and Joan McLaughlin were present, and said they plan on owning this in perpetuity.

Vice Mayor Weick asked about signage, which are not lighted. Mr. Hendricks reviewed them as four in total, on or near the building. Councilman Haverland asked if everything requested is within the existing code, which the only variance is for a minor site plan revision. It would be the only pizza in Indian River Shores. Mr. Hendricks said the recommendation is to approve the requested site plan modifications.

Mr. McLaughlin explained that there would be some protection from the rain at the outside eating area on the back row, which is not visible from A1A. They are not requesting a dog-friendly variance. A **motion to approve the site plan modification for Village Shops** was made by Councilman Ochsner with a second from Councilman Slater, which **passed 5-0**. Mr. McLaughlin clarified that the shoppers could take out a limited number (20) of pizzas per day.

Also Citron Bistro had received approval for construction of storage on the side of their existing building.

Approval was granted for removal of tree of special interest on Baywood with mitigation of two live oak trees.

The last request was for a v-shaped marketing sign for the 6000 A1A office building announcing rental of retail space. The Board discussed at length if it was a real estate sign or construction sign, which was determined to be real estate with 20 square foot sign approved until the Spectrum building is removed. Mayor Barefoot thanked the Board for all of their hard work.

b. 2016 Council Meeting and Holiday Dates (Town Manager/Town Clerk)

Mrs. Aldrich said this schedule for holidays was prepared based on what the County has approved, and set a suggested calendar for Council meetings based on the fourth Thursday of the month with the exception of November and December. A **motion to approve the holiday and Council meeting dates as presented** was made by Councilman Haverland with a second from Vice Mayor Weick, which **passed 5-0**.

c. Auditor Engagement Letter for FY Ended 9-30-15 (Town Manager/Town Treasurer)

Ms. Christmas presented two engagement letters for audit for FY 2015 audit, which should begin around December and depending on the actuarial valuation, be ready for presentation approximately April. A **motion to approve engaging Berman Hopkins Wright & LaHam for the Town's audit for FY2015** was made by Vice Mayor Weick with a second from Councilman Haverland, which **passed 5-0**.

d. Committee Actions

1) Finance Committee: Reappoint John Porta for 4-Year Term. Mayor Barefoot thanked Mr.

Porta for volunteering again, and **a motion to reappoint John Porta for a 4-year term to the Finance Committee** was made by Councilman Ochsner with a second by Vice Mayor Weick, which **passed 5-0**.

- 2) Finance Committee: Consider Alternate 1 Bill Cull, River Club. Mr. Cull was not present, and since the Council was not familiar with him, the Mayor asked Mr. Auwaerter, with the Council's approval, to please interview him prior to the next meeting.
- 3) Finance Committee: Consider Alternate 2 Randy Rogers, John's Island. Some of the Council knew Mr. Rogers, who was present at the meeting. **A motion to appoint Randy Rogers to the Finance Committee as an alternate** was made by Councilman Haverland with support from Councilman Slater, which **passed 5-0**.
- 4) IRC School Planning Citizens Oversight Committee: Consider Applicant Jerry Solin. Councilman Haverland asked if this is a position that has existed, and Mrs. Aldrich said that there was a resident on the Committee who had to resign due to illness, and this is only an annual meeting. **A motion to appoint Jerry Solin to the School Planning Citizens Oversight Committee** was made by Councilman Haverland and supported by Vice Mayor Weick, which **passed 5-0**.

e. Pension Buyouts (Councilman Haverland)

An article in the Wall Street Journal prompted Councilman Haverland to ask the Council to consider exploring the Town how various entities are buying out pensions, which appears to be beneficial to the buyer and presents options for the employee. He wondered if the Town wanted to consider this, and ask the two actuaries if they have been involved with this.

f. Retiree Medical Buyouts (Councilman Haverland)

While meeting with another government official in a different area, he wondered if it is possible to offer a medical retiree buyout to someone who is employed. This is to give up their right while they are employed to subsequent retiree medical benefits. Mr. Clem said this would take some research. Councilman Haverland said they had such great success in converting more than a million dollars in liability before, and thought if we could do this with existing employees it may be worth exploring as an option, not a forced situation. Mayor Barefoot said the Florida law requires us to offer insurance to retiring employees. The Town Manager was tasked to ask the actuary. Councilman Ochsner said this may be good for the Finance Committee to explore if there is a possibility, and then make the recommendation.

7. **Town Manager**

a. Outstanding RFP – Telephone System

Mr. Stabe provided a memo regarding telephone quotes received, and that the recommendation was to go with Forerunner Technologies. The Finance Committee Chairman has reviewed and worked with him on this, and he asked for a motion to contract with Forerunner for \$26,269 and \$13,500 to put fiber optic cable to the Public Safety Department. It would be for one phone system rather than two, and we have been paying \$2,200/month total that would be brought down to \$549/month with a 5-year contract. We budgeted \$25,000, and this additional \$15,000 more is for infrastructure, which is offset by monthly costs. The second request for RFP's yielded three responses. Councilman Slater asked if there is a performance provision that it has to work, and Mr. Stabe said the only proposer that includes a 24/7 remote and personal representative for technical support is Forerunner. Councilman Ochsner said they brought in Windstream fiber optic to the church five months ago, and it has worked great. This is the same as proposed by Forerunner. **A motion to contract with Forerunner Technologies for 5-year telephone service** was made by Councilman Haverland and supported by Councilman Slater, **passing unanimously 5-0**.

Mr. Stabe also mentioned that he met with DataPath Tower, as approved by Council, and he provided the necessary letter of engagement to begin finding carriers. They have three options for location of the tower to explore. The FAA is a large part of the tower process, which must be determined to not be in the way of flight patterns. Restrictions on height and lighting will also be

dependent on FAA approval. The three (3) sites are all on Town-owned property: Town Hall, Public Safety Department complex area, and on the end of Fred Tuerk Drive at the substation property. He recommended that they schedule a workshop to receive resident input, which was tentatively set for October 22 before any type of project idea goes to the Planning, Zoning and Variance Board. Mayor Barefoot said there will be people in favor of one location over another. One letter received from Bermuda Bay homeowners has been submitted to DataPath, who thanked Mr. Stabe.

The length of time once the site decision is made is between 8-12 months with no snags to have an operational cell tower. We are working with John's Island for a second tower if needed. They are not part of the Town's project, but as part of the Town. They have approval and a preference on how to finance it also, the Mayor added.

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

Mayor Barefoot said the Council receives calls about construction projects that are supposed to be completed by October, and encouraged Jose to remind the contractors to stay on target completion dates. The homeowner ends up waiting to occupy their homes in October.

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

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

Beach & Shores. No report.

TCRPC. No report.

TCRLC. Councilman Ochsner went to this meeting for Councilman Slater and reminded him that he is on the nominating committee.

TCCLG. No report.

MPO. No report.

EDC. No report.

9. **Call to Audience**

Dr. Steve Faherty reported on natural gas that will be piped to this area, as it is tied to the Interstate 95 improvement project. Fellsmere is connected, and Sebastian recently connected the Sebastian River Medical Center to natural gas. This is Florida City Natural Gas, and it presents an opportunity to get lower costs for energy by using natural gas rather than electricity. A 2013 press release stated that it is expected to be on the barrier island within two years. Mr. Faherty asked if the Town could work with Florida City Gas to bring natural gas here for residents. The earlier the better, as it helps by providing competition for the electric utility. Mayor Barefoot asked him to provide contact information to the Town Manager.

10. **Adjournment.** The meeting was adjourned at 4:51 p.m.

Respectfully submitted,

/s _____

(Approved by the Town Council at the 10-22-15 meeting)