



MINUTES
Town of Indian River Shores
Special Called Town Council Meeting
Reuse Water Issue
Tuesday, March 16, 2021
9:00 a.m.

6001 N. STATE ROAD A1A, INDIAN RIVER SHORES, FL 32963

1. **Call to Order**

- a. Invocation
- b. Pledge of Allegiance
- c. Roll Call

Mayor Foley called the meeting to order at 9:00 a.m. The Invocation was given by Vice Mayor Carroll, followed by the Pledge of Allegiance. The Town Clerk called the roll for the **elected officials**, with those being present as follows: Mayor Brian **Foley**, Vice Mayor Sam **Carroll**, Councilmember Christian **Hendricks**, Councilmember John **McCord**, and Councilwoman Mary Alice **Smith**. **STAFF** present were Deputy Town Manager & Town Treasurer Heather **Christmas**, Town Clerk Laura **Aldrich**, Town Clerk Assistant Chelley **Pallo**. **RESIDENTS** present were Karen **Drury**, Bob **Auwaerter**, and Hap **Schroeder**.

2. **Arcadis Feasibility Study & Town Water Service/Water Dispute Status**

Mayor Foley said normally, the Town Manager would be giving the background on this, but because of Mr. Griffin's resignation due to health reasons and other matters such as coordinating with the County, this discussion has been delayed for several meetings, which is why a Special Called Meeting was required, as the subject is now time sensitive. For those who read the proposal, the completion date goes out 345 days. So, with an October 2023 termination date for the City of Vero Beach Franchise Agreement, every day counts.

Mayor Foley continued by saying the purpose of the meeting is to decide whether to grant contingent approval to allocate \$121,321 for a feasibility study regarding connecting utilities with Indian River County. The scope of work in the Arcadis proposal is fairly detailed and includes everything from our capacity needs, the cost to connect and disconnect, detailed analysis of the pipeline and even funding evaluations. On the funding side, Mrs. Christmas is still looking into what can be done with the \$1.8 million CARES Act allocated to the Town from Congress. It does appear that allowable usage of these funds will be broader than the previously approved packages from Congress.

The reason that a contingent approval is being requested of Council is that we want to make sure, before spending the taxpayers' money, that we have the cooperation of the needed County officials in order to conduct the study. Staff time and resources are going to be needed from the County, without which the study cannot be completed. Mayor Foley invited discussion from his fellow Council members.

Councilmember Hendricks asked when Mayor Foley believes the case against the City of Vero Beach will be on the docket. Mayor Foley said the two are somewhat unrelated, but litigation is a "hurry up and wait." You file a complaint, the answer is filed, allegations and counter-allegations are made, and then you engage in what is called the "discovery" process, which is essentially exchanging documents. We have entered that phase. The County has received a public records request from the City of Vero Beach (CoVB) and the Town received a

Request for Production of documents. The Town has also served the CoVB with a Request for Production. His best estimate is that with typical granting of extensions of time, this process will take about 60-90 days. Then will be the “deposition” process, which will be an examination of the witnesses’ hopefully relevant knowledge of the facts. Once this process ends, we get a hearing date. We do not have a reasonable estimate for a hearing date, and we have been advised by Mr. Berg that there are delays at the courthouse due to COVID-19.

Councilmember Hendricks said the reason he raised the question is because they are not to breach the contract with the CoVB until October 2027, meaning we cannot cancel the contract and join up with Indian River County before then. Mayor Foley said we can begin preparations and do analyses, and we are also claiming that the CoVB is in breach, one of the consequences of which is nullification of the contract. Councilmember Hendricks said that is all part of the decision that we will have to make once we know the results of the case; Mayor Foley agreed.

Councilmember Hendricks said he just questions the timing of this, as we are unable to do anything until 2027. He went on to say that he read an Article from November 2019 featuring IRC County Administrator Jason Brown discussing what the CoVB would need to do in order to come on to their system, and the number one principle was that there cannot be any additional cost to the current members of the Indian River County sewer system, and that the CoVB would have to be willing to pay for the underground lines, for the expansion of the facility and be prepared to pay higher rates. He just wanted to bring that to Council’s attention. He said there was another TC Palm article in which the CoVB stated they did not want to consolidate with the County because they don’t want to lose the \$1.5 million.

Mayor Foley thanked him and said he thinks it is important to not confuse consolidation with the Town potentially moving to the County system, as they are two separate issues. Councilmember Hendricks asked him to define what it would be if the Town went to the County, a consolidation or a merger, or... ? Mayor Foley said it is not a consolidation to move from the CoVB to the County. Presumably, the City will still try to operate.

Mayor Foley said to keep in mind that we have a little bit of goodwill to earn back from the County given that back in 2012, the County felt that we kind of “led them down the garden path” only to negotiate a better deal with the CoVB. If he were in their shoes, he would be understandably cautious about proceeding with the Town, particularly since we are involved in litigation with the CoVB. Mayor Foley said he told the County that he has no intention of using them to negotiate a better deal with the CoVB. We are proceeding along this path because we truly believe we need to have an assessment of our options, as we are concerned with the CoVB as a partner going forward. The one thing we can’t guarantee is that at the end of this feasibility study, depending on the cost and whether there is funding available to pay for it, that we would actually be *able* to make the switch to the County.

That being said, this is why the request is contingent. Once we show a willingness to proceed along this path and undertake this study, he believes the County administrators will give us a determination of whether or not they have authorization from their powers that be to dedicate the staff to do this. We are not going to spend the money unless they provide the resources.

Councilwoman Smith said when she looked at the study and what they need to do, there is a lot of cooperation involved, from both the County and the City. She asked whether they would know right away if they were going to be cooperative with us or not. Mayor Foley said cooperation from the County but not the City will be required, which is why there will need to be a meeting with the County to ensure that if the Town is willing to spend the money on this study, that the County will be willing to allocate the resources needed to complete the study. Councilwoman Smith said she misunderstood; she didn’t realize the County had already said yes. Mayor Foley said they have not yet said yes; they wanted the Town to show a willingness to spend the money, and then (they) will obtain the authorization needed to provide the resources. If they do not receive such authorization, the Town will not spend any money. Mayor Foley said he has to give Mr. Auwaerter credit for that, as it was his suggestion that we do this contingently, which he thought was a very, very good idea.

Councilwoman Smith also had a question about the project management scope in the very beginning ,where it refers to a “town project team.” She asked who that team is. Mayor Foley said they are trying to keep Mrs. Christmas as unburdened as possible. The project team would normally be the Town Manager coordinating with Town staff. Mayor Foley said he is in the unfortunate position where for the time being, he is doing that. He doesn’t know how much staff time is going to be needed from the Town, given the fact that we don’t have any in-house resources anyway. Whatever documentation we need will be coordinated through the Town Clerk’s office. Other than that, he doesn’t think we really have a contribution to the Town team that would be necessary to complete the study.

Councilwoman Smith asked whether he thinks it would be worthwhile for us to contract someone to head the team. Mayor Foley said he was going to get to that, but we have one consultant in Arcadis and that is why we are hiring them to do it. He is hesitant, and disclosed that he spoke with the Town Attorney about this, as he is not entirely comfortable as Mayor to be the point person on this for any extended period of time. If we do not have a Town Manager relatively quickly, like in 6-8 weeks, Mayor Foley may be back at the April or May meeting asking that we hire a professional consultant to act as the point person as a part of the Town project team.

3. Recommended Action/Motion If Any

The Mayor continued that if we wait until we hire a Town Manager, by the time the County gets their approvals and we are up and running, we are going to run out of time given the drop-dead date of October 2023. Mayor Foley asked if there are other comments, and hearing none asked that **a motion be made to grant contingent approval to spend \$121,321 for a feasibility study to connect the Town’s utilities to Indian River County, such paperwork to be executed by either the Interim Town Manager or the permanent Town Manager once confirmation is received from the County that they will provide the necessary staffing.** Vice Mayor Carroll made said motion, which was seconded by Councilmember McCord and **passed unanimously.**

Mayor Foley said he believes the best method for status updates regarding the water litigation will be for Mrs. Christmas to check in with Mr. Berg periodically for updates, which she can then give to the Council. Mayor Foley said he would be very surprised if anything material happens within the next couple of months. Mayor Foley said we have another law firm that we have retained, Holland & Knight, who have informed him that they are currently working on their work product, which is to provide options to the Town. He is hopeful that they will have something to present to Council, confidentially, within the next 4-6 weeks, which would require a shade meeting.

4. Call to Audience

Mayor Foley summarized that his fellow Council members should contact Mrs. Christmas, not Mr. Berg, for updates, and that the motion to grant contingent approval for the Arcadis feasibility study passed unanimously. He did a call to the audience, which went unanswered.

5. Adjournment

Upon motion and unanimous consent, the meeting adjourned at 9:25 a.m.

Respectfully submitted,

*Approved by Town Council at the
May 27, 2021 Regular Council Meeting*

/s

Laura Aldrich, Town Clerk