



## MINUTES

### REGULAR TOWN COUNCIL MEETING

THURSDAY, JUNE 24, 2021 9:00 A.M.

### TOWN OF INDIAN RIVER SHORES

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

#### 1. Call to Order

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

The meeting was called to order by Mayor Foley at 9:00 AM. Vice Mayor Carroll gave the invocation, and the Pledge of Allegiance was recited. Those present were ELECTED OFFICIALS: Mayor Brian **Foley**, Vice Mayor Sam **Carroll**, and Councilmember John **McCord**. It was announced that both Councilmember Christian **Hendricks** and Councilwoman Mary Alice **Smith** had excused absences. STAFF present were Town Manager Jim **Harpring**, Town Treasurer Heather **Christmas**, Town Attorney Chester **Clem**, Town Clerk Laura **Aldrich**, Assistant to the Town Clerk Chelley **Pallo-Darnell**, Building Official Luis **Martinez**, and Public Safety Chief Rich **Rosell**. RESIDENTS present were Patty **Gundy** (PZV Board, Pebble Bay), Peter **Tedesko** (Finance Committee, Sea Forest), Hope **Woodhouse** (John's Island), and Wanda **Lincoln** (The Shores). GUESTS present were Lisa **Kahle** and Michael **Kint**, Children's Trust, Bob **McPartlan**, Department of Children and Families; and Mike **Korpar**, John's Island POA.

#### 2. Agenda Reordering, Deletions, or Emergency Additions

#### 3. Presentations/Proclamations

- a. Children's Services Presentation (Lisa Kahle)

Lisa Kahle began by saying she was born and raised in Vero Beach, left for a number of years for college, law school and her early career, and returned almost 21 years ago when she and her husband were planning to start a family. Because of her deep roots here, and a family legacy of philanthropy and community problem-solving, she has been lucky enough to have been involved with many meaningful projects in the community. She is most grateful to have become involved with The Children's Trust initiatives. Mrs. Kahle said they think it is important for the Council to understand the history and process of what has brought them here today.

The seeds for the Children's Trust were planted long ago, as the potential for and barriers to scaling successful local programs came to be understood. Many impactful local programs were being developed and implemented, but still far too few children were being reached. Over 30 years ago the County funded the *Children's Services Advisory Committee (CSAC)* to support children's services, which was dramatically reduced in 2008 and not increased again until 2017, when community leaders and children's advocates understood that without a different approach and meaningful investment, successful, scalable, local programs was impossible. Three years ago, she was engaged by a group of community leaders to help reach a better understanding as to whether there was a need for adequate and sustainable funding for children's services in Indian River County, and, if so, what solutions might be developed to address our local needs. Dozens of conversations with community leaders and organizations were conducted by an Exploratory Committee, made up primarily of business leaders, law enforcement and philanthropic leaders was formed. This committed group of fourteen individuals met regularly and had robust discussions, addressing key questions. First, the group determined the current funding model was inadequate and funding was unsustainable to meet the needs of our children and, second, that investing in developmental and educational resources for children and families would provide measurable returns for our community. Next, the Exploratory Committee reviewed several funding models from around the State of Florida. As part of this review, a public panel discussion was held in early 2019. The models represented on the panel included Independent Taxing Districts, also known as Children's Services Councils, like those in St. Lucie, Martin, and nine other Florida counties; philanthropically supported systems such as in Collier County, and what we came to call a hybrid model being utilized in Manatee County. This

hybrid model creates a dedicated funding stream to children's services, but the structure falls within the local County government.

After conducting this thorough review and analysis, it was clear to the Exploratory Committee that the hybrid model had the greatest potential for success in Indian River County. There was a commitment to building on the strengths, history and lessons learned from CSAC, and building in system efficiencies available through existing infrastructure and fiscal oversight, while correcting recognized existing limitations such as staffing and program compatibility. Mrs. Kahle said their goal is to build on what currently exists with CSAC, to make it more robust and impactful to the children and all citizens of Indian River County, and to bring greater accountability to the programs that support it. This model, *The Children's Trust*, was proposed to the County Commission, and was unanimously supported by the County at their May 11<sup>th</sup> meeting, voting to move forward. Because of the unique and local nature of the Children's Trust, the process also requires the approval of a resolution by each of Indian River County's municipalities to allow it to be placed on the 2022 ballot referendum. They hope this background information will be helpful, along with a request that, at a future meeting, Indian River Shores consider and pass a resolution to be included in The Children's Trust upon voter approval of the referendum in November of 2022.

Mrs. Kahle introduced her fellow presenters as follows: Michael Kint, retired CEO of United Way of Indian River County, who prepared a PowerPoint presentation to help better understand the challenges children in our community are facing; Hope Woodhouse and Wanda Lincoln, who were members of the Exploratory Committee and will share their perspective about the value of local programs and their return on investment; and Bob McPartlan, who will offer his insight about the benefits of The Children's Trust.

Mr. Kint said Mrs. Kahle provided a great synopsis of how the proposed Children's Trust was developed, and to help Council understand some of the reasons why this enhanced investment is needed, called their attention to a section on the first slide which states "Prenatal – 14.5%." He explained that is the percentage of babies born in Indian River County with a low birth weight. For those early-childhood aged children, 50% have developmental delays or disorders that don't get diagnosed before they start school, which is a real problem. More than 50% of our children are not prepared when they enter kindergarten. More than 60% of the students in our County are eligible for reduced and free lunch. Over 1500 reports of suspected child abuse are received by DCF (Department of Children and Families) every year. There is a plethora of issues we face, but these are the kinds of things that need to be addressed. Also, 60% of 3<sup>rd</sup> grade children in Indian River County read at grade level. On the Treasure Coast, both Martin and St. Lucie Counties grade levels slipped and ours was maintained.

The next slide is about the millage being requested in the referenda, which Mr. Kint explained is being structured to make the existing system much more robust, with greater focus on agency and program accountability that will be data-driven. The slide showed current mills for CSAC at 0.125, or 1/8<sup>th</sup> of a mil, and the proposed millage rates for Children's Trust of IRC (CTIRC) of 0.25 (1/4 mil) for four years increasing to 0.385 mills for 8 years. Reauthorization is required in 12 years. The Statute does not allow more than 0.125, as it is a dependent millage that is controlled on a year-to-year basis by the County Commission, and it could go down. As currently funded through CSAC, the first year of the Children's Trust would be in FY 23-24, and based on information that they received from the Town, the projected revenue at 0.125 would be \$2,395,448. If the referendum passes and a dedicated millage of 0.25 is approved, the first year would yield a projected \$4,790,895.

Mr. Kint addressed the language of the County ordinance, which not only establishes the Children's Trust, but it also deletes the CSAC from the County Statutes. So, *the 1/8<sup>th</sup> of a mil that is currently being spent on CSAC will migrate back to the County's General Fund where it comes from.*

Continuing, Mr. Kint stated that more than 50% of the births in the County each year are Medicaid eligible; there are 600 children who need appropriate wrap-around services from birth. "Key indicators," or the kind of data that everyone tracks, show that IRC has higher than the State average in these areas: rates of child abuse, neglect, foster care, and sexual violence. In behavioral and mental health, the suicide rate and hospitalizations due to mental disorders and substance abuse is higher than the State average. We have more youths arrested for juvenile crime than the State average. Finally, we have a greater number of children who qualify for free or reduced lunch than the State average, and the number of ALICE households (a county-by-county assessment that determines the cost of providing housing, transportation, childcare and food to a family, based on costs to live in Indian River County) are higher than the rest of the State average.

Mr. Kint reviewed what it will take for our children to succeed where we have been lacking, are prenatal health and early brain development from 0-3 years, when all the brain synapses are being formed and the foundation for learning is laid. Since the pandemic, we have also fallen behind significantly in mental health.

The County Commissioners will be approving CSACs numbers for the year at their meeting next Tuesday. He said there are 3,848 children on the CSAC wait list. It would take \$8,500,000 to meet that wait-list need, which averages about \$2,022 per day. There are 7,200 children aged 0-5 in the community, and 4,600 of them live in or on the margins of poverty, meaning less than 2,000 of them are actually in a quality childcare situation. We need to do better. He quoted experts in the area, James Heckman, a Nobel Prize-winning economist, who said "Policymakers would be wise to coordinate these early childhood resources into a scaffolding of developmental support for disadvantaged children and provide access to all in need. The gains are significant because quality programs pay for themselves many times over. The cost of inaction is a tragic loss of human and economic potential that we cannot afford." Mr. Heckman also said there is a 7-10% return of investment per year based on school and career achievement, as well as reduced costs in remedial education, health, and criminal justice expenditures. He also quoted Dominick Calabro, the CEO of Florida Tax Watch, who said work done in counties throughout Florida by entities such as the Children's Trust "manages to save taxpayers' money. Because they are working to improve health, taxpayers spend less on healthcare. Because they are making sure students are ready to achieve in school, taxpayers pay less on remedial instruction. Because they are helping families build strong and healthy homes, taxpayers spend less on social services and intervention." Mr. Kint has been touring over the last 2-3 years with Tony Carvajal, of the Florida Chamber of Commerce Foundation, and the President of the Chamber, preaching that investment in children early is critical for all of us. Expanding early learning initiatives provide *a benefit of \$8.60 for every \$1 invested*, half of which is from the increased earnings of the children when they grow up.

Bob McPartlan with DCF addressed some of the issues that he runs into every day. He said we are fortunate to have had members of the law enforcement community on the Exploratory Committee, and now have strong support from many of the chiefs of police of the municipalities because they see on a day-to-day basis how expanding support for kids is going to make things better. Children who don't receive quality early education are 25% more likely to drop out of school, 40% more likely to become a teen parent, 50% more likely to be placed in special education, 60% less likely to go to college and 70% more likely to be arrested for violent crime. The earlier investments are made, especially in those first three years, the greater the return. Data and a whole report are available should Council wish to read it. One of things that has been very clear in their discussions with both County administration and many of the County Commissioners was that everyone appreciates the work CSAC has done, but a much greater, higher level of accountability has been called for, particularly for program work. Long-term planning will also be able to be handled better because they will know with more certainty what dollars are available to structure the work, identify needs and coordinate funding.

Mr. Kint drew from his United Way experience and mentioned they are perhaps the largest funder (of non-profit agencies) on an annual basis in Indian River County, and a lot of people look to him with trust that the work the United Way has done has been done right and that best practices were followed. If the Children's Trust gets established, it will become that new entity working with the *United Way* and working with other funders. The *Hospital District* potentially a key player in some of the health aspects for the kids, and how we could be working collaboratively with them as another funding source. There have been ongoing discussions since this began with *the school system*, obviously a key player in this and (IRC School Superintendent) Dr. Moore has been and will continue to be highly supportive. Being able to align and coordinate the funding to do a better job in our community is what it is all about.

Mr. Kint passed the microphone to Indian River Shores resident Hope Woodhouse, who introduced herself as former President of the John's Island Community Service League, current ten-year member of the Children's Services Advisory Committee and Chair of the Children's Needs Assessment for the County. She said this cause is really important to her, and is the most important issue she will be working on for the next few years. She asked Mr. Kint to keep the PowerPoint presentation up because she wanted to point out the most important word on it is "*sustainable*," because without sustainable funding they are totally reactive instead of proactive. Mrs. Woodhouse continued that strategic investment is essential. The County is not producing enough quality employees, which is why John's Island hires employees from Eastern Europe. Mrs. Woodhouse recounted her personal experience in filling two jobs, an administrative assistant from Boston and a full-time live-in caregiver from Ft. Lauderdale. Both have salaries of \$75,000 per year plus benefits, which is a living wage for a family of four in Indian River County. The search firms she used told her they would not be able to find anyone for these

jobs in Indian River County. She just wants great stuff for the kids; she wants them to be smart and reliable and responsible taxpayers who can continue to support this wonderful place.

Mrs. Woodhouse mentioned some excellent agencies that the County has invested in, such as Healthy Start, the Learning Alliance and Childcare Resources. Without sustainable funding, they won't be able to help enough children. For example, Childcare Resources is fantastic, but it only serves 150 children from birth through age 5. Within that group, there are 600 kids per age group that are in poverty, so there are probably 450 kids that need this service and there are only quality spots for 150. She mentioned the article in the paper yesterday about 3<sup>rd</sup> grade reading scores are up in the County to 60% through working with the Learning Alliance, done through high-quality intervention after school and quality intervention within the classroom. Mrs. Woodhouse repeated that all they are asking from the Council today is to allow them to go to the voters in November of 2022.

Bob McPartlan introduced himself as the Community Development Administrator from the Department of Children and Families (DCF), covering Indian River, St. Lucie, Okeechobee and Martin Counties. He sits on the Children's Services Councils in Okeechobee and Martin Counties, and he knows how great they are for the community. He said he has been a member of CSAC in Indian River County for almost ten years and was there when it was down to \$600,000; through community support, the County helped it. He related this to being a member of the Army's bomb squad, which determined it was either unsafe and you blew it up, or if it was safe to do so, you took it apart to make it safe. He started working with the DCF 20 years ago, and it was the same kind of thing; you had to see what made families tick, and then you try to deliver services that can try to keep it safe for the children to stay there.

Mr. McPartlan worked for the Children's Advocacy Center of Brevard County, which only handled the worst kinds of abuse, such as broken bones, fractured skulls, child deaths and sexual abuse. Mr. McPartlan said even these parents love their children, and we need more services out there to assist them. His goal is to never see these people again, and he doesn't mean that in a derogatory way - to give them every service that can assist their family to make them stronger and less reliant on the State, so they can go forward and make their children the best. If down the road, they do stumble and fall, they know who to call to help themselves; they don't need the State to get them up and they don't want them involved in their business.

As Mr. Kint alluded, the State receives over 300,000 child abuse reports every year; our four Counties get about 6,000 and Indian River County gets about 1,500-1,600 report every year, with 70% of those cases resulting in the child having to be removed from the home. Mr. McPartland said when they finally do get a child released from a home, he doesn't want to say it is too late for those families, but some of the situations going on take so much time and effort to try to work through, it would be so much easier if we had intervention services in the beginning. The early learning is so important.

Mr. McPartlan said he is an elected official of the City of Sebastian, and he understands (Council's) position. Nobody wants to throw good money after bad, but he assured them that every dollar invested will save thousands of dollars down the road. He reiterated that they are just requesting the Council approve an ordinance so that the Children's Trust can go on the ballot in 2022. He said he wholeheartedly supports this and thinks it could be a gamechanger for the community. Some of the things they are mentioning we are not even looking at, because there are a lot of great organizations in the County that are doing great work. What the Children's Trust can do is put them all together so we can develop different plans. He said we have one of the highest fetal infant mortality rates in the State here, and there are so many services that we could implement to reduce those numbers to almost zero. He thanked the Council members for their time.

Mrs. Wanda Lincoln introduced herself as a resident of Indian River Shores and the Chair of Quail Valley Charities, and most importantly, she is an advocate for children. Because she is an advocate for children, she is an advocate for the Children's Trust. She said maybe this is a good time to take a look and ask, "where are we?" in supporting our County's children. Because of previous investments and our strong philanthropic community, we have in place right now a baseline for a continuum of care for the children. As Mr. McPartlan pointed out, the parents need this as well, and that is a start. She said we find ourselves today in Indian River County with an unconscionable number of children (in need of services), with terribly long waiting lists and parents who desperately need to know more about how to really be a good parent. Mrs. Lincoln agreed that after this pandemic disruption, we have children who really need mental health services. She continued with an example of a kid in the principal's office who then gets a detention, then a suspension, and then he is out on the street and in the juvenile justice system. That costs. We know this is true because the data says it is true, and yet we ignore those facts at our County's peril.

Mrs. Lincoln said she is sure that many who are present are supporters of what is going on in the County regarding the children, as mentors, volunteers who freely donate time and talent, and those who donate

monetarily. The Children's Trust asks us to build on that and continue to create a permanent funding stream for children that will bode well for the present and the future. We want our children to be strong, moral and resilient, and we want support for all of our children. It is a cliché but also a fact that the children are our future. We want the entire County to be a vibrant community with well-adjusted, educated residents and workers in a place where young families want to raise their children. We all chose Indian River County for our home because it is a special place, which is a cliché as well, but is true. Now is the time to make it a special place for everyone, for now and in the future, by supporting our children.

Mrs. Lincoln passed around a handout and said the simple equation starts with investing; it starts early. Invest in the children so that they have something called *equal access*, no matter what City they live in within our County. The second step is to *develop*, which means you have places and systems in place that allow those programs that are developed within organizations which serve in the beginning, and even when they are five, seven, or eight. The final step is to *sustain*, which means you reap rewards of significant investments and development when you sustain the best programs possible to meet the needs of the children. Add these all together and you have gain for our whole community, and that is what a Children's Trust can do. Mrs. Lincoln said she believes doing what is right for children and for our community requires strong leadership, which is the Council; strong investment, which is the Children's Trust; strong philanthropic hearts, which we have – and all these efforts maximize results. We believe in establishing and funding the Indian River (Children's) Trust, which will do this and more, and we hope that you will support it. Mrs. Lincoln thanked the Council.

Mayor Foley thanked them for the presentation and asked Councilmember McCord for his comments. Councilmember McCord said the tax issue is sensitive for everyone. He asked if there are other towns in the State of Florida that have a program like this. Mr. Kint said yes, many, but not all. He said in 2020 two more counties added traditional independent taxing districts. Councilmember McCord asked, of all the counties in the State of Florida, what percentage have a program like this, and Mr. Kint answered around half, and to what percentage they charge, and Mr. Kint answered that the State Statute which governs them allows up to 0.5 mils. He said he doesn't believe they are all necessarily that high, and reminded the Council that the County's max would be 0.375 mils. Mrs. Kahle said she knows that St. Lucie County is just under 0.5 mils and Martin County was around the 0.375 mark a couple of years ago, but she is unsure what it is now. Mrs. Woodhouse said she was part of the group that picketed the (County) Commissioners four years ago, and the comparison at the time was with Martin County. She said they have had a Children's Trust in place for probably 20 years, and up until this year, their outcomes were better in almost every category.

Councilmember McCord asked how much the United Way brings in every year, and Mr. Kint said about \$2.75 million. Councilmember McCord noted this would be something in that same category, or over it. He asked if there is any overhead in this operation, and Mr. Kint answered that the draft ordinance contains language limiting all overhead to 8%. The State Statute allows for administrative costs up to 10%. The Councilman asked what the United Way's overhead is, and Mr. Kint responded that it has averaged about 13% over the last 20 years, which is a combination of fundraising and administration. Councilmember McCord stated there are many organizations in the Town of Indian River Shores; it is ground zero for giving. Councilmember McCord asked if that was a fair question to ask how much money is in the pot for all of these organizations, such as the Boys and Girls Club, the Food Bank, etc., and Mr. Kint replied that it is, but he doesn't think he knows the answer. Councilmember McCord said he thinks we need to know the answer, because if he is going to vote to increase taxes, what percentage is \$2-3 million of the total pot? If it's 1%, "whoop-de-doo," if it's 10-30%, then there is really an argument for it.

Councilmember McCord said he needs more facts. He added it isn't being critical, as he knows the need is there; it is a matter of responsibility to the taxpayers. He wanted to know how much money is being raised in this County for the different services. Mrs. Woodhouse said when she became President of the John's Island Service League, only 30% of the 1400 front-doors gave to the Service League. She said this year, they reached 50% for the first time, but to do that campaign was exhausting. She believes this will not only get money from the people that were not giving, but those who are already giving will continue to do so, and it is the sustainability issue that goes from totally reactive to proactive. Councilmember McCord asked Mrs. Woodhouse if she thinks new organizations are going to appear out of the air asking for funding, and she said no. What they want is for this to be the glue so they can focus on scaling of the best. She would like to see the Moonshot Academy in all the elementary schools, which currently she believes are in about four out of eleven. Right now, they don't have the funding for quality Pre-K (it costs \$12,000 per child and the State reimburses \$2,500 or up to \$3,000 for those in poverty). The Service League's main grant money falls short -only \$1.2 million, which is not enough to convince people to change and scale.

Mrs. Kahle asked to address this further, stating that the Community Foundation has conducted an analysis of what they currently have from their funding sources versus what the need is by quantifying things such as scaling the needed programs, which is a delta of \$20 million. The Children's Trust dedicated millage at its peak would be at \$10 million in year seven, which is significantly more than \$2-3 million, but is significantly less than the needed \$20 million. Mrs. Kahle said the further point that Mrs. Woodhouse was alluding to which they learned during the research of the Exploratory Committee is that this becomes a resource, or a confidence building leverage point, when doing philanthropic fundraising, as there is a central place that is vetting programs and collecting funds. Councilmember McCord reminded Mrs. Kahle that his question is regarding the size of the pot for children's services County-wide. Mr. Kint said he will find the answer and follow-up.

Vice Mayor Carroll said he had the pleasure of meeting with this group this morning and what he learned, among other things, is that this is an exceptional group who have dedicated themselves to improving the lot of disadvantaged families, especially children, in Indian River County, and he truly admires their dedication to the cause. He added this is an opportunity for the Town to step up and approve an ordinance that will give the voters input on whether sustainable funding should be in place. He wholeheartedly supports the approval of such an ordinance.

Mayor Foley thanked Vice Mayor Carroll, and said the disadvantage of going last is that so many thoughtful and intelligent comments were already made. He said the presentation was very forceful, but he shares Councilmember McCord's question regarding the size of the pot. Mayor Foley observed that this is an ad valorem proposal, meaning there would be a greater burden on those with higher property values such as in our community, which already sees itself as one of the most philanthropic in Indian River County. Mayor Foley said Council needs to satisfy the residents' questions, which Council will continue to feed to the Children's Trust.

Mayor Foley continued that there is already a County tax going towards these services, and asked if that tax would be eliminated if the Children's Trust were approved. Mr. Kint said the County has stated they will back off the 0.125 mil. The proposed County ordinance for the Children's Trust not only defines it and gives it bones, but there is language that dissolves CSAC so that it will cease to exist. Mr. Foley wished to clarify that their understanding is that the portion of ad valorem tax currently going to CSAC will be eliminated, and they said yes. Mayor Foley also asked, regarding processes and timing, whether this was expected to be on the November 2022 ballot, and they confirmed.

Mr. Kint asked to add something, not wanting to sound self-serving. When he moved to Vero Beach 36 years ago from a small-town in Illinois, it was the first time he realized there were a lot of people with a lot more money than he, and they are good people who are supportive of the arts. And then he spent 25 years at the United Way, and he has come to appreciate the fact so much that folks like the Council and everyone in Indian River Shores are so supportive of non-profits. Mr. Kint said God bless the people of this Town, who are not obligated, for having the hearts they have, and he thanked Council for their consideration.

#### 4. Consent Agenda

- a. Acceptance of PZV Board Meeting Minutes dated November 10, 2020
- b. Acceptance of PZV Board Meeting Minutes dated December 8, 2020
- c. Approval of Regular Town Council Meeting Minutes dated May 27, 2021
- d. Intergovernmental Agreement for Software License & Service Agreement for Building Department Use, MyGovernmentOnline
- e. Acceptance of Finance Committee Minutes dated April 13, 2021
- f. Acceptance of Auditor Selection Committee Minutes dated May 13, 2021

Councilmember McCord made a **motion to approve the Consent Agenda**, which was seconded by Vice Mayor Carroll and **passed unanimously**.

#### 5. Town Attorney (nothing to discuss)

#### 6. Mayor or Council Items

Mayor Foley said he has two items, and first is that he received a letter from a gentleman, which he assumed the rest of the Council received as well, raising the question of **the safety of pedestrians on the sidewalks with bicyclists** whizzing by. Mayor Foley said he has no idea whether this is something that is related to the A1A construction or whether it is a more sustainable thing, but he has asked Town Clerk Aldrich to pass it along to Town Manager Harpring, who he is sure will be in consultation with Chief Rosell to formulate a response to this gentleman.

Regarding the second item, Mayor Foley said he knows they are going to be talking about the **current water situation** later in the meeting, but he thought it would be helpful to summarize his understanding, as Sunshine Law prevents them from talking about it collegially outside of a public meeting. To summarize, there are three municipal players in this current dispute: the City of Vero Beach, who is the Town's current provider of water services under the Franchise Agreement; the Town of Indian River Shores, who is the customer who buys from the City of Vero Beach; and Indian River County. Let's call them the City, the Town and the County. Mayor Foley said the issue began when the City refused to match a drop in the reuse water rate that was posted by the County. The County rate went to \$0.21, and the Town was still paying \$0.67. The City's argument and refusal assumed that they were two different kinds of services. The Town disagreed and recounted that was all discussed during contract negotiations in 2012. Mayor Foley continued that the Town did what they had to do, raising the issue and proceeding through mediation, which was unsuccessful and therefore led to litigation. No one wants to litigate, including the Town of Indian River Shores, but we felt we were forced to, as it is Council's responsibility to ensure that the Town's contractual obligations are being honored by all parties.

Mayor Foley said the Franchise Agreement contains the following language, which seems clear, that the City agreed to in 2012: "Rates for water, wastewater and reuse water charged by Vero Beach for the Town of Indian River Shores shall be no greater than the rates for such utility services as published by the Indian River County Department of Utility Services or its successor." Mayor Foley said that means that the City can charge no more than what the County's posted rates are. In the context of the litigation, it is a very narrow issue of the reuse water rate being higher than the County's posted rate. Mayor Foley said they found the following disturbing things in a court filing from the City of Vero Beach, which basically states their position in litigation concerning what this contract obligates the City to do. Contrary to the contract language, the City contends that a locked-in rate would be void and unenforceable, and the Town knew or should have known that the City could not make a contract that is ultra-*veritas*, (which means unenforceable), such as guaranteeing a fixed rate as is alleged in the complaint. Mayor Foley said the City goes on to say, "this duty to make rates supersedes anything they agreed to in the contract." He said this means the City believes they do not have to honor the obligation that is central to the contract the Town entered into with them, which is that the City would charge the Town and its residents no more than the County rates. That position basically means the City is tearing up the contract and believes they can charge the Town whatever they want.

Mayor Foley continued that following the City's meeting, Council decided to have discussion with the County to look at alternatives. Back in 2012, the County was very willing to discuss with the Town taking over services that were then still provided by the City of Vero Beach. As a consequence, the Town hired Arcadis, which is a well-known consulting firm, to prepare a more detailed report that would be useful for evaluating whether or not it would be possible, and what conditions and costs would be involved in disconnecting from the City and connecting with the County. Mayor Foley pointed out that the Arcadis study is not just limited to its utility hook-up with the County, it is also helpful for us to know the condition of the infrastructure in the ground so we can hold the City's feet to the fire in terms of maintaining workman-like quality of the structure, and also for some other options, which Mr. Harpring will get into later.

Mayor Foley said Councilmember McCord has talked about **P3 options**, which are **Public-Private Partnerships**, or options other than the County and City offer to provide water services. Mayor Foley said this is where it gets a little complicated. Thirty years ago, there was something called an Exclusive Service Area, that was entered into between the County and the City. That is that the City and County agreed to carve up territories and who would serve what. Pursuant to that Exclusive Service Area, the City argues today that the County is legally unable to service the Town of Indian River Shores. They also argue that they are legally unable to service County residents that do not live within the confines of the City of Vero Beach, so more County residents are excluded from that.

Mayor Foley called to mind a legal opinion presented by Holland and Knight which said there is nothing in those franchise agreements that expired twelve years ago, in both our and the County's opinion, that would prevent the County from servicing either the Town of Indian River Shores or the County residents that live outside the City of Vero Beach who are customers of the City of Vero Beach. Mayor Foley continued that these Exclusive Service Areas, even assuming these agreements are intact, raise serious antitrust issues. The Town had discussions with the County; the County Commissioners approved the Arcadis study 4-1 to determine the feasibility of the Town connecting to the County. Mayor Foley said our initial indications were that the Commission voted 4-1 to approve the study, although they were clear that they were not committing to provide service to the Town. The County also believed that they had the freedom to have discussions with us as to whether they would service the Town of Indian River Shores, should we decide to terminate our relationship with the City of Vero Beach. Those were the initial indications.

Mayor Foley said now, we have information, and Mr. Harpring will get into this, that, pursuant to a legal notice that the City provided to the County, which requires the County to mediate the potential dispute, which proceedings the Town was not invited to, by the way, and the City has taken the position that they believe Exclusive Service Areas *do exist* and that they have asked the County to honor that. Long story short, if the County were to agree with that, they would be agreeing with the City that the County is not going to have any interest in servicing the Town as a water customer. Mayor Foley reiterated that this is an antitrust issue. The Town may very well be in a position, depending on what the County does, where we have been cut out of a discussion and negotiation by the City, and if the County were to capitulate, then having the County service us is not an option. So, again, what are our options? The P3 options and the antitrust route, which is a legal route. Mayor Foley mentioned it would be extremely expensive to bring an antitrust suit, and there is no chance that it would have any kind of full resolution before October 2023. So, if the scenario is such where there are two municipal players agreeing not to do business with us, we will have another option, which is to have our attorneys communicate with the antitrust regulators at the Federal Trade Commission Bureau of Competition under the Department of Justice, those are our taxpayer dollars that are put to use to ensure that these regulators *keep all factions* acting in accordance with the law and antitrust issues.

Mayor Foley added they can discuss this later during Mr. Harpring's portion, as he does not believe they need to decide on this today, but it is an option for us to go out there and do it. The cost for the Town would be to have our attorney, Holland & Knight, explain the situation to the regulators and have them look into it. Mayor Foley said his impression based on discussions he and Mr. Harpring have had with the County, is that the County also wants to see some resolution to this as well. Today is the County's day for mediation, but if something like this does occur, we are going to be in the position where we will have to decide regarding going forward. Mayor Foley said that concludes his report on this issue and he hopes it wasn't too confusing.

Vice Mayor Carroll said the third option would be staying with the City of Vero Beach, and Mayor Foley agreed, because we do have a Franchise Agreement despite what the City utility staff or the City Council members may say. This Council has a responsibility, to explore the Town's ability to avoid being in litigation with the City. As Councilwoman Smith said, there has been some talk that City of Vero Beach "owns" the Shores. Mayor Foley said he just cannot believe that we are not going to find ourselves in the position where they are going to try to push the envelope on this rate issue, and say the Town really messed up by trusting them and that we should have known better. He thinks that is an immoral position. It is an option that is fraught with disputes going forward, unless we can come to some clear understanding, or we develop an alternate source of supply going forward.

Councilmember McCord said he has a few things to add, and he recently had the opportunity to speak to the Mayor of the City of Vero Beach at the time FPL purchased the Vero electric utility, Harry Howell, regarding the proposed COVB water plant. Mr. Howell said during his time as Mayor, the new plant was proposed to cost \$30 million. At the Utilities Commission Meetings Councilmember McCord has attended as a representative of Indian River Shores, Mr. Rob Bolton indicated that the cost was \$50 million. The number has since been raised to \$70 million. We estimate that it will actually end up costing \$80-\$100 million.

Councilmember McCord continued that the City would need bonding authority for the new plant. Bonding companies do not like and will not underwrite bonds where there is ongoing litigation. He recounted the FPL litigation when we spent \$1.2 million in legal fees when we effectively went after the City of Vero Beach, which went on for many years and resulted in the acquisition of the Vero Beach utility by FPL for approximately \$175 million. The City of Vero Beach got about \$20 million of that because of the hedge the FMPA put on the Vero Beach utility.  
(10:30)

Councilmember McCord spoke about the bonds that the City needs for the water plant that they want to build, and the cost \$80-\$100 million to service 20,000 people. There are 150,000 people in the County, and that is growing. The City is not growing. The Town is responsible for approximately 20% of the revenue for the Vero Beach water utility and 10% of the usage. South of Indian River Shores along the barrier island, is another 10-20%. The actual City of Vero Beach customers are maybe 60-75%, about 15,000 people. He has a feeling that the people on the barrier island who are also not citizens of Vero Beach (but are their water utility customers) will also be somewhat distressed about the City of Vero Beach building a \$80-\$100 million facility for some 20,000 people. He envisioned the rates will be extravagant, based on the \$50 million plan and only a projected 17% rate increase. However, they just announced the expected cost is around \$70 million. He said he is comfortable that this Council will do everything in their power to ensure that they don't build that plant.

Mayor Foley said he appreciates Councilmember McCord's comments, and reminded the audience that Councilmember McCord is the Town's representative on the City of Vero Beach Utilities Commission, and totally supports moving the plant off the Lagoon and is in no way disputing the importance of that as an appropriate goal



both in the long and short term. However, he does not think the City is the right vehicle to operate such a plant on a long-term basis.

Vice Mayor Carroll said he is going to repeat a comment that he made to Town Manager Harpring with regard to this issue. He said he thinks that we are dealing with a group of people who are disingenuous, and he questions their ethical standards, given everything that has unfolded. While he understands Councilmember McCord's points regarding the Town's position vis a vis the water service company regarding revenues, the number of people served, the way the City would finance it, and one or two potential obstacles that might stand in the way of them raising the money, he thinks that the Town's next step should be to pursue other options and another source for water from more upstanding, ethical people. Vice Mayor Carroll said he believes both the Mayor and Councilmember McCord referred to P3, and agreed it is time to explore opportunities in the private sector. He said he thinks Council has also learned something about the County and has concern about what appears to be their agreement in principle regarding service rights. The fact that we have not even been invited to have a seat at the table in their discussions speaks volumes about how the County views us. Vice Mayor Carroll said he thinks we have no choice but to pursue P3 as aggressively as possible.

Mayor Foley asked his fellow Council members if they believed they should have attorney Mr. May liaise with the antitrust regulators. He does not think a resolution is required, and with no objection, he will instruct Mr. Harpring to instruct Mr. May to move forward. There were no objections.

## 7. Discussion with Possible or Probable Action

### a. Voting Delegate for Annual FLC Meeting

Mayor Foley said he will be in town and is happy to volunteer as voting delegate for the Florida League of Cities conference in August. He added that the Resolutions are generally not of great import, but if there is anything that gives him pause, he will inform the Council.

### b. Set Budget Workshop and Budget Public Hearing Dates

Town Treasurer Christmas said that the Budget Workshop Meeting is traditionally held before the Council meeting, with the millage rate proposed at the Budget Workshop then voted upon at the Council meeting that follows. It was suggested that the Budget Workshop be held on Thursday, July 22<sup>nd</sup>. Vice Mayor Carroll made a **motion to hold the Budget Workshop Meeting on Thursday, July 22<sup>nd</sup> at 8:30 AM**, which was seconded by Councilmember McCord and **passed 3-0**.

Regarding the Budget Public Hearings, they must be held after 5:00 PM per Florida Statutes. They also cannot be held at the same time as the School Board or County Commission. The available dates for the First Budget Public Hearing are 9/3, 9/7, 9/8, 9/10, 9/13 or 9/14. Mrs. Christmas stated it is generally a 10-minute meeting, barring public comment. After some discussion, Vice Mayor Carroll made a **motion to hold the First Budget Public Hearing on Friday, September 3<sup>rd</sup> at 5:01 PM**, which was seconded by Councilmember McCord and **passed unanimously**.

Mrs. Christmas stated the Second Budget Public Hearing is usually after the September Regular Town Council Meeting at 5:01 PM, with the Council meeting at 3:30 PM instead of the usual 9 AM. Councilmember McCord made a **motion to set the Second Budget Public Hearing for Thursday, September 23<sup>rd</sup> at 5:01 PM**, which was seconded by Vice Mayor Carroll and **passed 3-0**.

## 8. Staff Updates

### a. Building Official Report & Statistics

Mr. Martinez said the numbers are still trending upwards, and construction is booming. He asked if Council had any questions or concerns. Councilmember McCord asked about guidelines for 4-story buildings and mentioned a building that partially collapsed down in Miami. Mr. Martinez said he had just heard about that and will have to look into it. He mentioned that structural inspectors, who are engineers, always approve the plans for these sorts of buildings.

### b. Town Treasurer Report

Mrs. Christmas said she chose to delay the budget amendment to the July meeting. She explained that the Finance Committee met and went over the budget and that their recommendations will be brought forward at the Budget Workshop Meeting. Mrs. Christmas said the Auditor Selection Committee met and there was only one proposal submitted, from Carr, Riggs & Ingram, the Town's current auditor, which the Committee decided to recommend accepting, rather than going through the rebidding process. This recommendation will come before the Council at the July meeting.

Mayor Foley said they had previously discussed claw back and the danger of accepting funds from ARPA, but with the P3 option, the Town may need the funds.

c. Public Safety Department Report

Chief Rosell said there was nothing to report. Regarding the content of the letter Mayor Foley received from a concerned resident, he did identify a few cyclists that need to be spoken to regarding pedestrian safety, and printed materials will be provided to those individuals. He does not believe that an ordinance will be necessary.

d. Town Clerk Updates/Reports

e. Town Manager Updates & Town Hall Renovation Report

Mr. Harpring said he communicated with Mr. Fitzgerald, the resident who wrote the letter regarding pedestrian safety and cyclists. Mr. Harpring stated we will not be moving cyclists onto A1A while construction is ongoing. This is an issue of education and reinforcement. He also does not think an ordinance is necessary, as State Statute already covers this matter.

Town Manager Harpring continued that the final attorney interviews will be held later today. Mr. Clem has been communicating with prospective Attorney Sweeney, which should be finalized for the July meeting.

A hurricane preparedness meeting was held with all department heads, the Town Manager continued, and he was satisfied regarding the Town's storm preparations and was very pleased with the meeting's outcome.

He continued that the Town Hall remodel is proceeding according to schedule.

Regarding A1A construction, Mr. Harpring said there was a permanent reduction in speed from 50 MPH to 45 MPH. A question was raised at the last Council meeting regarding when the speed limit will be going back up to 45 MPH from 35 MPH, and he does not recommend doing this until FDOT is done and the road has had its final "sweep."

Mr. Harpring said there is a conflict resolution meeting between the City of Vero Beach and Indian River County today. He believes the County will make an offer to the City, but that is speculative at this point – they don't know what the County will offer. The South barrier island residents met with the County to discuss their similar concerns regarding rates, and have a meeting scheduled with Mayor Brackett regarding the same. He added that he has had discussions with as potential P3 partners, specifically FPL and Equalia, who submitted an unsolicited proposal to the City of Ft. Pierce. Mr. Harpring said he doesn't believe he needs additional delegation of authority in order to reach out to Mr. May regarding contacting the antitrust regulators.

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

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

a. Committee & Informational Updates or Comments

Councilmember McCord said there was no **Utilities Commission** Meeting this month. Vice Mayor Carroll said he had nothing to report. Mayor Foley mentioned the upcoming **TCRLC/TCCLG** Barbecue and that all Town officials are invited. There will be a good meal and representatives from other jurisdictions to converse with. He also mentioned that his packet from the **MPO** meeting is on file with Town Clerk Aldrich should any of his fellow Council members want to have a look.

## 10. Call to Audience

Patty Gundy, Pebble Bay, asked whether the City was trying to charge the Town residents higher rates, and Mayor Foley replied yes; currently, Town residents pays a lower rate than City customers because the Franchise Agreement requires the County posted rates to be charged by the City to Town residents. She said it would be helpful if our residents understood what we are paying in relation to what the City residents pay. She also asked whether the County would be able to support all the Town's water and sewer needs with all the new development that is going on in the County. Mayor Foley replied that the County had showed interest in providing the Town water service both in 2012, and then again before the City of Vero Beach started Chapter 164 proceedings, which indicates that yes, they have the capability.

## 11. Adjournment (11:06 AM)

There being no further business, Councilmember McCord made a **motion to adjourn**, which was seconded by Vice Mayor Carroll and **passed unanimously**.

Respectfully submitted,  
/s  
Laura Aldrich, Town Clerk

Approved by the Town Council at their  
July 22, 2021 Regular Council meeting