



RTCM

MINUTES

REGULAR TOWN COUNCIL MEETING

THURSDAY, SEPTEMBER 22, 2022, 3:30 PM

TOWN OF INDIAN RIVER SHORES

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

1. **Call to Order** (3:30 PM)

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

The meeting was called to order by Mayor Foley at 3:30 PM. The Invocation was led by Vice Mayor Carroll and the Pledge of Allegiance was led by Mayor Foley. Those present for roll call were Mayor Brian Foley, Vice Mayor Sam Carroll, Councilmember Bob Auwaerter and Councilmember Mary Alice Smith.

2. **Agenda Reordering, Deletions, or Emergency Additions** (3:31 PM)

There were no motions for recording, deletions, or additions. Vice Mayor Carroll motioned to approve the agenda which was seconded by Councilmember Auwaerter and passed unanimously.

3. **Presentations/Proclamations** (3:32 PM)

- a. There were no presentations or proclamations.

Mayor Foley discussed the new County Sports Pride Day for local football teams that was held on September 20th. Mayor Foley supported the event and noted its potential to become an annual event.

4. **Comments From the Public Regarding Agenda Item(s)** (3:34 PM)

There were no comments from the public regarding agenda items.

5. **Consent Agenda** (3:35 AM)

- a. Approval of Regular Town Council Meeting Minutes dated August 25, 2022
- b. Approval of 1st Budget Public Hearing Minutes dated September 9, 2022
- c. Approval of Planning, Zoning & Variance Board Meeting Minutes dated August 9, 2022
- d. Law Enforcement Memorandum of Understanding – Jones Pier
- e. Mail Ballot Elections Agreement
- f. Indian and Seminole Lane – Change Order 4
- g. Fleet Purchase Authorization
- h. PZ&V Board Item – 343 Silver Moss Drive – Variance Request
- i. PZ&V Board Item – 221 Silver Moss Drive – Variance Request

Councilmember Auwaerter motioned to approve the consent agenda items, which was seconded by Vice Mayor Carroll and passed unanimously.

6. **Mayor's Report** (3:36 PM)

Mayor Foley provided updates on the status of the state and federal water cases involving the City of Vero Beach and noted that the recent ruling in the federal case denying the City's Motion to Dismiss was followed by the City filing a Motion for an Immediate Appeal of the Denial. The Town filed a Motion in opposition.

Mayor Foley further discussed a letter from the City to the County Administrator indicating the City does not have an objection to the County and Town discussing water service. Mayor Foley stated that until the City of Vero Beach deems that agreement unenforceable it will continue to cause issues for the Town. He stressed the importance of the Town's continued actions to negate the agreement for the Town to operate now and in the future. Mayor Foley advised there is no update on the rate case that is on appeal.

Mayor Foley discussed the future of waste and recycling services for the Town based on the expiration of the recycle contract with Republic and the future expiration of the refuse contract. Mayor Foley noted that under the terms of the new agreement, there will be no concierge services of in-ground containers, side-door, back-door, and garage services as those services are obsolete based on the current industry standards movement to automation and the financially prohibitive cost of concierge services. Mayor Foley indicated that the Town had sent notice to the homeowner associations about the forthcoming changes to the Town's waste and recycling services. He commented on the option of hiring private entities to provide concierge services on an individual HOA basis.

Mayor Foley next discussed the councilmember vacancy and advised he met one on one with the candidates.

7. **Councilmember Items** (3:39 PM)

Councilmember Auwaerter noted his discussion would occur under the 12a Council update section of the meeting.

8. **Discussion with Possible or Probable Action** (3:40 PM)

a. Councilmember Vacancy Appointment

Mayor Foley noted that the council vacancy existed as Councilmember Hendricks moved out of state. Mayor Foley outlined the three candidates for discussion for selection for appointment: Susan Meheil, Gerard Weick, and James Altieri. Mayor Foley noted that each of the candidates spoke individually with the current Council Members to discuss their vision and interest to serve. Mayor Foley requested that the Council discuss the pros and cons of each candidate at their comfortability level.

Councilmember Auwaerter discussed the importance of their experience, knowledge and participation in Town committees and issues facing the Town including the water/sewer problem with the City. Councilmember Auwaerter indicated his selection to fill the vacancy would be Jerry Weick based on Mr. Weick's familiarity with the water situation. Councilmember Auwaerter also noted that Mr. Weick has institutional knowledge of the discussions that occurred in 2012 when the water and sewer franchise agreement was renewed with the City of Vero Beach.

Mayor Foley opted to discuss the candidates next and noted the qualifications of Mr. Weick including his knowledge of the water and sewer issue, but stated that by a razor thin margin, his decision for selection was in favor of Mr. Altieri. Mayor Foley stated Mr. Altieri managed his concerns regarding attendance in meetings and inter-governmental committees. Mayor Foley stated Mr. Altieri was tasked with review of current issues and situations involving the Town and that Mr. Altieri digested the information and provided valuable insight. Mayor Foley noted that Mr. Altieri is a brilliant lawyer, and his legal and administrative skills will benefit the Town. Mayor Foley indicated Mr. Altieri was his choice as the best candidate to fill the vacant position and added that Mr. Altieri's residence at John's Island was not a factor for the selection.

Vice Mayor Carroll stated there were three highly qualified candidates. Vice Mayor Carroll noted applicant Susan Mehiel's involvement in community service through serving on HOA boards, several non-profit organizations, and campaigning against large regional planning bodies, most recently against Florida All-Aboard high-speed railroad project which evolved into the Alliance for Safe Trains Organization. Vice Mayor Carroll also noted Ms. Mehiel's outspoken criticism of the special taxing district for children services and support of community oversight for the Indian River County School District. Vice Mayor Carroll indicated that Ms. Mehiel's was committed to the Shores' community, an independent thinker, has excellent communication skills, and the time to dedicate as a Council Member. Vice Mayor Carroll discussed Mr. Weick's history of serving the community in different capacities for the last twenty years including the Town's PZ&V Board, and design and development of the Community Center. Vice Mayor Carroll noted another quality that make Mr. Weick an excellent candidate was Mr. Weick's extensive knowledge of the Town's relationship with the City and how the Town got to where it stands today with the regard to water service and contractual issues with the City. Vice Mayor Carroll discussed Mr. Altieri's distinct set of unique skills and background including his professional background as a corporate litigator in state and federal courts throughout the country representing a broad range of litigated matters. Vice Mayor Carroll also discussed Mr. Altieri's highly noteworthy involvement in the management of Drinker, Biddle & Reath. Vice Mayor Carroll also noted Mr. Altieri's community involvement and discussed the well-articulated strategy earlier in 2022 to get a recalcitrant state attorney to publicly reverse itself and a corporate state agency to do the same in the matter of the tragic death of Shores resident Carl Cutler. Vice Mayor Carroll cited this as an example of Mr. Altieri's tireless commitment and professional support. Vice Mayor Carroll noted Susan Mehiel's dedication to several causes and her public record and inspired following. Vice Mayor Carroll discussed Jerry Weick's dedication to several causes and his history at the podium for two terms. Vice Mayor Carroll commented on Mr. Altieri's perseverance in righting the wrong that occurred to Mr. Cutler. Vice Mayor Carroll noted that each of the candidates could and would do the job. Vice Mayor Carroll selected Mr. Jim Altieri as the candidate most qualified to serve as his selection to fill the vacant position.

Councilmember Smith noted her selection of Jim Altieri to fill the vacancy based on his work and dedication on the Cutler debacle to right a wrong along with his expertise, strategic planning competencies and the new set of eyes on the Council.

Mayor Foley thanked the Council for their time and consideration of the candidates. Prior to the vote, Mayor Foley thanked Jerry Weick, present in the audience, for his past service, his offer to serve on the Council again and for his sage advice and good guidance. Mayor Foley also thanked Ms. Mehiel, who was not present, for her interest in the position.

Mayor Foley opened the floor to public comment as to the appointment prior to the Council's vote. No members of the public spoke.

A motion to nominate James Altieri to fill the vacant councilmember seat for the Indian River Shores Town Council was made by Vice Mayor Carroll. Councilmember Smith seconded the motion to appoint Mr. Altieri. A roll call vote followed with votes from Mayor Foley, Vice Mayor Carroll, and Councilmember Smith in favor; Councilmember Auwaerter against. The motion passed 3-1. Mayor Foley noted that the new Councilmember would be sworn in at the next regular meeting in October.

Councilmember Auwaerter confirmed with Mayor Foley that committee assignments would be addressed at that meeting as well. Mayor Foley indicated that assignments to committees occur at the November meeting but because of several open assignments it would occur at the October meeting. Mayor Foley directed Town Clerk Rutan to compile a list of vacant seats for discussion and assignment at the next meeting to be placed on the agenda under item 8 under probable action.

b. PZ&V Board Item – 875 River Trail – Dock Request

Mayor Foley confirmed with Town Attorney Sweeney that Council consideration of the variance would proceed as a quasi-judicial hearing. This matter had come before the PZ&V Commission and had been denied. He noted there was a court reporter present. Town Attorney Sweeney provided a brief outline of the quasi-judicial process to the Council. Town Attorney Sweeney provided background on the variance request and noted it was an application for a multi-slip dock at 875 River Trail which is within the Indian Trails subdivision and on the western part of Jungle Trail. Town Attorney Sweeney noted that because of its location, the application required review under the Jungle Trail Preservation Ordinance 161.07 which contains the criteria that restricts construction of a multi-slip dock on Jungle Trail to multi-slip docks proposed by a developer, property owners' association or condominium association. Town Attorney Sweeney indicated that the variance request was vigorously discussed at the PZ&V Board meeting which resulted in a motion made by Member Carbin and seconded to deny the variance for the multi-slip dock request. The PZ&V motion passed by a 4-1 vote. Town Attorney Sweeney recommended the Council take judicial notice of the pertinent ordinances as well as the minutes from the PZ&V Board meeting. Mayor Foley noted that Council received all relevant materials from the PZ&V Board meeting and additional documentation of a submission from the attorney for the applicant as part of the record. Mayor Foley asked all individuals that wished to provide testimony to stand up and the Town Clerk administered the oath.

Mr. Vitunac addressed the Town Council on behalf of the applicant and noted that due to the location, the application was governed by the Jungle Trail Preservation Ordinance. Attorney Vitunac stated that this Ordinance is located under the Land Development Code that requires for development on the Jungle Trail to use a community marina and no applications for single-family docks by the developer. Attorney Vitunac indicated that the language in question and the staff's strict interpretation of the Ordinance precludes any single-family lot owner from ever having a multi-slip dock even though the applicant meets all other criteria as outlined in the staff report. Attorney Vitunac noted that the applicant cannot be evaluated under the Land Development Code while at the same time, not be considered a developer. Mayor Foley confirmed with Attorney Vitunac that the variance request was for a multi-slip dock that contains two slips. Attorney Vitunac noted that the application was made under the variance and notice was sent to the neighbors and the neighbors supported the variance request. Attorney Vitunac noted that Mr. Kusco, the riparian owner, faces a hardship by denial of the variance as his property rights were being hindered. Attorney Vitunac

explained the applicant's status as a property owner with riparian rights and discussion ensued. Attorney Vitunac requested the Town Council determine the applicant meets the code and be approved or if the Council should determine the applicant does not meet the code as a developer, they approve the variance to allow for enjoyment of his land with a small dock that does not impact Jungle Trail. Mayor Foley noted that the ordinance was designed to prevent the multiplicity of docks popping up on Jungle Trail and provided for dock usage by HOAs. Discussion then continued the topic of riparian rights and the status of a waiting list at the association dock. Attorney Vitunac noted that the owner's plan would not impact the east part of the buffer zone, preserves Jungle Trail, and only uses it for pedestrian use that is already allowed. Councilmember Smith asked Attorney Vitunac about the due diligence done by the current owner when the property was purchased to determine if the owner was aware that the ordinance precludes the dock. Attorney Vitunac stated the owner was given permits by the prior owner indicating the dock was approved. Attorney Vitunac noted that the owner had secured all the permits for the dock except for approval of the Town for the dock. Councilmember Auwaerter asked Attorney Vitunac to provide an explanation on the position of riparian rights to obtain the variance. Attorney Vitunac noted his position that the Ordinance does not apply to a single-family lot owner who is not the typical, giant swath of raw land developer on Jungle Trail and indicated his belief the ordinance covers big subdivision developers. Attorney Vitunac noted that under state and federal constitution the rights of the riparian property owner cannot be taken without just compensation and directed the Council to review the three cases which were part of the record that outlined the four parts of riparian rights with one as the right to construct a dock. Additional discussion ensued on the topic of riparian rights.

The applicant, Jim Kusco, stated the realtor advised at the time of the purchase of the property at 875 River Trail that all the permits were secured for the dock which was information secured by the owner. Mr. Kusco noted the owner sent the Army Corps of Engineer and St. John's permits to the realtor which were provided to Mr. Kusco. Mr. Kusco noted that contact was made with the initial engineer for the residence who verified there should be no issues with building a dock. Mr. Kusco noted additional steps of the engineer re-drafting the dock with his information and Mr. Kusco's meeting with his community for their approval of the dock. Additional discussion ensued on the topic of subdivision approval, permits and engineering obtained by the previous owner and the waiting list for a slip in the association dock. An engineer for the applicant also provided testimony on his involvement in the project design. Mr. Sweeney also discussed some apparent conflict in items discussed to that point in the meeting. Town Attorney Sweeney advised the ordinance was clear and unequivocal on its face as the request for a multi-slip dock application is not from a developer, condominium association or homeowners association which prohibits the dock as the requirements had not been met. Town Attorney Sweeney noted that the requirements for a variance were multiple and clearly stated in the applicable subsections of Ordinance 168.09(2) (a-f).

Town Attorney Sweeney noted that there was a broad section of the Ordinance involving variances and stated this application requires conformity with the specific section involving Jungle Trail reflective in the PZ&V Board minutes. Town Attorney Sweeney noted that there were four multi-slip docks situated along Jungle Trail within the confines of Indian River Shores with three docks associated with an association and one dock at the adjoining neighbor's property at 875 which was built, owned, and leased by the property association to that property owner for a lengthy term more than eighty years. Town Attorney Sweeney indicated that to meet the criteria the application would need to be supplied by a developer, condominium association or homeowners' association.

Councilmember Auwaerter asked about the legal definition for the term developer. Town Attorney Sweeney stated he was unaware of a definition for the term developer within the Land Development Code.

Mayor Foley invited members of the public to speak. Larry Schaeffer spoke and noted that he is on the wait list for the boat slip. Mr. Schaeffer discussed how many of the homeowners on the list will most likely never obtain a slip. Mr. Schaeffer stated there would not be any harm in approval of the variance and if Mr. Kusko were granted the variance, it would free up a slot on the waiting list.

Mayor Foley invited Attorney Vitunac to provide a summation. Attorney Vitunac requested the Council grant Mr. Kusko's variance application and noted that at most four homeowners could obtain a similar variance if their requests met the protections of Jungle Trail. Councilmember Auwaerter asked Attorney Vitunac to explain the comment about impacting four homeowners. Attorney Vitunac noted that from the testimony of Engineer Smith, there were four homeowners on the stretch of Jungle Trail in Indian River Shores that might have precedence to build docks depending on the decision of the Council.

Mayor Foley commended Attorney Vitunac on an outstanding job representing his client. Mayor Foley noted that there was no mechanism to ignore the Ordinance. Mayor Foley further stated that the Council took an oath to uphold the ordinances and laws of Indian River Shores and expressed sympathy for Mr. Kusko who was provided a belief that a dock could be built. Mayor Foley noted his vote was in favor of upholding the PZ&V Board's denial of the application for the permit and denial of the variance. Councilmember Auwaerter noted that review of the Ordinance down the road might be appropriate, but at the present time, the Council does not have the ability to grant the variance. Vice Mayor Carroll referenced a similar situation that came before Council two years earlier involving the PZ&V's denial of a variance requested by a property owner. Vice Mayor Carroll noted based on the similarities between both variance requests that his vote would be to uphold the decision of the PZ&V Board. Councilmember Smith agreed with the decision of the other Councilmembers to uphold the determination of the PZ&V Board.

Councilmember Auwaerter motioned to uphold the initial denial of the request for the permit pursuant to the relevant ordinance which was seconded by Vice Mayor Carroll. A roll call vote was held with votes from Mayor Foley, Vice Mayor Carroll, Councilmember Auwaerter and Councilmember Smith in favor and the motion passed unanimously.

Vice Mayor Carroll moved to deny the application of the variance which was seconded by Councilmember Auwaerter. A roll call vote was held with votes from Mayor Foley, Vice Mayor Carroll, Councilmember Auwaerter and Councilmember Smith in favor and the motion passed unanimously.

c. Recycling and Solid Waste

Town Manager Harpring discussed the letter of intent that memorialized the basic understanding of the agreement moving forward. Town Manager Harpring stated discussions continued with Republic to determine the details of the transition agreement. Town Manager Harpring discussed his meetings with the County's Solid Waste Director and noted that the Town is on track for inclusion in the County's RFP. Town Manager Harpring stated the plan is to have a contract for the Council to review and approve in October which would constitute amendments to the two current contracts as an extension with Republic with 2025 as the termination date. Mayor Foley requested Town Manager

Harpring provide the proposed contract as soon as possible to the Council for their review as opposed to inclusion of the proposal as part of the October regular Town Council meeting packet. Town Manager Harpring noted the proposal is in progress and will provide the contract to the Council upon completion.

Mayor Foley provided an opportunity for members of the public to speak. Mr. Bill Driskell addressed the Council and noted his position as the board member of the Shores Community at Old Winter Beach Road. Mr. Driskell asked if the contract was put out to bid. Town Manager Harpring stated that the extension to the contract was not put out to bid. Mr. Driskell stated that the rate of the extension reflects a 72% increase in the change in rates from \$76.61 a quarter to \$132.12 per quarter. Mr. Driskell expressed his concern over the high benchmark resulting from these figures. He expressed his concern that when the RFQ is put out for competitors, those bidding will play off this high increase, resulting in an adverse impact on the small community of 4,000 to 4,200. Mr. Driskell discussed his surprise at the process and his disapproval of forcing the issue now. Mr. Driskell indicated that by not negotiating further, a benchmark would be established that will negatively impact the community financially as well as Republic earning ½ million dollars incremental to the current rate.

9. Staff Updates (4:47 PM)

a. Building Official Report & Statistics

Building Official Luis Martinez indicated that numbers have continued a downward trend. Councilmember Auwaerter noted that new construction value is higher fiscal year to date and additions and alterations were down.

b. Town Treasurer Report

Town Treasurer Christmas noted the Council was provided the report and discussed the movement of \$1,000,000 from the South State Bank into the SBA based on the increase in rates. Councilmember Auwaerter noted the information provided by Town Treasurer Christmas is on page 115 of the report and asked Town Treasurer Christmas to elaborate. Town Treasurer Christmas stated funds were moved from SouthState Bank since current interest rates do not match the Federal fund rates. Treasurer Christmas noted there is a lag time when funds are moved in and out of the SBA and made the decision to not move the funds in their entirety. Treasurer Christmas explained the decision to leave over \$1,000,000 in the checking account to satisfy payroll checks and emergency needs. Treasurer Christmas also indicated there would not be a report available for the October meeting based on her additional workload because of the end of the fiscal year.

c. Public Safety Department Report & Statistics

Public Safety provided an update on the crosswalk and discussed the constant communication with FDOT to get the crosswalk approved. Discussion ensued on FDOT studies of A1A and cross walk locations.

10. Town Attorney Report (4:56 PM)

Town Attorney Sweeney provided the Council with a Memorandum regarding the recent changes to F.S. 106.113 prohibiting the use of any municipal funds to support or otherwise discuss the Charter amendment referendum. Mayor Foley discussed his request that Town Attorney Sweeney provide

guidance to the Council on what is permissible on the provision of information to educate the Town residents about the Charter referendum based on the inability to send out mailings to the Town to explain the referendum based on changes to F.S. 106.113.

**The Regular Town Council Meeting recessed at 4:58 PM for the budget hearing at 5:01 PM and then reconvened at 5:07 PM to finish the Regular Town Council Meeting. **

11. Town Manager Report (5:07 PM)

Town Manager Harpring discussed the Code Enforcement Report prepared by Officer Maikranz. Town Manager Harpring noted that Officer Maikranz is also the Town Fire Marshall and oversees vacation rentals. Town Manager Harpring discussed recent communication with Florida City Gas involving locations for regulator stations. He went on to advise that the Indian and Seminole Lane project was complete and noted that the system was functioning well and as designed. Town Manager Harpring indicated improvements to the courtyard will begin in the fall. Town Manager Harpring finally stated that approximately 50% of the repairs to the Community Center were complete with continued progress on the outside surface that will conclude with painting.

12. Council/Committee Reports or Non-Action Items (5:10 PM)

a. Call for Committee Reports, Informational Updates or Comments

Councilmember Auwaerter discussed the City of Vero Beach Utilities Commission meeting where plans were laid out for increases in rates to put money aside for utility plant. Councilmember Auwaerter discussed the City's proposed budget of eighty-two million dollars for the plant that has gone up 35% from the initial sixty-million-dollar figure fourteen months earlier. Councilmember Auwaerter presented the Council with his motion to the City of Vero Beach Utilities Commission and noted the Commission's agreement except for the Chairwoman. Councilmember Auwaerter outlined his motion to require a utilities consultant to provide the proposed increase rates if the plant cost went up ten million dollars. Councilmember Auwaerter noted that the City Council met the following day and directed the consult to provide that increased amount. Councilmember Auwaerter discussed the potential structure to the pay down the bond for the plant that would result in an increase to the rate payers an additional \$5,000,000 over thirty years. Vice Mayor Carroll inquired as to the \$5,000,00 increase and Councilmember Auwaerter indicated it was an increase on the 82milliondollar figure. Councilmember Smith commended Councilmember Auwaerter on his participation in the discussions as the Utilities Commission. Councilmember Auwaerter discussed his appointment to the Florida League of Cities Legislative Policy Committee for Utilities, Public Works, and National Resources. Mayor Foley thanked Councilmember Auwaerter for his participation at the City of Vero Beach Utilities Commission meeting.

Mayor Foley discussed his attendance at the recent Florida League of Cities Board of Directors meeting on September 21st and the upcoming meeting on November 30th in conjunction with the legislative conference. Mayor Foley invited the Council to attend the November meeting. Mayor Foley discussed his attendance at the recent Treasure Coast Council of Local Government meeting this month and the discussion of the very low unemployment rates in our area and continued shortage of workers.


13. Call to Audience (5:16 PM)

Patty Gundy thanked the Council for upholding the PZ&V Board's decision regarding item 8b noting her sympathy for the homeowner. Mayor Foley thanked Ms. Gundy for her participation on the PZ&V Board and for the work the Board does.

14. **Adjournment** (5:17 PM)

The meeting adjourned at 5:17 PM.

Approved: October 27, 2022



Janice C. Rutan, Town Clerk