



Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING WEDNESDAY, FEBRUARY 21, 2018 COMMUNITY CENTER – 509 OCEAN AVENUE

MINUTES

Mayor Jim Simmons
Vice Mayor Tom Davis
Commissioner Wyatt Hoover
Commissioner Sherri Quarrie
Commissioner Steve Walters

Town Manager Robert Daniels
Town Clerk Nancy Wilson
Town Attorney Clifford Repperger, Jr.

PUBLIC NOTICE

**The Town Commission conducted a Regular Town Commission Meeting
on Wednesday, February 21, 2018 at the Community Center
to address the items below**

I. Call to Order – Led by Mayor Simmons

Mayor Simmons called the meeting to order at 6:30 p.m.

II. Roll Call

Town Clerk Wilson led the roll call.

Commissioners Present:

Mayor Jim Simmons
Vice Mayor Tom Davis
Commissioner Steve Walters
Commissioner Wyatt Hoover
Commissioner Sherri Quarrie

Staff Present:

Town Manager Bob Daniels
Town Clerk Nancy Wilson
Town Attorney Cliff Repperger

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Presentations

No presentations

V. Boards and Committees

*Curtis Byrd - Environmental Advisory Board
306 Surf Road*

Mr. Byrd reported that he attended the Satellite Beach Sustainability Summit the previous week where he got some great information. Satellite Beach, Cocoa, Cocoa Beach, Palm Bay and Melbourne are all working on plans. There are a lot of things we can do, among them is working with FIT where we may be able to get an intern. There are three who are qualified and will be available for an internship in the Fall. Working with FIT would be good for the Town and the students; it would be nice if the Town could fund an internship(s). Mr. Byrd said he was happy about the effort to decrease the use of plastic in the Town and EAB is behind that effort.

VI. Public Comments

*Frank Thomas
606 Atlantic Avenue*

Mr. Thomas announced that Commissioner Hoover was a recipient of this year's LEAD Brevard's "4 Under 40" honor. As our local historian, he mentioned another noteworthy article related to Ponce de Leon.

*Allen Waters
312 6th Avenue*

Mr. Waters handed out a list of Melbourne Beach code violations compiled by him and his wife. He wants the Town to be more proactive with code infractions.

VII. Approval of the Agenda

Commissioner Walters made a motion to approve the agenda as presented; Commissioner Quarrie seconded. Motion carried 5-0

VIII. Consent Agenda (00:11:50)

- A. Appointment of Bruce Morgan to the Environmental Advisory Board for a term of two years ending February 21, 2018
- B. Reappointment of Marty Remark to the Historic Preservation and Awareness Board for a term of two years ending February 21, 2018
- B. Reappointment of Joe Tracy to the Historic Preservation and Awareness Board for a term of two years ending February 21, 2018
- C. Reappointment of Crystal Cain to the History Center Board for a term of two years ending February 21, 2018
- D. Reappointment of Steven Doles to the History Center Board for a term of two years ending February 21, 2018
- E. Police Pension Board report
- F. February 7, 2018 Town Commission Joint Workshop draft minutes

Commissioner Walters made a motion to approve the Consent Agenda as presented; Vice Mayor Davis seconded. Motion carried 5-0.

IX. Public Hearings

No public hearings

X. Old Business

- A. Consideration of B.S.E. Consultants proposal to provide engineering services to mitigate stormwater issues– Town Manager Daniels **(00:12:15)**

Town Manager Daniels said initially we had 3 priority 1 sites:

- Rosewood Drive and Dogwood Avenue
- Oak Street and Cherry Drive
- Andrews Drive

Since then 2 other sites have arisen at outfall lines that need immediate attention: 508 Riverside Drive and Avenue A at Riverside Drive. These were most likely damaged during IRMA but it took a while for the earth to give way. He's looking to authorize B.S.E. to perform the engineering necessary for stormwater repairs and prepare an RFP to be advertised for contractors to conduct the repairs necessary for sites at Oak Street south of Cherry Drive, Rosewood Drive at Dogwood Avenue the outfall line by 508 Riverside Drive and the outfall line at the end of Avenue A at Riverside Drive. He would also like to

authorize B.S.E. to perform the engineering necessary for stormwater repairs on Andrews Avenue. Without more research, B.S.E. can't tell us the best way to resolve the issue on that road.

*Ana Saunders, Project Engineer
B.S.E. Consultants*

Vice Mayor Davis liked the option of redirecting the water on Andrews. Commissioner Hoover asked for clarification about the redirection of water to which Ms. Saunders responded that they would utilize street slope to see where the water is going then appropriately place drainage structures or make modifications to the curbing or road.

Commissioner Walters asked if B.S.E. wants an additional 18 hours to review existing video. Ms. Saunders responded that B.S.E. has been given some additional boxes of information to review. When B.S.E. gave their initial estimate, they said it would take 3-4 hours for the one box of information that the Town provided but instead it took about 16 hours. They don't have any intention of viewing all the new information provided, rather, what they intend to do is review all the new material, catalog the information and tag the material that is pertinent then organize all the information in such a way that the Town can utilize it. In response to a question raised by Commissioner Walters, Ms. Saunders said it was a lot of information to go through and it would take some time. Secondly, he said that B.S.E. is estimating 20% of construction costs to be their fee and he thinks that's high. Ms. Saunders said it's very difficult to estimate construction costs but they did their best to provide a ballpark figure so the Town would have a place to start in budgeting for these projects. Commissioner Walters continued evaluating the costs presented in the Town Manager's memo.

Commissioner Hoover said that the ratio of B.S.E. costs to construction costs varies and wondered if that was because of a presumed complexity of one project over another. He wanted clarification on how they determine their fees. Ms. Saunders said they don't generally work on a percentage adding that percentage based engineering is usually done for large projects. They don't know the construction costs at this point so the figures presented are their best guess based on experience. When they look at a project and price it, they determine how long they think it will take, develop the plans, go through permitting, work with staff and are onsite during construction. After factoring in all those components, they come up with a price.

Commissioner Quarrie asked about permitting costs and who would do it. Town Manager Daniels answered the permitting would be conducted by the engineering staff and if we do the 2 outfalls at one time there are economies of

scale. Ms. Saunders thinks the permitting would be around \$1,500 but that figure will be determined up front. She added that when the projects go out for bid, the Town will need to hire a licensed contractor with dock and seawall repair experience so that would need to be stated in the RFP.

Mayor Simmons said he's assuming that they use hourly rates for engineers, surveyors, etc., to come up with a cost estimate. Ms. Saunders agreed and added that if they can do something cheaper, they will. The Mayor said what we're looking at is for B.S.E. to perform the engineering for the five areas discussed, which includes Andrews Drive, for a not to exceed total cost of \$28,800.

Commissioner Walters asked how the Town knows if the costs presented are reasonable. Ms. Saunders said the Town will receive a monthly invoice where there will be a cost breakdown. She added that B.S.E. has shown good faith in their dealings with the Town and they have already performed a lot of work at no charge. She said that B.S.E. is sensitive to the fact that the Town is in a precarious position due to stormwater issues in the past. In response to Commissioner Walters' questioning of the charges presented and the 18 hours requested by the Town Manager for the engineers to review recently provided information, Mayor Simmons said he felt B.S.E. was charging very reasonable rates. He added that they have been performing engineering work in Indialantic for over 27 years.

Commissioner Hoover made a motion to approve the engineering cost of \$21,600 for the 4 areas that include: Oak south of Cherry (\$4,000), Rosewood at Dogwood (\$5,000), 508 Riverside outfall (\$5,400) and Riverside at Avenue A outfall (\$7,200) with an additional engineering estimate of \$7,200 for Andrews for a total not to exceed engineering cost of \$28,800; Commissioner Quarrie seconded. Motion carried 5-0.

Town Manager Daniels said that the problems on 2nd/Pine and Poinsettia are second tier issues though Scott Glaubitz (B.S.E.) did perform an analysis on those two areas while he was in Town. He listed them in his memo because they were mentioned in B.S.E.'s report but they are to be addressed at a later date.

Commissioner Quarrie asked about the installation of swales on Poinsettia and if all the residents would need to be given notice prior to work being performed. The Town Manager said he would imagine so.

The Commission agreed by consensus to table 2nd Avenue/Pine and Poinsettia projects until B.S.E. has had time to review the new material they were given by the Town.

Commissioner Quarrie wanted a timeline for when B.S.E. would come back to the Commission with information regarding the 2 projects mentioned above. Ms. Saunders answered that B.S.E. should be able review all the new information provided by the Town by March's meeting.

The Commission agreed by consensus to authorize B.S.E. to spend up to 18 hours to thoroughly review the 3 boxes of additional stormwater information provided by the Town.

Town Manager Daniels asked for Ms. Saunders to update the Commission on the backup generator system. Ms. Saunders reported that B.S.E. assisted the Town in preparing the RFP but the bids received were incomplete as neither firm conducted an energy analysis. B.S.E. acquired the summary data information for the Town from FPL. After analyzing that data, they found that we had a maximum kilowatt hour per day of 52 in October 2016 at peak load meaning that a 60kw generator would satisfy our demands though 75kw is recommended to allow for expansion. Ms. Saunders suggested rebidding the project with updated specifications. She also suggested that we also request bids for an 80kw generator as it may be cheaper than a 75kw generator. The problem with the previous RFP is that it was too technical and too much information was required.

Mayor Simmons said that a 75kw generator is probably a good idea because we probably weren't running the air cleaning systems in the bays in October 2016 nor were we utilizing supplemental communication equipment. Ms. Saunders suggested that the revised RFP ask for quotes for both 60kw and 75kw generators.

The Mayor wants one contractor who owns the project and who we call when anything goes wrong. Ms. Saunders added that it is ideal to have a contractor who installs the generator, maintains it and provides a service plan since periodic maintenance should take place at 6 month intervals and at timed cycles. She said regarding the transfer switch, it should allow a load delay based on a priority list so that power would be turned on in cycles; this would avoid power spikes.

Commissioner Quarrie asked if we are required to have an extra generator for the Police or Fire Departments for communication equipment. The Mayor responded that we are not and added that we utilize satellite radios.

The Town Manager said he will reissue the RFP requesting bids for both 75kw and 80kw generators.

The Commission agreed by consensus to allow the Town Manager to reissue an RFP requesting bids for a 75kw and 80kw generator.

- B. Consideration of contract with Computer Experts to perform IT Services – Town Manager Daniels (00:46:47)

Town Manager Daniels said the bid from Computer Experts was accepted at the January 17, 2018 meeting. The contract was reviewed by the Town Attorney and the recommendation was to approve the 2 year contract.

Vice Mayor Davis made a motion to approve the contract with Computer Experts to perform Computer Services for the Town at a rate of \$1,599 per month; Commissioner Quarrie seconded.

Town Attorney Repperger said there is an inconsistency on page 47 under “Defaults and Terminations” where the term of the contract should be changed to 2 years from 1 year. The Town has a 30 day out clause.

Vice Mayor Davis revised his motion to approve the 2 year contract with Computer Experts to perform Computer Services for the Town at a rate of \$1,599 per month; Commissioner Quarrie seconded. Motion carried 4-1 with Commissioner Walters casting the dissenting vote.

- C. Consideration of renewal agreement for legal services – Town Attorney Repperger (00:50:00)

Town Attorney Repperger said there is a proposal for renewal that the Commission has already seen which needs to be dealt with first. Since the last meeting, Mr. Repperger decided to transition law firms to Rossway Swan so the Town has an option to renew legal services with Gray Robinson or transition with him to his new law firm.

Commissioner Walters said that the agreement in the package is with Gray Robinson to which Mr. Repperger clarified that the agreement is with him being the attorney the Town uses from Gray Robinson. Under the Florida Bar rules, an option is provided so that when an attorney contracts with the client, the client has the option of either going with the firm or going with the lawyer when a transition takes place. The bottom line is that if the Town accepts the renewal with Gray Robinson another attorney will be assigned. Alternatively, the Town can transition to Mr. Repperger at his new law firm.

Commissioner Hoover asked if it's customary for clients to be notified of transitions to which Mr. Repperger responded that it's a requirement under Florida Bar rules. He then said the Town can vote to renew then vote to either stay with Gray Robinson or transition with him to Rossway Swan. If the Town renews with Gray Robinson, the rate does not need to be renegotiated.

Commissioner Quarrie asked if Mr. Repperger would operate under the terms of his current agreement when he transitions. He responded that nothing regarding terms would change.

Vice Mayor Davis asked if they could deny renewal with Gray Robinson then contract with him separately. Mr. Repperger said that the Commission could deny the renewal then contract with him after the transition takes place. He added that if the Town is happy having him as their attorney, he would encourage them to accept the renewal and then approve the transition which would mean the Town would operate under the same terms that we have with Gray Robinson. Nothing else would need to be done except that the Town may want to confirm that the renewal has been picked up by Rossway Swan.

Mayor Simmons said we have been well served by Mr. Repperger, there has been no rate increase for 3.5 years and he came highly recommended by the Town's previous attorney. He said the Town has lacked continuity by putting contracts out for bid which usually result in the Town paying more; we need expertise and continuity.

Vice Mayor Davis made a motion to approve the renewal with Clifford Repperger as our Town Attorney; Commissioner Hoover seconded. Motion carried 4-1 with Commissioner Walters casting the dissenting vote.

Vice Mayor Davis made a motion to direct the Mayor to sign the transition letter whereby all files and data will be forwarded to Rossway Swan; Commissioner Quarrie seconded. Motion carried 4-1 with Commissioner Walters casting the dissenting vote.

XI. New Business

- A. Consideration of January 10, 2018 Town Commission Workshop draft minutes as amended – Town Clerk Wilson (01:14:02)

The Commission approved the amended draft minutes from the January 10, 2018 Town Commission Workshop draft minutes 5-0.

- B. Consideration of January 17, 2018 Regular Town Commission meeting draft minutes as amended – Town Clerk Wilson (01:14:29)

Commissioner Hoover made a motion to approve the January 17, 2018 Town Commission meeting draft minutes as amended; Commissioner Quarrie seconded. Motion carried 5-0.

C. Discussion and possible action regarding Customary Use (Beachfront Access) and the potential impacts to Melbourne Beach - Mayor Simmons (01:15:08)

Mayor Simmons said he put this on agenda because he read about proposed legislation that would halt local governments' ability to pass customary use ordinances that ensure public beach access thus allowing private property owners to restrict access. Currently, access to privately owned beachfront property can't be restricted. He asked the Town Attorney if, when taxpayers started paying for beach renourishment, the private property owners lost the right to exclude people from using the beach up to the dune line. The Town Attorney said that access to that property is not necessarily a result of taxpayers' funding of beach renourishment. Those are complicated public use easement type issues. He said there is an historical public easement use for those areas regardless of beach renourishment. The Mayor said that current proposed legislation may take away that historic right to use; he's concerned about potential problems. In talking to one beachfront owner, she said she was pretty sure she had signed something that gave away her right to claim that land when she accepted beach renourishment. The Town Attorney responded by saying that private owners may have done that as part of the process. The Mayor said his real question is, based on the proposed State legislation and based on the fact that we've paid for the sand that's now there, do we have or do we not have customary use of the beach between the dune and the water? The Town Attorney said that he believes the Town is entitled to have that customary use regardless of the acceptance of the sand. The Mayor then asked if that's true even with the new legislation. Mr. Repperger said it's hard to opine on new legislation; that will have to be a decision that the courts render. He doesn't think the legislation would affect the customary right of use. The Mayor said if HB 631 and SB 804 pass, they will take away customary use and we don't have an ordinance in place to protect us from those bills; all we have to cover us is the beach renourishment. Mr. Repperger said the legislative summary says the proposed legislation does not apply to ordinances adopted prior to January 1, 2016. The upland owners are the owners of the property from their property to the mean high water line but that property is subject to a customary right of use. In response to comments made by Commissioner Quarrie, the Town Attorney said he doesn't see this legislation as taking away much. It's saying that local governments can't unilaterally make a determination that customary use applies. In order to have customary use apply, you have to get a court decree. Mayor Simmons said that Florida League of Cities, Surfriders, et al, have a different take on the subject and believe it's a land grab. Mr. Repperger said that under the summary it doesn't appear that any action the Town takes is going to matter.

Commissioner Walters said that property owners on the ocean are trying to keep people from using the beach and the League of Cities has protested the bills. We are losing our Home Rule a little bit at a time.

For the record, Thad Altman is our representative for the House Bill and Debbie Mayfield is our representative for the Senate Bill.

No action taken on this agenda item.

- D. Consideration of change to volunteer application to improve the vetting process for four Town boards – Mayor Simmons (01:29:03)

At the January 17th meeting, Mayor Simmons said he would like to establish a more rigorous screening process for applicants to the Board of Adjustment, Code Enforcement Board, Planning & Zoning Board, and Police Pension Board. He feels we should vet applicants who want to sit on these key Boards.

Commissioner Walters said his only problem with this is that we can't get volunteers as it is. He agrees with the concept but feels it won't work here. Vice Mayor Davis agreed. Mayor Simmons said the Town is very strict about giving variances and he wants to make sure the Boards continue that. He added that if an applicant can't be bothered taking 15 minutes to talk to the Commission, he doesn't want them on the Board anyway. With the exception of the Planning & Zoning Board, the other 3 boards can cost the Town a lot of money by their decisions and can affect allowable uses without Commission review or the ability to override their decisions.

Commissioner Quarrie said that having restrictions may attract people who are more qualified to serve on the Boards. Both she and Vice Mayor Davis remember being interviewed prior to serving on one of our Boards. Commissioner Walters said if an applicant can come to a Workshop, he has no objection to modifying the volunteer application.

Commissioner Hoover pointed out an error on the proposed application that the Town Clerk said she will fix. He added that he would rather have fewer members on a Board than have people on the Board who aren't qualified or committed to doing the job properly. He would like the required meeting to be as informal as possible.

There was Commission consensus to update the Board application (as presented in the agenda package) to read that prior to appointment, applicants to the Board of Adjustment, Code Enforcement Board, Planning & Zoning Board, and Police Pension Board will be required to attend a Town Commission Workshop to meet with the Mayor and Commissioners.

- E. Discussion and possible action regarding hiring a near full time Code Enforcement Officer – Vice Mayor Davis (01:42:45)

Vice Mayor Davis said that code enforcement should be proactive rather than reactive. He'd like for the Town to approve 25-30 hours per week for the position of Code Enforcement Officer. He's not looking for punitive actions to be taken and thinks that the residents don't know our codes so the job would involve educating them via passive correction.

Commissioner Walters said he feels the Town only needs 10 hours/week to perform code enforcement but he wouldn't disagree with 15 hours/week if that's what the Town Manager suggests. He thinks over time, the workload will dwindle. Vice Mayor Davis said that when an activity is performed proactively, it's hard to quantify because success is often prevention of an undesirable activity. He wants to see rapport between the citizens and the Code Enforcement Officer.

Mayor Simmons agreed that we need to be proactive. The Town has 19 miles of road, if somebody drives 20 mph on all 19 miles, every road can be covered three times a week in three hours (one hour per day) leaving 6-7 hours per week to write reports and perform other related activities. He said if we found somebody who is dedicated to the job, the work could be completed in 10-12 hours.

Commissioner Quarrie asked if a qualified person is found, could they work as a code enforcement official and help out in the building department – there was no response. The Mayor said that our powers are limited on code enforcement. He recounted a story about a lien and said that the only way we were able to clear that \$225,000 lien was when the bank inquired about satisfying the lien in order to refinance or repossess. We also can't look over fences or go on people's property; we can only add to a person's lien. He concluded by saying that sending something to the Code Enforcement Board is a last resort and little is sent to them because most issues are rectified. We want to work with our residents.

Town Manager Daniels said the main purpose of a good code enforcement program is to gain compliance. His expectation is that whoever does that job, needs to be community policing oriented. We need to talk to individuals and educate them on our code. He suggested hiring somebody who will work a flexible schedule including evenings and weekends.

Commissioner Hoover asked if we have in place a schedule to account for time which has indicated that 10 hours/week isn't enough to which Town Manager Daniels responded that we don't have a plan in place. He added that some violations take up more time than expected. Also, there are a number of people who aren't get building permits and code enforcement has had to step up to the plate because of how busy the Building Department has been. Commissioner Hoover said he understands that some work will be unexpected, but he would

like to see some sort of plan in place before hiring somebody. The Mayor added that the Town Manager would have to manage the days and shifts that the code enforcement employee works.

In conclusion, Mayor Simmons said that a neighbor shouldn't have to call to complain, the problem should be solved before a call is necessary. Being proactive will ensure that everybody is being treated fairly.

The Commission agreed by consensus to hire somebody to perform code enforcement for up to 15 hours per week and for the Town Manager to present a plan of action describing what the new employee will be doing and present this plan at the March 7th Workshop

Jane Waters
312 6th Avenue

She agreed that the Town should be more proactive with code enforcement and suggested that relevant information be published on our website and/or in the Beachcomber.

Commissioner Hoover requested that when the new employee is hired that we showcase him/her in the Beachcomber.

- F. Consideration of the 2018 Ocean Lifeguard Agreement with Brevard County – Town Manager Daniels (02:12:16)

Town Manager Daniels said he understands that signing this agreement with Brevard County is an annual process. Money has been budgeted for this activity and he's requesting that the Commission authorize him to execute the contract.

Commissioner Quarrie made a motion to direct the Town Manager to execute the contract with Brevard County to provide lifeguard services in the amount of \$18,721 beginning on March 31st and ending on October 28th; Commissioner Hoover seconded. Motion carried 5-0.

- G. Consideration of FRCP (Florida Resilient Coastline Program) Cost Reimbursement Grant letter of interest– Town Manager Daniels (02:14:15)

Town Manager Daniels said that the Florida Department of Economic Opportunity requested that we review our Comprehensive Plan for compliance with Florida Statutes. On January 31, 2018, staff submitted the results of the review to the State and changes to our Comprehensive Plan are necessary; we have until January 31, 2019 to perform those changes. The grant provides between \$25,000 and \$75,000 for planning and/or technical assistance, especially in conjunction with comp plan *Evaluation and Appraisal Review* efforts. No matching of funds is required.

Commissioner Quarrie made a motion to direct the Town Manager to submit a letter of interest for the FRCP Cost Reimbursement Grant; Commissioner Hoover seconded. Motion carried 5-0.

- H. Consideration of FIND (Florida Inland Navigation District) Grant application – Town Manager Daniels (02:17:22)

Town Manager Daniels said that FIND is accepting grant applications for their 2018 Waterways Assistance Program due March 30, 2018. The grant requires a 50% match. Eligible projects include public navigation, public waterway access facilities, waterfront parks, environmental education and boating safety projects. The Town is looking for ramp renovation and repair funds with a projected cost of approximately \$60,000 which includes the use of pervious asphalt, seawall replacement on the south seawall, wheelchair access and handrails. The damage from previous storms has been assessed and the results have been submitted to FEMA but we don't know if or when they will respond.

Mayor Simmons asked if we can piggyback the repairs to the outflows at Riverside onto this application. The Town Manager said it's a possibility. The Mayor added that Jerry Sansom, Chairman of FIND, said he returned money last year that wasn't awarded; he was begging people to apply.

Commissioner Quarrie made a motion to authorize the Town Manager to apply for the FIND grant covering the south seawall replacement, pervious asphalt, wheelchair access and handrails at the boat ramp and to explore including the outflows at Riverside; Commissioner Hoover seconded. Motion carried 5-0.

- I. Consideration of policy prohibiting the use of some plastics, all EPS products and single use plastic bags at Founder's Day – Mayor Simmons (02:23:36)

Mayor Simmons got the idea to do this coming out of the Sustainability Workshop and Summit. State law prohibits us from regulating any of these things (plastics, EPS products and single use plastic bags) with our merchants but it does allow us to regulate the use all EPS products and plastic plates/spoons/forks/knives on Town property. The biggest impact will be felt by the Rotary Club because they use plastic Solo cups. Regarding straws, the Mayor contacted a member of the Brevard Zoo and she said she'll give us 10,000 paper straws that disintegrate; there are no regulations about prohibiting straws. We cannot prohibit the use of single use plastics bags but we can prohibit the use of EPS products and plastic cups, etc. on Town property and for Town functions. The Mayor would like consensus to prohibit the use of EPS products and plastics (with the exception of bags) on Founder's Day and encourage our vendors not to

use single use plastic bags. The Town Manager said that Hoover Junior High students will be monitoring our recycle and waste bins on Founder's Day.

There was Commission consensus to have plastic utensils and EPS products prohibited on Town property for Founders Day.

The Parks Board, vendors and artists need to be notified about these restrictions.

J. Consideration of paid internship to support Town Sustainability Plan development – Mayor Simmons (02:30:55)

Mayor Simmons said there will possibly be 3 volunteer interns available to help with our Sustainability Plan. Dr. Lindeman said at the previous Workshop that a small stipend for the intern(s) is a great incentive. The Mayor said that by not attending a couple budgeted activities this year, we have about \$2,500 that could be used to compensate the interns. Commissioner Walters said we don't have a plan or a course of action so we don't know specifically what the students will be doing. Commissioner Hoover said that EAB is having their first meeting with the students on February 28th and since there's no urgency, we can give EAB a couple of meetings to start developing a plan. The stipend was discussed further with the amount paid to be determined at a later date, however, an hourly rate would not be paid. It was also mentioned that we may only want to utilize one of the interns.

The Mayor said he could talk to Dr. Lindeman and EAB members after their next meeting to get input from them.

The Town Manager pointed out that this activity will span 2 budget years so we have 2 budgets to work with. He added that we should have one point of contact.

Christina Keshishian
313 Hibiscus Trail

Ms. Keshishian said that there are other entities developing sustainability plans so we will be competing with them for these students. She understands that we need to be frugal but she wouldn't want to lose those students because we didn't want to compensate them adequately. Ms. Keshishian added that the FIT interns actually helped Satellite Beach come up with their sustainability plan.

There was Commission consensus to table this item until the next regular meeting.

XII. Staff Reports (02:39:30)

A. Town Attorney Report

Mr. Repperger thanked the Commission for renewing his contract.

He said he is still having a dialogue with Melbourne regarding the terms of the water renewal. It will most likely be presented at the March meeting. Mr. Repperger said pretty much everything in the agreement is the same and they haven't specifically talked about cutting off water to the barrier island during storms. The Town Manager added that he's been told that water won't be cut off but he'd prefer to see it in writing. Mayor Simmons said that last year, Melbourne said they told barrier island residents that they had "no plans" to shut off water to the barrier island but that wasn't true. Commissioner Hoover said he's talked to some water utility employees and they definitely think the best thing to do, and what is going to happen, is to shut off the valve because if a line breaks over here during a storm, everybody loses water. Commissioner Quarrie asked if we have the power to alter the language of the agreement to which Mr. Repperger responded that he'd be happy to address any issue and to forward a draft copy to them. Mayor Simmons stated that we have no leverage but he doesn't want to make it easy on them.

Commissioner Walters asked about *Sands on the Beach*. Mr. Repperger said we have a pending Special Exception application for conversion to a Bed & Breakfast. The Town Planner issued a report saying the application was incomplete. It is now at issue because the appeal that they had filed, off the determination that they were previously residential, didn't go anywhere in front of BOA. At that point, Ms. Rezanka insisted, to drive the project forward, that the Special Exception be heard. We had it scheduled, the Town Planner had issued a report, we were ready to go forward but the applicant has twice asked for continuances that BOA has granted. Part of the reason for the continuances is that they wanted to try to address the issues that were raised in the Town Planner's report that says it was incomplete. We are trying to work with them but they can't continue it again without resubmitting or readvertising. In the meantime, they've also submitted a request, through Town staff and the Town Planner, to evaluate whether they can move forward with a concept plan for a spa with overnight accommodations.

Commissioner Walters asked about the \$5,000 that should have been placed in escrow to pay for costs associated with the Special Exception application. The Town Attorney said he didn't know if they have paid anything additional. The Mayor said if they have made a separate application, there needs to be a separate escrow. The Town Attorney said he doesn't know if they made a separate application or made a request for an interpretation of the concept of a spa. Mayor Simmons asked if they have expended the funds on the initial application and, if so, have they replenished the funds in escrow; the Town Attorney said we need to get an accounting of that. The Town said no to their rezoning request so they then went back and said they are resurrecting that it was zoned residential at some point. The Town Attorney said that when the application was submitted, rather than move forward because the applicant had an understanding that staff

was not supportive of it, they moved forward with a code change. The code change was proposed to change Bed & Breakfast to allow them to move forward with the application which the Commission rejected. In that process, the applicant had submitted evidence that they thought demonstrated that they met the codes so they didn't need a code change. Mr. O'Gorman opined that it was insufficient to demonstrate that so Ms. Rezanka tried appealing to the Board of Adjustment and BOA said they don't have jurisdiction over that so then Ms. Rezanka requested that they move forward with the application. Technically, there is an application pending and clarification was requested for a totally different use than what's in the application. The Town Attorney said he believes the Town Planner is looking at the spa request. Mayor Simmons said if they've exhausted their escrow, they need to submit more funds to cover the expenses incurred by the Town. An action item will be added to ensure the applicant has fully funded his application and to direct the Town Manager to stop supporting this effort if funds are not replenished. In conclusion, the Town Attorney said that the way that it works is that there is a Special Exception fee of \$1,000 which includes the processing of the application and includes the first 2 hearings by the Board of Adjustment. Additional hearings and continuances initiated by the applicant accrue per hour charges for which the applicant is responsible. The \$5,000 advance deposit and subsequent replenishment is for text amendments (code changes). In this case, the applicant's cost responsibility should go back to the first continuance of the Special Exception application. The Mayor said we need to bill the applicant for the actual costs of the Town Planner and Town Attorney services and we should not move forward until we've been paid. The Town Attorney said we may want to ultimately suggest that Mr. Pepaj withdraw the entire application.

Mayor Simmons said he received an email regarding the "planter" at 300 Ocean Avenue. Mrs. Baccus said she was going to request a permit to replace the pavers that were taken out and also add some small native plants. At a previous meeting, the Commission specifically said there could be no more plantings added – period. Prior to Mrs. Baccus getting a permit, Serene Blue submitted a building permit application to pour concrete for his driveway on the Town's right-of-way. The Town Attorney said his understanding is that Serene Blue submitted an application for right-of-way use that was approved which displeased Mrs. Baccus. The Building Official may not have known that there was a prior approval from 1985 for the Baccus pavers so there's a conflict about whether those pavers can be removed, based on what was approved for Serene Blue, without affecting their rights. Mayor Simmons made the point that we don't give away land when we allow somebody to put something on it. The Town Attorney said we have a public right of way and an approval of pavers that were placed there. If the Town wanted to remove all the pavers in the right-of-way, it would be the Town's right to do that; the property owner doesn't have any vested right to that property. The question is whether what was

approved for Serene Blue, if they start pulling out pavers, in some way damages the Baccus property. That's a private, legal matter between the two parties in which the Town got caught in the middle.

Mayor Simmons said the reason Mr. Arocena doesn't want to match the pavers is because he wants his access to be clearly delineated. The Town Manager said that the Building Official wasn't aware of the 1985 approval but because the pavers are in the Town right-of-way, he went ahead and approved it. Mr. Arocena is using concrete because concrete was used next door and he is trying to match that. He said he will notify the Town at least 2 weeks prior to beginning work on his driveway. Town Attorney Repperger said the Town should have some communication with the Mrs. Baccus about our final decision

There was Commission consensus to direct the Town Manager to write a letter to Mrs. Baccus regarding our final decision and have the Town Attorney review it.

The Commission took a break at 9:35 p.m. and reconvened at 9:41 p.m:

Town Clerk Wilson led roll call.

Commissioners Present:

Mayor Jim Simmons
Vice Mayor Tom Davis
Commissioner Steve Walters
Commissioner Wyatt Hoover
Commissioner Sherri Quarrie

Staff Present:

Town Manager Bob Daniels
Town Clerk Nancy Wilson
Town Attorney Cliff Repperger

B. Town Manager / Public Works Report

The Town Manager made several announcements in addition to his report:

- Fire Department had their ISO audit
- Brevard County is holding 2 open houses to introduce the proposed new flood risk maps
- A letter from Gray Seismic Monitoring was sent to property owners along the beach announcing that they will be conducting tests to see if any of the beach renourishment they are doing is damaging properties.
- The Town Manager gave a report on a recent SCTPO study

The Commission suggested postponing the hearing the vacation ordinance until after the State Legislature disbands in April as legislation currently being considered may remove all municipal rights on this issue.

B. Town Clerk Report – nothing to report

C. Departmental Reports:

1. Building Department – no comments

2. Code Enforcement – Commissioner Quarrie doesn't like the layout of this report and suggested a one page report that includes the last 6 months only. For offenses that are open, Mayor Simmons would like to know the location and why there wasn't compliance. He wants to know if we are solving the problems or if we are carrying over the same problems.
3. Police Department - Commissioner Walters asked why the format of this report has changed; he said the old format was more readable. Commissioner Quarrie asked that headings be used on each page.
4. Fire Department – no comments
5. Finance Department – no comments

XII. Town Commission Comments

A. General Comments

Commissioner Walters said years ago, Melbourne Beach used to have the County take over the school parking lot and people could drop off hazardous material such as batteries, mercury lights, oil, etc. This took place twice a year. Now, everybody just throws this waste in with their regular trash.

Mayor Simmons reported on the *Eats and Beats* event that's being held on April 6th from 5pm – 10pm and said the event is looking great financially. He said we are supplying 2 officers for whom we are being reimbursed. We are also contracting with one company that provides all 10 food trucks. Any money remaining after expenses and donations will be used as seed money for the next event.

A. Review of Commission Action List

- 7 – items added
- 8 – items updated
- 4 - items closed

XIII. Adjournment

Commissioner Quarrie made a motion to adjourn; Commissioner Hoover seconded. Motion carried 5-0.

Meeting adjourned at 10:47 p.m.

ATTEST



James D. Simmons, Mayor



Nancy Wilson, Town Clerk