

Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING

WEDNESDAY, MARCH 20, 2019

COMMUNITY CENTER – 509 OCEAN AVENUE

DRAFT MINUTES

PUBLIC NOTICE

The Town Commission conducted a Regular Town Commission Meeting on Wednesday, March 20, 2019 in the Community Center located at 509 Ocean Avenue to address the items below.

Commission Members:

Mayor Jim Simmons
Vice Mayor Wyatt Hoover
Commissioner Steve Walters
Commissioner Sherrie Quarrie
Commissioner Corey Runte

Staff Members:

Interim Town Manager Elizabeth Mascaro
Town Clerk Nancy Wilson
Town Attorney Clifford Repperger

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 conducted the roll call.

Commissioners Present:

Mayor Jim Simmons

Staff Present:

Interim Town Manager Elizabeth Mascaro

Vice Mayor Wyatt Hoover
Commissioner Steve Walters
Commissioner Sherri Quarrie
Commissioner Corey Runte

Town Clerk Nancy Wilson
Police Chief Melanie Griswold

Staff Absent:
Town Attorney Clifford Repperger

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Presentations

Presentation of life saving pin to Police Officer Alex Vila

Police Chief Griswold said that on January 29, 2019 at approximately 11:00am, School Resource Officer (SRO) Vila was assisting the staff in the lunchroom at Gemini Elementary School. SRO Vila's attention turned toward the principal, Mrs. Jennifer Julian, as she attempted to perform abdominal thrusts on an 11-year-old student who was choking because of an obstructed airway. SRO Vila took over, performing the Heimlich maneuver on the student. The student became limp and as he continued to administer first aid to her, the object in the student's throat became dislodged and she was able to breathe again, at which point, he was able to radio for an ambulance to respond. SRO Vila's quick response, his recognition of the severity of the medical emergency, immediate actions and the adequate and proper technique resulted directly in saving the life of the student.

The Police Chief gave Officer Vila the Life Saving Award and Mrs. Vila pinned the lifesaving pin to his uniform.

Chief Griswold said they are bringing back *Officer of the Quarter* and Officer Vila was also presented with that award.

Mayor Simmons commented that Officer Vila is doing a great job as SRO Officer.

V. Boards and Committees

No reports

VI. Public Comments

Debra Marchese
310 First Avenue

Ms. Marchese showed a picture of a storm drain at first and Oak that had weeds growing out of it saying with that growth, the drains can't be working efficiently. She asked about the status of 309 Ocean Avenue. From the Action List: *The Town Manager spoke with the owner of 309 Ocean on Monday Feb 10th via telephone*

from Hawaii where he has been for 8 months. He is in the process of selling the property and will contact the Town Manager in April when he is in Town.

Interim Town Manager Mascaro said the property has only been listed for 3 weeks and she asked the realtor to keep her abreast of any offers on the property.

VII. Approval of the Agenda

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

VIII. Consent Agenda

- A. Site Plan Review for 321 Avenue B, Melbourne Beach
- B. Reappointment of Charles Baird to the Code Enforcement Board for a term of 3 years
- C. Reappointment of Curtis Byrd to the Environmental Advisory Board for a term of 2 years
- D. Reappointment of Laurie Simmons to the History Board for a term of 2 years
- E. March 6, 2019 Town Commission Workshop Draft Minutes

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

IX. Public Hearings

No public hearings

X. Old Business (00:10:55)

Consideration of revisions made to the Town's *Ethics and Harassment Complaint Procedure* – Mayor Simmons

Mayor Simmons said this issue was discussed in February and the Town Manager was asked to set time frames for the procedure. Interim Town Manager Mascaro said the current parameters set for the procedure would make the process lengthy, up to 3 months. To tighten up the time frame, she suggested that the initial response time be shortened to 5 days from 10 days and give the Town Attorney 15 days to respond instead of 30 days. Also, the step to go to the Department Head first was eliminated so that complaints will go directly to the Town Manager thus eliminating the current second step.

Vice Mayor Hoover said that since the step to go to the Department Head was removed, he thinks the Town Manager should be given 10 days instead of 5 to respond.

The Commission consented to giving the Town Manager 10 days to investigate and the Town Attorney 15 days. Also, they consented to removing the Department Head as an investigator.

The changed paragraphs in Section 3.05 will read:

A. Procedures for Filing and Investigating Complaints:

Any employee who believes he or she has been the subject or victim of discrimination or sexual or any other form of harassment must promptly notify the Town Manager. If the Town Manager is the subject of the complaint, the employee must promptly notify the Town Attorney. If the Town Manager is not the subject of the complaint and has not responded to the complaint within 10 business days (ref Para B), the employee must file the complaint with the Town Attorney.

B. Investigation of the Complaint:

The complaint will be thoroughly investigated by the Town Manager within 10 days or the Town Attorney, as applicable, within 15 business days. A report of such investigation will be filed by the Town Manager. If the Town Attorney has conducted the investigation the Town Attorney will submit the report to the Town Commission.

Mayor Simmons also suggested the following order of the Sections under Standards of Conduct:

3.03 Policy Against Sexual Harassment & Other Unlawful Harassment

3.04 Code of Ethics

3.05 Complaint Procedure

The Commission consented to moving the Complaint Procedure to 3.05.

Commission Walters had questions on the 3.01 that reads: *Employees are encouraged to develop skills and seek formal training that will enhance their personal development and add to the overall expertise of the organization.*

He asked the Interim Town Manager if that is in effect. Ms. Mascaro responded in the affirmative. In responding to his question if anybody had been denied going to school, she answered there are times when people can't take a class because of their schedules but employees are encouraged to take advantage of opportunities.

Commissioner Walters then read from 3.06: *The basic work week for all employees will normally consist of forty (40) hours unless otherwise specified or scheduled by the Town Manager or Town Commission.* He said his understanding of what the Town Commission approved was that the hours of work are Monday – Friday from 8am – 5pm. The Commission agreed that they could then unlock the doors for business at 8:30am and lock the doors at 4:30pm but that is not stated. That was his first problem. His second problem was that he said he had 2 complaints from Jean Marshall about the Town Clerk working from home. He said he responded to the complainant that there was no way possible that she could be working from home because that is not in our rules. He wants to know that if we are staying with the 8-5, Monday-Friday – no one works from home and everybody is on time. He

then read the policy. Commissioner Quarrie asked if the policy was written before people were so computer literate? He responded that if we don't need employees at Town Hall then we have too many employees. He added that once the Town Clerk stopped reporting to the Commission, the Town Manager allowed her to work from home. Vice Mayor Hoover said the policy doesn't address working from home so he doesn't understand the issue. Commissioner Quarrie added that the policy says 40 hours. There was then some discussion about opening at 8:30 and closing at 4:30. Mayor Simmons then read: *Department Heads, with the approval of the Town Manager, should establish the basic work week and hours of work best suited to meet the needs of the community.* He said he doesn't know the specific complaint made by Jean Marshall but we do have a Deputy Town Clerk who can fulfill public requests.

The Town Clerk said that there were never any calls to her from Mrs. Marshall that weren't answered immediately; any messages or names on caller ID are immediately forwarded to her when she's worked from home and Mrs. Marshall's name has not been among those messages. Commissioner Walters said he has sent emails to the Town Clerk that have not been responded to within 24 hours. The Clerk responded that has happened once and it had to do with the March 12, 2019 agenda – she didn't know what was going to be on it. Once the agenda was set, the Commissioners were all sent a copy.

Commissioner Runte said he has no problem with people working from home and it should be left to the discretion of the Town Manager. Mayor Simmons said if it becomes a problem, we'll address it. Vice Mayor Hoover said that in 3.06, if an hourly employee takes a lunch break it indicates that the break should not exceed one hour but if their lunch break is less than 30 minutes, it's not a lunch break and they should not clock out. He said he's not sure if that is happening.

Commissioner Walters said he understands flexing hours so overtime is not paid but he doesn't want the Public Works Supervisor sharpening the lawn mower blades at home.

Interim Town Manager Mascaro said some of her work requires quiet time and the office is very busy and interruptions are constant. When she comes in late, she stays late. She said there hasn't been a Town Manager since she started working for the Town who has had a problem with flexible schedules. We can all work remotely.

Commissioner Quarrie said we are stepping into the field of micromanaging. The Commission doesn't need to micromanage staff as long as the office is open when it should be and their jobs are getting done. Commissioner Runte agreed with Commissioner Quarrie saying that he also doesn't want to micromanage staff. Commissioner Walters said that the Commission's job is to serve the public and he

doesn't consider it micromanaging to expect the Town Clerk to be there whenever a citizen needs something.

Mayor Simmons said there will be no changes to Section 3.06 then he asked Vice Mayor Hoover about his earlier comments regarding employee breaks; he said the issue can be addressed at a later date.

Kate Wilborn
502 Second

Dr. Wilborn said she was disappointed when she didn't see the 2nd and Pine stormwater issue on the agenda. Mayor Simmons said that she should have spoken during *Public Comments* and Vice Mayor Hoover added that the issue is on the Action List. The 2nd/Pine issue will be discussed further at budget meetings.

Interim Town Manager Mascaro said she has talked to Dr. Wilborn and will discuss the retention solution posed by Dr. Wilborn with the Town Engineer.

Mayor Simmons reiterated the revisions made to the Town's Ethics and Harassment Complaint Procedure outlined above and the Commission consented to those revisions with the exception of a "nay" vote from Commissioner Walters.

XI. New Business (00:34:10)

- A. Consideration of February 20, 2019 Regular Town Commission Meeting minutes – Town Clerk Wilson
- B. Consideration of March 6, 2019 Special Town Commission Meeting minutes - Town Clerk Wilson

Commissioner Walters asked about how corrections are indicated in the draft minutes and Mayor Simmons explained the mark-up process.

Commissioner Quarrie made a motion to approve the February 20, 2019 minutes and the March 6, 2019 minutes as amended; Vice Mayor Hoover seconded. Motion carried 5-0.

- C. Discussion and possible action regarding new retention areas – Mayor Simmons (00:35:50)

Mayor Simmons said this came to us as part of the Harbor East canals. A resident has suggested that the Town should work with the County to establish retention and percolation areas such as along Oak Street and in the County near Old Town Hall. Interim Town Manager Mascaro said she called Brevard County regarding the baffle boxes in the Harbor East subdivision and found out that we have never maintained the pipes in that area– the County does. She's trying to find out why we aren't responsible from them. She also said that there is an

issue at Grace Lutheran with the discharge that goes into the County pipes; she will explore this matter further. This issue is on the Action List.

Mayor Simmons said to the Public Works Supervisor that some inlet drain pictures were presented earlier showing plants growing out of them and that he may want to look into that.

In response to a question asked by Vice Mayor Hoover, the Interim Town Manager said that we maintain all of our baffle boxes except those in Harbor East.

XII. Staff Reports (00:40:28)

- A. Town Attorney Report – not present
- B. Town Manager Report – report provided in the packet was written by previous Town Manager Daniels

Interim Town Manager Mascaro said that Frank Thomas has asked for the Town to pay for his history book. Mayor Simmons said he talked to the president of the History Board and they are willing to put up 50% of the money required to purchase the books and then put half of the books at Old Town Hall for fundraising and have the other half go to Town Hall to sell there and at events. The total cost for 300 copies is about \$2000 (\$6.51/copy) and they are sold for \$20 each. If the Town would like to pay for half the books, our portion would be about \$1,000.

Commission consented to pay for half the cost of the history books.

The Interim Town Manager said that the History Board took Frank Thomas's historical pictures and put them onto discs which we paid for out of their budget. She suggested that the Town may want to contribute half of the funds toward that effort and have a disc made for the Town at a cost of about \$100.

The Commission consented to expending the funds to get a disc of historical pictures of the Town.

Interim Town Manager Mascaro commented on the written report submitted by Town Manager Daniels regarding sea oat planting, Coffee with a Cop events and TPO meetings. Vice Mayor Hoover asked about the property next to Exxon. The Interim Town Manager said the owner may submit plans for a house or ask for more parking for his gas station next door. She doesn't know why he cleared his property. Commissioner Quarrie said the property is zoned 4RM which is multi-family so he can put a single family home on it but not a parking lot.

Ms. Mascaro said Gemini Elementary would like to have a fundraiser at the Founder's Day event and sell bottled water. It was suggested that they can sell canned water.

The Commission consented to NOT allow water to be sold in plastic bottles.

Ms. Mascaro asked if the Commission would like to waive the vendor fee for the Rotary Club on Founder's Day, as has been done in the past.

The Commission consented to waive the vendor fee for the Rotary Club on Founder's Day.

Ms. Mascaro reported that the Rotary Club doesn't want to be in charge of the Citizen of the Year award program anymore. It was suggested that the Rotary Club perform the function for one more year and we'll take it over next year. This was placed on the Action List.

It was also reported that Bruce Black resigned as Volunteer Coordinator and so the mural at the pier will not be painted. Ms. Mascaro said we could get artists to submit proposals for murals to be painted on the Ocean Park bathroom wall and the Commission could pick the one they like best. The Town would pay for materials.

There was Commission consensus to allow the Interim Town Manager to solicit ideas for murals that would be presented to the Commission and from which they could choose their favorite to be painted on the Ocean Park bathroom wall.

The Interim Town Manager said that regarding the FRS audit, the Town submitted information about previous Town Managers, one of whom had cashed out of the retirement system at a time when you weren't allowed to go back in the program without the Town paying a fee. Under FRS, there are certain positions, such as Town Manager, where payment into FRS is required whether or not that employee exists on the payroll. The Town filed with FRS properly but didn't pay the fee since that fee would only have been required during a specific time period and wasn't the current rule. The amount we presumably owe is about \$27,000. Our Town Attorney is disputing that charge and he doesn't think we should have to pay it. Also, Ms. Mascaro said that the Town is required to pay 24% of the Town Manager's salary to FRS for benefits. It's the position that gets that percentage rather than who is in the position. She will opt out of contributing to FRS, if necessary, so the Town doesn't have the burden of paying that increased amount. Reporting to FRS has to be performed annually.

Commissioner Walters asked about the Police Benevolent Association. Ms. Mascaro said that Corporal Hinchman was excluded from voting. The Police Chief said that Andy Hammett will soon be posting a formal document regarding the next step which is most likely to be taking a vote.

Commissioner Walters asked about FEMA and if there are issues with the paperwork being submitted on time. Ms. Mascaro answered that all projects were completed on time and all paperwork has been submitted within stated timeframes. The scope of work for the project on Riverside Drive having to do with erosion was excluded by FEMA (\$45,000) because they said the location for the project hadn't been filed. The money that FEMA had allowed for the outfall project was increased by \$40,000 because the scope of work was altered; it was a bigger project than anticipated. She added that the \$900,000 obligation from FEMA for the Andrews/Oak/Cherry/Dogwood/Rosewood projects ended up costing about \$550,000. The final bill from Brewer showed \$400,000 remaining for their draws after all their costs were realized.

Commissioner Runte asked if we had collected the final waivers from Brewer Paving. Interim Town Manager Mascaro said we received a waiver from B.S.E. Consultants but she doesn't know about Brewer. Commissioner Runte doesn't want to count on the \$400,000 until we receive a waiver.

C. Town Clerk Report

Town Clerk Wilson met with Anne Hicks from the Audubon Society who would like to place bluebird boxes in Melbourne Beach. The Commission asked that the Clerk find out how many boxes they are talking about, location and placement information and who would be responsible for cleaning them.

The Interim Town Manager said the tot lot was installed and asked that the Commission take a break to go outside and look at it. The Commission took a break at 7:39 pm.

XIII. Call to Order – Led by Mayor Simmons

Mayor Simmons called the meeting back to order at 7:47 p.m.

IX. Roll Call

Commissioners Present:

Mayor Jim Simmons
Vice Mayor Wyatt Hoover
Commissioner Steve Walters
Commissioner Sherri Quarrie
Commissioner Corey Runte

Staff Present:

Interim Town Manager Elizabeth Mascaro
Town Clerk Nancy Wilson

Staff Absent:

Town Attorney Clifford Repperger

The Town Clerk said that several months ago she had conferred with a Civic Plus (host of our new website) representative about ADA compliance. She was assured that everything at the back end of the site is compliant. The problem comes at the front end of the site which is where we upload our files. Any images that aren't tagged with a description and any image files, such as scanned documents, can't be read with assistive technology readers. This shortcoming has resulted in probably hundreds of lawsuits in Florida since there is no defense for not being compliant. Most settlements are in the vicinity of \$15,000-\$20,000 and some entities have been sued multiple times – losing each time. Some municipalities and businesses have taken down their sites entirely. Because of these lawsuits hitting so close to home (Indian Harbour Beach being the most recent victim) the Clerk unpublished a lot of the documents on the Town's website that are non-compliant until figuring out how certain files can be made compliant. Neither the website nor the internet have been taken down and all files previously published on the website are available on our servers at Town Hall. This item will be added to the Action List.

D. Departmental Reports (01:35:26)

1. Public Works Department – Vice Mayor Hoover said to Public Works Supervisor Davis that he'd like to have a general idea of the number of signs that are needed in the Town prior to budget discussions. Mr. Davis said he has already started that process and will be ready with figures come budget time but his department has already made a dent in the number of signs that need to be replaced with their current stock. Mr. Davis also reported that Circle Park is too high for drainage but the property is nice and the sod is new so he and the Interim Town Manager think that a pergola with a bench and pavers would look nice with some landscaping around it. The cost would be around \$1,000 to dress up that park. He is also researching the feasibility of adding swales along 1st Avenue to deal with stormwater.
1. Building Department – no questions/comments
2. Code Enforcement – Mayor Simmons talked to our Code Enforcement Officer Jennifer Kerr and she said that even though the list of complaints is growing, almost everybody comes into compliance. There are 20 more closed cases than there are open ones.
3. Police Department – no questions/comments
4. Fire Department – Commissioner Walters thanked the Fire Department for leading and assisting with the South Beaches Little League Parade. Commissioner Runte reported there was a home fire on Shannon just north of our Town limits and our volunteer fire department responded and assisted Indialantic.

4. Finance Department

Commissioner Quarrie made a motion to accept the finance report as presented; Vice Mayor Hoover seconded.

Commissioner Walters said a motion isn't necessary for the finance report. Ordinance 2003-02 requires that if the budget is going to be changed, either between departments or within a single department, Commission approval is required. He said in the past, it's happened one or two times a year and necessitates the drafting of a resolution to change the budget. He said if the Commission wants to change the ordinance, they can divide the budget into amounts that each department will be allotted and let them decide how the money is allocated. The motion to accept the finance report is happening after a transfer has been made and Mr. Walters would like to know prior to the transfer. Mayor Simmons said the Town Attorney agreed that the Commission needs to approve both intra- and inter- departmental transfers but he said that can be accomplished by making a motion to accept the finance report each month. Commissioner Walters said the transfers are being reported after the fact and he has no idea what has been changed. Finance Manager Mascaro said that she provides a list of all transfers, via the monthly budget report, so the Commission can see who is overrunning/underrunning their budget. Commissioner Walters disagreed with the interpretation of Ordinance 2003-02 given by the Town Attorney adding that he is going to turn this over to the Auditor General.

Motion carried 4-1 with Commission Walters casting the dissenting vote.

XIII. Town Commission Comments

A. General Comments

Commissioner Walters asked the Interim Town Manager to discuss the departmental transfer issue with the Town Attorney adding that if money is moving from one budgeted line item to another, a resolution is required. Commissioner Quarrie said a resolution is brought to the Commission annually that approves intra-departmental transfers.

Mayor Simmons said the Town doesn't have a policy for thanking those who have contributed to the community either by volunteering or with donations. He suggested that we track any contributions/donations so those people can be formally thanked. The Mayor also suggested hosting a dinner for our board members and contributors; he will bring this forward at the next regular meeting.

Regarding Senate Bill-288 (Monuments and Memorials) co-sponsored by Debbie Mayfield basically says that all monuments recognizing any war or

veteran can't be removed by municipalities. Mayor Simmons asked what if a statue of a war hero is erected and he is found out to be a child molester? As a community, we should be able to determine how we project ourselves. He brought this issue before the SCLOC and they unanimously passed a resolution against SB-288 and the companion House Bill. During research performed by Paul Gougelman, he said there was a federal case in Alabama that determined that municipalities have a right to 1st amendment free speech.

Mayor Simmons mentioned that he has had lengthy conversations with one of the advocates of golf carts who said that insurance costs are less for golf carts because personal injury protection isn't required like it is for low speed vehicles. He talked to somebody at State Farm who confirmed that information. He thinks we need to be very cautious about allowing uninsured vehicles on our roads. Interim Town Manager Mascaro called FDOT about golf cart signage and restrictions and she was told that golf carts do not need to cross at street lights. They will get back to her about doing an analysis about what improvements we may need since state law says we have to certify that it is safe to be on our streets. Ms. Mascaro also talked to a Viera law enforcement officer who said there have been a lot of accidents involving golf carts and they are starting to crack down on violators in that community. Vice Mayor Hoover asked if Ms. Mascaro was working from pre-existing notes to which she responded that nobody she talked to had been previously contacted.

Commissioner Walters asked about an investigation from Fine's committee on our audit and what happened at the hearing. Interim Town Manager Mascaro said there was no hearing because there were no substantive findings. The Town sent a letter explaining the reason for the findings which were technical in nature. Those findings didn't impact the budget or our finances in any way.

B. Review of Commission Action List

The Action List was reviewed and updated:

- 4 items added
- 5 items closed

NOTE: Beginning with May's Regular Town Commission Meeting, the Action List will be included with the draft minutes for Commission review.

Interim Town Manager Mascaro said a teenager approached her about constructing a skate park in Melbourne Beach similar to what Satellite Beach and West Melbourne have. Vice Mayor Hoover asked that the young man make a pitch to the Commission and include potential locations and costs. The Interim Town Manager was asked to check with Satellite Beach and West Melbourne about liability coverage.

Ms. Mascaro talked to the Environmental Advisory Board Chairman Curtis Byrd about the intern who is working on the Town's sustainability plan; she should have something to present to the Commission in May or June.

Ms. Mascaro also reported that Scott Hunter from Green Earth Composting is trying to find a new location for compost which may cost up to \$300/month. He will offset that cost by charging customers \$10 each/month. It's possible that an area near the 7/11 in Brevard County may be open to having the compost there. We are continuing to give money to Mr. Hunter for fuel.

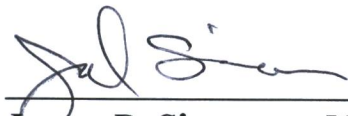
Commissioner Quarrie said that a military family complained to her that the flag at Ocean Park is not illuminated at night. The Public Works Supervisor will look into this issue.

XIV. Adjournment

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

The meeting adjourned at 9:17 pm

ATTEST:



James D. Simmons, Mayor



Nancy Wilson, Town Clerk