



Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING WEDNESDAY, MARCH 21, 2018, 6:30 p.m. COMMUNITY CENTER – 509 OCEAN AVENUE

MINUTES

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

Town Manager Robert Daniels
Town Clerk Nancy Wilson
Town Attorney Clifford Repperger

PUBLIC NOTICE

**The Town Commission conducted a Regular Town Commission Meeting
on Wednesday, March 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

Proclamation recognizing April 10th as Gopher Tortoise Day

A proclamation was submitted by Meghan Lee who is seeking her Girl Scout Gold Award and she asked Melbourne Beach to read it at this meeting. All municipalities in Brevard County and the County Commission were asked to do the same. Mayor Simmons proceeded to read the proclamation.

V. Boards and Committees

No board or committee reports

VI. Public Comments

No public comments

VII. Approval of the Agenda

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

VIII. Consent Agenda (00:06:35)

A. Site Plan Review for 504 Riverside Drive, Melbourne Beach

Commissioner Quarrie said the site plan does not show any landscape trees on the survey which is supposed to be part of the package. Town Manager Daniels said there was no mention of any trees being affected. Commissioner Quarrie requested that the site plan for 504 Riverside Drive be moved to New Business, item A.

- B. Appointment of Jane Waters to the Parks Board for a term of two years ending March 21, 2020

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

IX. Public Hearings

No public hearings

X. Old Business

- A. Discussion and possible action regarding the Baccus/Arocena driveway conflict on Atlantic Avenue – Mayor Simmons (00:08:17)

Mayor Simmons said there were two items to be discussed: 1) Should a stop work order be issued to Serene Blue, LLC for the previously issued permit to construct a driveway; 2) Should the Town engage outside counsel for the Special Magistrate process.

Commissioner Quarrie disclosed that she met with the Town Manager and the Arocenas on March 19th at Town Hall. After considerable conversation regarding access to the Arocena property, Mayor Simmons said that access has been discussed at several previous meetings and that the lots are individually platted.

Commissioner Walters asked if the Arocenas have access from A1A to their home to which the Mayor answered that they do not. He added that it was originally one compound that was accessed via A1A. Now that the property has been divided, the one parcel to the east of the Baccus property cannot go north and west to access A1A without driving on someone else's property.

Commissioner Walters said the Town gave permission years ago to Mrs. Baccus to install the pavers and the planter then the Building Inspector recently granted a permit to someone else to rip them up. Mayor Simmons said we did not deed Town property to Mrs. Baccus, all we allowed was for her to place pavers on Town property. Commissioner Quarrie said that when Mrs. Baccus installed the pavers, the original property owner did not have a gate at the current ingress/egress location. Now that there are two property owners, access to the Arocena property is restricted.

*Bradly Bettin (substituting for Kimberly Rezanka)
Cantwell & Goldman, P.A.*

Mr. Bettin said the discussion that the Commission has been having is the best argument that can be made for issuing a stop work order, adding that the Commission doesn't have a handle on what all the issues are in this case. Mr. Bettin said that the Town Attorney should make the decision regarding his recusal,

though he and Ms. Rezanka feel it would be appropriate for him to recuse himself. He said that if Mr. Repperger does decide to recuse himself, the Town should seek the advice from new counsel before making any decisions. Mr. Bettin said that Ms. Baccus's pavers are in the right-of-way and were put there with explicit permission from the Town. He said that Ms. Baccus relied on that permission to expend funds but now the Town has given permission to someone else to "rip those things out" without giving any consideration to Ms. Baccus. He said the Town has given a neighbor the right to establish his own independent driveway by taking away her pavers. In conclusion, Mr. Bettin said that nobody is going to be hurt by a delay that's long enough to allow the Request for Relief to go forward and be determined.

Commissioner Hoover asked how the delay suggested by Mr. Bettin will differ from the previous 18 months of discussion and delay. Mr. Bettin answered that there would be a Special Magistrate who would hear and determine the issues and who would decide whether or not the permit is appropriate. Mayor Simmons asked if it is Mr. Bettin's intention to live by the Special Magistrate's finding such that there would be no further action or would he then go to the next step for relief. He responded that Ms. Baccus would decide whether or not she wanted to move forward. Mayor Simmons said we've been dragging our feet for months on this issue and it keeps coming back. Mr. Bettin said it is always better for a local government to have afforded a citizen an opportunity to be heard.

Commissioner Walters asked if it is the position of the Baccus family that the Arocenas already have complete ingress and egress to their property. Mr. Bettin said that back when Ms. Baccus installed the pavers, the current Arocena properties were under unitary ownership. He said it's a basic principal of law that if property is conveyed resulting in landlocked property, an easement for that property must be provided.

Vice Mayor Davis asked Town Attorney Repperger if the Town has the authority to issue a stop work order. Mr. Repperger answered that there was a permit issued to Serene Blue and if the Town Commission felt that the permit should be stayed, they could request that action to be taken by the Building Official.

Mayor Simmons asked the Town Attorney if he was going to recuse himself to which Mr. Repperger responded that he was not. He said he addressed the conflict of interest issue posed by Ms. Baccus and Ms. Rezanka last October during the "planter" discussion. At that time, he sent an email to Ms. Rezanka indicating that he did not believe he had a conflict based on the applicable rules of professional conduct related to his prior representation of Mr. Arocena, Ms. Baccus, Mr. Edelstein and the Town of Melbourne Beach. Mr. Repperger explained why he did not feel his previous representations of the aforementioned parties resulted in any conflicts of interest. He similarly feels that there is no conflict regarding the 7051

proceeding because it is limited to a consideration of whether the permit was issued appropriately and whether it affects the rights of Ms. Baccus; Serene Blue isn't even a party to the proceeding. What will happen as part of the 7051 proceeding is that the Magistrate will hold a mediation to determine whether the Town and the party filing the request can come to a resolution. If that can't be done, a public hearing will be held with respect to the grant of the permit application and a subsequent recommendation will be made to the Town regarding future action. The Town is not bound by that recommendation whatsoever.

There was consensus to have Town Attorney Repperger represent the Town of Melbourne Beach on issues related to this matter and not engage outside counsel. 5-0.

*Federico and Valerie Arocena
315 Atlantic Street*

Mr. Arocena said it has been 1.5 years and the same questions are being asked. He said from the day they purchased the properties, they were three independent parcels. 315 Atlantic has an entrance on Atlantic Street and the other two properties have an entrance on A1A. Their intention is to sell one of the properties that has an entrance on A1A which will necessitate access via Atlantic. All neighbors have the right to use the right-of-way. Mr. Edelstein, 325 Atlantic, and the Arocenas have a problem exiting their properties because of the planter. He said they were accommodating when they asked that only part of planter be removed, however, they are now driving on the Edelstein's driveway. He's asking that just a small section of pavers be removed to delineate his property adding that the Town should be fair to all 3 neighbors.

Mayor Simmons said he received an email from Mr. Arocena late that day that included a copy of the building permit and showed what pavers would be removed. The permit shows that only the pavers southeast of the planter would be removed and the concrete would be poured up to the planter.

Commissioner Walters questioned why both parties, the Arocenas and Edelsteins, were fine with the planter being cut back but aren't fine with it now. He believes that the pavers should be matched with what is currently in place, especially after the parties came to an agreement several months ago. He doesn't see any end in sight.

Commissioner Hoover said he thought that the intent of the Arocenas was to always put in a driveway to which the Town Attorney commented that in December, the Commission said that if the Arocenas are interested in a putting in a driveway, they should submit a permit application to Town staff. The driveway issue was separate from the planter issue

Kyle Lieneck
300 Atlantic

Ms. Lieneck said her understanding was that the two parties could submit permit applications and they would be reviewed together. The Arocena permit that was approved necessitates the removal of pavers that were previously approved by the Town. In 2016, she said she spoke with Town Attorney Repperger about a conflict of interest. He said there is no conflict because there are no issues. Ms. Lieneck said that there are now issues and she feels a conflict exists. She said the driveway and planter have not been an issue with previous owners, only with Serene Blue. She said that Ms. Baccus was willing to fill in the planter area with matching bricks but a permit for a concrete driveway had already been issued.

Vice Mayor Davis said we are beating a dead horse because we can't get the parties to agree on a solution. He added that even if this goes to a Special Magistrate, it won't be the end.

Commissioner Walters said he doesn't have a problem with the Arocenas putting in a driveway but he does have a problem with them coming in now wanting to remove pavers after the agreement that was made several months ago. He doesn't feel the permit should have been issued to the Arocenas.

Commissioner Quarrie said that the Commission had directed the Baccuses to not place any more plants in the planter area but we are being asked by them now to allow more plants. Mayor Simmons agreed adding that the first request from the Baccuses was to add more plants to that area. The proposed driveway will go up to the planter giving the Arocenas the ability to define their driveway. Commissioner Quarrie said her pavers are installed to the asphalt street but if a sidewalk was installed, she would remove her pavers. Mayor Simmons agreed with the Vice Mayor, this situation will go on forever; he's not willing to make somebody hostage to however long somebody wants to drag something out. The Mayor is not willing to make somebody wait for years to have a decent driveway so he doesn't support the stop work order request. The Town has full right to allow whatever they want on their right of way. Commissioner Hoover said there will be a lawsuit no matter what the Commission decides and he feels that property owners should have adequate access to their property.

Mayor Simmons, Vice Mayor Davis, Commissioner Quarrie and Commissioner Hoover agreed to do nothing; there will be no stop work order issued.

Commissioner Walters made a motion to rescind the building permit, issued to the Arocenas, that allows for a driveway. Motion died for lack of a second.

- B. Consideration of request to authorize BSE to proceed with an engineering study on the second tier stormwater problem sites on Second/Pine and Poinsettia – Town Manager Daniels (01:02:14)

Town Manager Daniels asked how the Commission would like to proceed with the second tier stormwater problems. Commissioner Hoover said those two areas are more prone to flooding so he doesn't have a problem investigating the issues further though a full engineering assessment may not be necessary. Mayor Simmons said Poinsettia has more of a standing water issue than a flooding issue. Mayor Simmons doesn't want a piecemeal approach and would like to stick to the original plan of having a comprehensive review and subsequent plan before determining priorities.

Commissioner Walters said this was all decided years ago because there were two complete stormwater studies. The Town had a priority list that was supposed to have been addressed with the \$5 million bond money. He asked the Town Manager if BSE found any useful information from the stormwater files we provided to them. Town Manager Daniels answered in the affirmative. Commissioner Hoover suggested making Second/Pine and Poinsettia priorities once the comprehensive review is completed.

There was Commission consensus to stay the course with the current plan.

Mayor Simmons asked the Town Manager to get from BSE a cost for the master stormwater plan as soon as possible.

- C. Discussion and possible action regarding a transition to e-City to provide website services – Town Clerk Wilson (01:14:23)

Town Clerk Wilson said the information provided in the agenda was the same information provided several months ago. She does not favor one website provider over the other. She added that while transitioning to a new provider is always a headache, the long term benefit of a more robust website may be worth it. The funding for this would come from the Town Clerk's budget for conferences she would not attend.

Commissioner Walters said our old provider, e-City, did allow for searches that we're currently unable to perform with Wordpress. Mayor Simmons wants to ensure that migration to e-City would be seamless and would include moving all of our files to the new site and ensuring they are searchable. The Town Clerk said if

the Commission decides to contract with e-City, she would make sure that what we need and expect is included in the approximately \$4,000 price tag.

There was Commission consensus for e-City to make a presentation at an upcoming Workshop.

XI. New Business

- A. Site Plan Review for 504 Riverside Drive, Melbourne Beach (01:19:42)
(Request by Commissioner Quarrie to move from Consent Agenda)

Commissioner Quarrie said the site plan is incomplete because it does not show landscaping adding that the Land Development Code is specific on this topic. Town Manager Daniels said it was his understanding that the site plans just need to show the drainage of the property and the pervious/impervious areas. He'll ensure that landscaping is included on future site plans.

Commissioner Walters made a motion to approve the site plan for 504 Riverside subject to the owner's providing the tree and outbuilding plan with subsequent verification by the Building Official; Commissioner Quarrie seconded. Motion carried 5-0.

- B. Consideration of February 21, 2018 Regular Town Commission Meeting draft minutes as amended – Town Clerk Wilson
- C. Consideration of March 7, 2018 Joint Town Commission/Planning & Zoning Board meeting draft minutes as amended – Town Clerk Wilson (01:25:55)

Vice Mayor Davis made a motion to approve the February 21, 2018 Regular Town Commission meeting draft minutes and March 7, 2018 Joint Town Commission/Planning & Zoning Board meeting draft minutes as amended; Commissioner Walters seconded. Motion carried 5-0.

- D. Consideration of request by Founder's Day vendor *Country Kettle Corn* to use plastic products during this years' event – Town Manager Daniels (01:26:58)

Vice Mayor Davis said he needed to recuse himself because of his association with the owner of *Country Kettle Corn* but it was determined, after receiving input from the Town Attorney, that there was no conflict and the Vice Mayor could vote on this issue.

Commissioner Walters made a motion to allow the use of plastic bags by *Country Kettle Corn* for Founder's Day; Vice Mayor Davis seconded.

Vice Mayor Davis said that many businesses have a lot of inventory and it's expensive for them to purchase new stock for one event. Mayor Simmons said when he saw this item on the agenda, he called Rotary and withdrew his support allowing them to use plastic cups; they have since agreed to use paper cups. The Vice Mayor said the notice about not using plastic came too late and Commissioner Walters added that the vendors this year can be made aware that plastic products won't be permitted next year. Commissioner Quarrie commented that because we exempted the Rotary Club from having to use paper cups, we have to allow that same exemption to everybody; next year will be different, however. Mayor Simmons added that if any vendor won't comply with the plastic restriction, they shouldn't be invited back. Next year, the application for food vendors will require them to sign an agreement that they won't utilize plastic products. Town Manager Daniels reported that no other vendors have said they won't comply.

Motion carried 4-1 with Mayor Simmons casting the dissenting vote.

XII. Staff Reports (01:41:25)

- A. Town Attorney Report – Town Attorney said he has fully transitioned to his new firm, Rossway Swan.
- B. Town Manager / Public Works Report – Town Manager Daniels reported that he has commitments from NOAA, FPL and Spectrum who will send representatives to make presentations at a Hurricane Preparedness Seminar he has scheduled for May 8th. He met with someone from FPL to discuss the issue of vegetation and power lines and suggested that a letter be sent to residents asking them to prune their trees.

He also reported that 44 jurisdictions submitted applications for the FRCP Cost Reimbursement Grant. They accept the top 7 applicants and we placed number 6. They've requested more information which he will provide.

The Sheriff's Department has a web page listing free drop off locations for unwanted prescription drugs along with information about what can be disposed of.

Mayor Simmons asked about the Town hosting a hazardous waste day. The Town Manager said he broached the subject with Waste Pro to schedule an amnesty day.

The Town Manager received a request from a family who wants to plant a memorial tree near the pier. Though the Town is no longer planting trees for memorials, the family would like to dedicate a tree in memory of a family member and place it where a tree died near the pier.

The Commission unanimously agreed to allow the family to dedicate a tree.

Mayor Simmons expressed concern about traffic tieups at the new WaWa at the US-1/US-192 intersection and asked what the plan is to ensure safe and efficient

evacuation across the Melbourne Causeway when the new Wawa is completed. Town Manager Daniels said he will attend a Safety Traffic Committee meeting on April 28th and will get more information at that time.

There was Commission consensus to hold the audit presentation at the April 4th Workshop.

Mayor Simmons called the owner, Arnold Mallard, of VA Paving and said how happy he still is about work they did for the Town on Avenues A and B but how unhappy the Town is about the paving that was performed in 2017. Mr. Mallard said that the Avenues A and B projects involved a complete new road base, etc whereas the newer project involved only a remilling and resurfacing (the road base was not replaced). He described the old and new road base products saying that they are now using coral road base; there are pluses and minuses of each product, but that the old concrete road base tended to show cracks in the asphalt surface in a “grid” pattern (which is what we are experiencing). Mr. Mallard said that if we are truly interested in finding out if we got what we paid for and that they performed the paving per the contract, we could have an independent testing company perform core samples.

Commissioner Hoover requested that a stripe be painted on the north and south sides of Magnolia at Hibiscus Trail at the stop signs.

Commissioner Quarrie asked if the Town has a contract with FPL to cut back trees. Commissioner Walters said they have to be called and it takes a long time for them to get to it. FPL is supposed to come through Melbourne Beach in the next couple of months to trim around their power lines.

Vice Mayor Davis asked for the status of the Code Compliance Officer position. Town Manager Daniels said he talked to the Finance Manager about the job description and that he plans to advertise the position the following week. The Vice Mayor also asked for an update on the replacement generator. The Town Manager said he’s working on due dates for the RFP to give prospective bidders more time to submit bids.

Commissioner Walters asked the status of the *Sand on the Beach* application; he wants to ensure we get paid before moving forward. Town Attorney Repperger reported that the applicant pulled from consideration his most recent application and asked for the BoA meeting to be rescheduled to June whereupon they will be charged for readvertising and all invoice costs allowable under the fee resolution up to that point. The Town Manager said he will check on the fees from *Sand on the Beach* due the Town. Commissioner Walters also asked about 6th Avenue at the river where there is a missing chunk of concrete. He doesn’t think we need to perform any engineering nor does he think a permit should be required to pour a new slab. Commissioner Walters was going to send the Town Manager pictures of the area so he can look into it.

The Commission discussed the definition of a Bed & Breakfast and where they are permitted. The Town Attorney said what they are called doesn't matter, but what does matter, is how they operate and if they meet our Code's definition of a Bed & Breakfast.

C. Town Clerk Report – no report

D. Departmental Reports:

1. Building Department – no comments
2. Code Enforcement – Town Manager Daniels is going to work on reformatting the Code Enforcement report for the next meeting.
3. Police Department – The Town Manager said he will also work on getting the Police report reformatted for the next meeting. Vice Mayor Davis reported that a police officer has lunch once a week at Gemini and they make at least one pass per day through school property. In conjunction with Brevard Sheriff's Office, Melbourne Beach PD hosts school safety programs and there is an "active shooter" plan in place. Mayor Simmons said he wants to recognize a civilian who prevented someone from drowning; the Town Manager said he is getting more details on the matter.
4. Fire Department – no comments
5. Finance Department – no comments

XII. Town Commission Comments (02:18:00)

A. General Comments

Commissioner Walters reported on the Berry College eagle cam saying that one of the baby eagles fell from the nest and died but the other baby is doing fine.

B. Review of Commission Action List

Mayor Simmons asked the Town Manager to present at the next regular meeting a plan for consistent and proactive code enforcement.

Town Attorney Repperger said that once the 7051 proceeding was filed, a Special Magistrate (SM) was supposed to be here within 10 days of the filing, according to the statute. He told Ms. Rezanka that the hearing was going to be delayed adding that an SM needs to be chosen; the cost will be split between the Town and Ms. Baccus. Mayor Simmons asked if we could expedite the selection of a Magistrate so the driveway wouldn't be poured until after the hearing. The Town Attorney said that the Magistrate process isn't going to resolve the issue as to the pouring of the driveway. The Mayor asked if the hearing could happen sooner rather than later to which the Town Attorney responded that it depends on how soon we can find a Magistrate and work with his/her schedule.

There was Commission consensus delegating authority to the Town Manager to approve the selection of a Special Magistrate.

4 items were removed from the Action List
20 items were updated
0 items were closed
1 item was added: Pier Repairs

Mayor Simmons asked that rather than showing the status on the Action List from the previous month's meeting, he'd rather it be updated throughout the month to reflect the current status. This will save time at the meeting since each item won't have to be addressed.

The Commission consented to this request (5-0).

XIII. Adjournment

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

Meeting adjourned at 9:04 p.m.

ATTEST


James D. Simmons, Mayor


Nancy Wilson, Town Clerk