



Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING

WEDNESDAY, JUNE 21, 2017

6:30 p.m.

COMMUNITY CENTER – 509 OCEAN AVENUE

MINUTES

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

Town Manager Tim Day
Town Clerk Nancy Wilson
Town Attorney Clifford Repperger, Jr.

**The Town Commission conducted a
Regular Town Commission Meeting
at 6:30 p.m. on Wednesday, June 21, 2017
at the Community Center - 509 Ocean Avenue
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 Sherri Quarrie
Commissioner Steve Walters
Commissioner Wyatt Hoover

Staff Present:

Town Manager Timothy Day
Town Clerk Nancy Wilson
Finance Manager Elizabeth Mascaro
Town Attorney Cliff Repperger

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Public Comments

No public comments

V. Approval of the Agenda

Commissioner Walters made a motion to approve the agenda with the exception of item H. under New Business regarding the Finance Manager increase in salary and would like instead to address the issue during budget review; Commissioner Hoover seconded. Motion carried 5-0.

Mayor Simmons made a motion to move the *Site Plan Review for 501 Atlantic Street, Melbourne Beach, FL* to New Business, item A. There was consensus to move that item to New Business.

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

Frank Thomas
606 Atlantic Street

Mr. Thomas said the old post office building is being neglected and he'd like to see the building maintained like other Town buildings. He showed a rusted hinge that fell from the structure.

VI. Special Presentation (00:05:00)

A. Consideration of request to refund our municipal bond – Finance Manager

Finance Manager Mascaro said we were approached by the Florida League of Cities to refund our bond while the rates are still low. The current bond was originally executed in 1999 and refunded in 2005 which resulted in a savings for the Town. A representative from the law firm of Bryant Mill Olive from the Bond Counsel was present to answer any questions.

*Jason Bret
101 Monroe Street
Tallahassee, FL*

Mr. Bret said for the Town to participate in the refunding, the Commission must adopt a resolution. Because the bonds will be bought and sold prior to execution, they must insure buy-in by any participants. There were several questions posed by the Commission members regarding the interest rate, maturity date, services fees and eligibility. Ms. Mascaro answered that the guaranteed minimum savings is 3% and this is net of any and all fees. The likely savings will likely be around 5% but this won't be determined until the bonds are priced. The maturity date will remain at 13 years. The Town currently pays about \$1,800 in fees and even with the fees associated with refunding, we are guaranteed 3% or there is no cost to the Town. We didn't qualify for the program last year and even though we refunded the bond in 2005, we are eligible to refund it again. The deadline for applying is coming up very soon.

Town Attorney Repperger said that what the Commission is being asked to do is approve the resolution.

Commissioner Walters made a motion to approve Resolution 2014-04 authorizing refunding of the Town's current municipal bond; Commissioner Quarrie seconded.

*Joe Tracy
615 Citrus Court*

Mr. Tracy asked if there is a cost to get the loan. Mayor Simmons answered that if we don't meet the 3% savings threshold, we won't move forward.

Motion carried 5-0.

VII. Consent Agenda

A. Board & Committee Reports

1. Police Pension Fund Board of Trustees
2. Historic Preservation & Awareness Board report – Marty Remark

B. Town Board Resignations

1. Resignation of John Tanner from the Code Enforcement Board
2. Resignation of Christine Boyd from the Historic Preservation & Awareness Board
3. Resignation of Lisa Jackson from the Historic Preservation & Awareness Board

C. Site Plan Reviews

1. Site Plan Review for 404 Atlantic Street, Melbourne Beach, FL
2. ~~Site Plan Review for 501 Atlantic Street, Melbourne Beach, FL~~ moved to New Business, item A.
3. Site Plan Review for 419 First Avenue, Melbourne Beach, FL
4. Site Plan Review for 508 Magnolia Avenue, Melbourne Beach, FL
5. Site Plan Review for 901 Riverside Circle, Melbourne Beach, FL

D. Approval of Third Amendment to Fire-Rescue Dispatch Services Interlocal Agreement with the Town of Indialantic – Town Manager Day

Commissioner Walters made a motion to approve the Consent Agenda; seconded by Commissioner Quarrie. Motion carried 5-0.

Because a Board report was not provided in writing, the Commission agreed by consensus to have the Historic Preservation & Awareness Board report item moved from the consent agenda.

Marty Remark

707 Atlantic Street

Ms. Remark announced that two of their Boards' members have resigned: Christy Boyd and Lisa Jackson. She also said that the Ryckman House has been open to the public on Saturdays from 11am – 3pm. Regarding the condition of the Ryckman House, she said the south facing exterior wall needed to be replaced because of rot and the woodpecker nest but this couldn't occur until the fledglings left the nest. The lumber to replace the rotted wood is being milled and will be installed soon. Also, the northeast and northwest facing windows need to be replaced or repaired and the roof is being inspected. The sheeting is working well to protect the interior of the building during renovation. Other issues include the shutters and storm windows on the 2nd floor. She reported that the men in Public Works found the original light fixture for the Ryckman House.

Ms. Remark also commented on the Beaujean House saying it was checked last week - branches were trimmed and there were no signs of leaks.

The HPAB Board has been discussing holding a fundraiser and would like to have their event at the same time the Rotary Club has theirs.

In conclusion, Ms. Remark said that the Ryckman House and associated fees are not on our fee schedule. The Board thinks it would be a great idea to have brides use the house prior to their wedding ceremony in the Community Center and also to use the building for recitals.

The Commission agreed by consensus to have the Town Manager look in to having events to raise money to fund Ryckman House improvements.

Town Manager Day said the problem with having brides use the building is that there aren't window curtains and there is just the public bathroom outside.

This topic will be added to the Action List and a Workshop will be scheduled to discuss the issue further.

VIII. Public Hearing (00:34:15)

A. First Reading of the Bed and Breakfast Text Change Ordinance 2017-01 - Town Attorney Repperger

Town Attorney Repperger said the applicant is not in attendance so the Ordinance can be continued to a date certain or approved that evening. He added that the applicant is appealing our decision in response to the Town Planners' findings that the applicant's Special Exception Application was deemed insufficient to proceed. Moving forward with the Ordinance could make the appeal moot though Mr. Pepaj may still want the appeal to go to the Board of Adjustments. The Town Attorney recommended that the first reading be continued to the July 19th meeting.

Commissioner Walters made a motion to continue the revised draft Ordinance 2017-01 to the July 19, 2017 meeting; Commissioner Hoover seconded. Motion carried 5-0.

IX. Old Business (00:46:00)

A. Consideration of leave policy to restore employee unpaid leave to 12 weeks – Mayor Simmons

Mayor Simmons said that as an employer with fewer than 50 employees the Town didn't need to comply with the Family Medical Leave Act so we were informed that we could instead refer to it as "unpaid leave". In 12/2014, in response to learning that the Town didn't need to comply with FMLA, the Commission voted to reduce unpaid leave from 12 to 8 weeks. The Mayor wants to revise the policy such that 12 weeks of unpaid leave is available to employees for emergency situations and not force employees to use paid leave prior to using unpaid leave. Other qualifications would not be changed.

Commissioner Walters read the policy and said that there were a lot of holes in it.

*Jean Marshall
410 6th Avenue*

Ms. Marshall said she was on the Commission at the time and that the only comments recorded in the minutes belonged to the Mayor. Mayor Simmons said she voted to approve those minutes.

It was agreed by consensus to schedule a Workshop to discuss this issue further.

X. New Business (01:03:1)

A. Site Plan Review for 501 Atlantic Street, Melbourne Beach, FL

Town Manager Day said the issue was whether the attic space was a 3rd floor as indicated on the site plan. He said that changes were made to the plans removing all but one mention of a 3rd floor. Mr. Day subsequently toured the house and verified that the area in question is indeed used for mechanical equipment and storage.

*Tim Reaves
TVR Construction, Inc.
3860 Richey Road
Mims, FL*

Mr. Reaves said that the space in question is an attic and any 3rd floor reference on the plans is an error that he will correct.

Town Attorney Repperger said what is being asked of the Commission is not to approve a 3rd floor; you've made it clear that you don't want 3rd floors in the Town, so you aren't setting precedent. The Commission can approve the plans pending changes removing any reference to a 3rd floor.

Commissioner Walters made a motion to approve the site plan for 501 Atlantic Street subject to approval by our Building Official who will ensure all instances of a 3rd floor are stricken and replaced with "attic"; seconded by Commissioner Quarrie. Motion carried 5-0.

B. Consideration of May 17, 2017 Town Commission Regular Meeting Draft Minutes as amended– Town Clerk Wilson

The Town Clerk said that minor changes were made to the minutes by Mayor Simmons that she approved.

Commissioner Walters made a motion to approve the May 17, 2017 Town Commission Regular Meeting draft minutes as revised; Commissioner Hoover seconded. Motion carried 5-0.

B. Consideration of June 8, 2017 Joint Town Commission/Planning & Zoning Board Meeting Draft Minutes as amended– Town Clerk Wilson

Town Clerk Wilson said that changes were made to the minutes by Mayor Simmons that made them easier to read but intent and meaning were unchanged.

Commissioner Walters made a motion to approve the June 8, 2017 Town Commission Joint Workshop draft minutes as revised; Commissioner Quarrie seconded. Motion carried 5-0.

B. Discussion and possible action regarding medical marijuana – Mayor Simmons

Mayor Simmons said that legislation regarding medical marijuana was discussed at the June 12th SCLOC meeting. The legislation allows only outright prohibition or treatment of the medical marijuana outlets to be the same as pharmacies. There is a provision that these outlets can be restricted to within 500 feet of schools. There are also no provisions for “grandfathering” previously adopted ordinances or for other restrictions defined in the Town’s current ordinance. The Mayor suggested that the Town Attorney study legislation and provide alternatives to the Commission. Commissioner Walters said we should look in to preparing an ordinance to prohibit them. Commissioner Quarrie worried that it might cause a problem in the future if the Town prohibits these outlets.

Town Attorney Repperger looked at the legislation and said we essentially have two options. The first option would be to ban the medical marijuana outlets altogether or treat them as pharmacies. The Town could face a challenge but the legislature has authorized municipalities to ban them. He envisioned repealing our current ordinance and adopting a new one that would ban them altogether.

Mayor Simmons was concerned that if we go by the State Ordinance and it is changed, we then must abide by that change. He also felt we’d be better off banning outlets completely.

Commissioner Walters said he doesn’t have a problem with medical marijuana, rather, he has a problem with treatment centers. He questioned what constitutes a treatment center and what it would mean if the Town had one.

Vice Mayor Davis hoped that if surrounding communities permit the treatment centers, those who need them would go there and Melbourne Beach would be left alone.

Haig John

517 Andrews Avenue

Mr. Haig asked if this is really something we want in our Town. He's seen them in other areas and he doesn't see how they benefit a community. He asked if the Commission has the ability to keep the outlets out of our Town, to please do so.

Vice Mayor Davis made a motion directing the Town Attorney to repeal our current ordinance regarding medical marijuana dispensaries and pursue an ordinance prohibiting medical marijuana dispensaries in Melbourne Beach; seconded by Commissioner Walters. Motion carried 4-1 with Commissioner Hoover casting the dissenting vote.

C. Discussion and possible action regarding vacation/short term rentals – Mayor Simmons (01:41:30)

Mayor Simmons said he has received emails from people voicing concerns about vacation rentals in Melbourne Beach. The State Legislature prohibits restrictions on duration but there are other legislative actions that may be available to help mitigate the impacts to affected residents such as rules relative to safety, maximum occupancy, parking restrictions, etc. Because they are so lucrative, however, we may lose control of our Town legislatively. The Mayor asked the Commission if they'd like the Town Attorney to come up with a course of action.

Commissioner Walters said state law limits what we can do about vacation rentals. He is concerned about how the Town would enforce any restrictions and added that he hasn't seen anything that indicates there are problems with vacation rentals.

Mayor Simmons said we know the location of a lot of the vacation rentals but he agreed with Commissioner Walters that enforcement would be difficult but at least it would give us a mechanism by which to deal with the issue.

Commissioner Quarrie said we should focus on safety issues and utilize the Police Department for enforcement. She is not in favor of renting rooms in a house.

Joe Tracy

615 Citrus Court

Mr. Tracy suggested a surcharge for vacation rentals. Mayor Simmons said they are already subject to a bed tax.

Marty Remark
707 Atlantic Street

Ms. Remark lives close to a vacation rental and she is uncomfortable having people around who she has never seen. Because the rentals aren't long term, there is a regular turnover of people.

Haig John
517 Andrews

Mr. John owns short term rental properties in other cities but not in Melbourne Beach and he is glad. He added that the houses in Melbourne Beach are being appraised at a low value which is making houses more affordable so people are buying them and turning them into vacation rentals.

Jean Marshall
410 6th Avenue

Ms. Marshall said the Town has codes dealing with renting rooms to those other than family members. She added that we shouldn't allow rooming houses.

Town Manager Day said there are no funds coming back to the town for short term rentals. He has talked to an owner who was renting to multiple people, some of whom Mr. Day met; he said he wouldn't want those people around his family. He agreed with the concern voiced by others.

Town Attorney Repperger said the issue is complicated. He suggested that the Commission identify what they want to regulate, being very specific, and he will draft an ordinance.

Commissioner Walters suggested that the Commission should think of what they would like to see in an ordinance and discuss it at a workshop. This was agreed to by consensus.

D. Consideration of investment policy addressing internal controls to address audit finding - Town Manager Day

Town Manager Day said that in our audit that was presented and the 5/17 meeting, one of the findings said that the Town needed to develop and implement internal controls to enhance safeguards to the SBA Investment Fund. Verbiage to address that issue was added to an Investment Policy that was never approved by the Commission. The added text, found under section VII reads, "Neither the Town Manager, nor any other authorized staff member, may transfer funds from the General Fund to the SBA Investment Fund without the consent of the Town Commission." Mr. Day said we are looking for approval of the entire Investment Policy.

Commissioner Walters made a motion to approve the Town of Melbourne Beach Investment Policy as prepared on May 18, 2017 and submitted on June 21, 2017; Commissioner Quarrie seconded. Motion carried 5-0.

- E. Consideration of change to Policies and Procedures manual to add policy covering management and maintenance of the Town's IT system – Town Manager Day

Town Manager Day said that in our audit presented at the 5/17 meeting, one of the findings said that the Town should draft policies and procedures related to information technology for the management and maintenance of the Town's information systems. Section 4.13 was added to our Policies & Procedures manual and we are asking for Commission approval of that addition.

Commissioner Walters made a motion to approve the addition of section 4.13 addressing *IT Management and Maintenance* in our Policies & Procedure manual; seconded by Commissioner Hoover. Motion carried 5-0.

- F. Consideration of Memorandum of Understanding with FIT for the MPA program – Town Attorney Repperger

Town Attorney Repperger said that the Commission approved entering into the agreement with FIT on January 18th. On May 11th, Commissioner Hoover requested execution of the attached draft MOU. The Town Attorney drafted proposed edits but those edits threatened to delay the planned start date of the program on August 21st. The Director of the MPA program has provided assurances via email regarding the Towns' obligations under the draft MOU stating that there will be no costs associated with the program. So as not to delay the program, the Town Attorney has agreed to place the unedited draft MOU on the agenda for Commission consideration.

Vice Mayor Davis asked if the Town could suffer any liability. The Town Attorney responded that we have emails from FIT that remove liability from the Town. If FIT ever came back to us, we have the emails. Vice Mayor Davis asked if when we approved this in January, did we approve an expenditure for attorney fees. The Town Attorney said we agreed to move ahead with the program so when the MOU was sent to him, he drafted some edits which started the dialogue they just discussed. Vice Mayor Davis was concerned that we were spending taxpayer dollars for a favor.

Commissioner Walters made a motion to approve the Memorandum of Understanding between FIT and the Town of Melbourne Beach providing for MPA degree classes; seconded by Commissioner Hoover. Motion carried 5-0.

G. Consideration of change to the Fire Manager's job description – Town Manager Day

Town Manager Day said that since the position of Fire Department Manager was created in October 2016, it has become apparent that some elements of the job description didn't accurately represent what the job entailed so a new one was drafted. The person who holds that position misunderstood what his duties were; he thought he was required to go on calls so he was looking to receive high risk retirement benefits. The Town Manager updated the job description to remove any ambiguities.

The Commissioners suggested several edits and clarifications to the document for the Town Manager to incorporate.

Commissioner Walters made a motion to approve the Fire Department Manager job description as revised; Commissioner Quarrie seconded. Motion carried 5-0.

H. ~~Consideration of pay adjustment for the Finance Manager—Town Manager Day~~
To be discussed during budget meetings.

A five minute break was requested by Commissioner Quarrie at 9:12 p.m. and was agreed to by consensus.

At 9:20 p.m., Town Clerk Wilson led the roll call:

Commissioners Present:

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

Staff Present:

Town Manager Timothy Day
Town Clerk Nancy Wilson
Finance Manager Elizabeth Mascaro
Town Attorney Cliff Repperger

XI. Staff Reports

A. Town Attorney Report

Town Attorney Repperger said that upon further research, the referendum regarding the Town Clerk will need to be done as an ordinance and the first read will be at the July meeting.

A. Town Manager / Public Works Report

The Town Manager passed out a logo that the Environmental Advisory Board would like Commission approval to begin using.

The Commission agreed by consensus to approve the logo.

Town Manager Day appeared before the Florida Inland Navigation District Board on June 17th in Cocoa Beach. He is not sure about the timeline of being approved for the grant but October 1, 2017 is when the funds are released. Mr. Day said that once we know that we are receiving funding, we would go out to RFP. He believes the project would take between two and three weeks.

The Town Manager discussed some code issues with one at 217 Surf being a problem. The owner was told that if they did not cleanup their yard by June 26th, their case would be sent to the Code Enforcement Board.

Commissioner Walters would like to see open wifi in the Masny Room or have the password posted.

B. Town Clerk Report – no report

C. Departmental Reports:

1. Building Department – no questions/comments
2. Code Enforcement – no questions/comments
3. Police Department – no questions/comments
4. Fire Department – no questions/comments
5. Finance Department – no questions/comments

XII. Town Commission Comments

A. General Comments

Vice Mayor Davis asked for the sign on AIA by Commissioner Hoover's house to read *Town of Melbourne Beach* instead of *City of Melbourne Beach*.

Mayor Simmons said the State Legislature passed an additional \$25,000 homestead to be put on ballot. Brevard County is expecting the additional homestead exemption to cost them \$66 million. He asked the Town Manager to look at the impact of this during the budget process.

B. Review of Commission Action List

Six Action Items were closed and three items were added:

1. Unpaid leave policy – to be discussed at a workshop in August

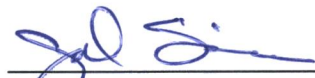
2. Vacation rentals – to be discussed at a workshop in August
3. Pine Street Road Markings

XIII. Adjournment

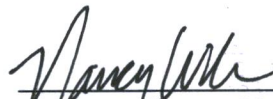
Commissioner Walters made a motion to adjourn; seconded by Commissioner Hoover. Motion carried 5-0.

Meeting adjourned at 9:48p.m.

ATTEST:



James D. Simmons, Mayor



Nancy Wilson, City Clerk