



Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING

WEDNESDAY, JULY 19, 2017

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 Timothy Day
Town Clerk Nancy Wilson
Town Attorney Cliff Repperger

PUBLIC NOTICE

**The Town Commission conducted a Regular Town Commission Meeting
at 6:30 p.m. on Wednesday, July 19, 2017 at the Community Center
located at 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 Steve Walters
Commissioner Wyatt Hoover

Staff Present:

Town Manager Timothy Day
Town Clerk Nancy Wilson
Town Attorney Cliff Repperger
Town Planner Corey O’Gorman

Commissioner Absent:

Commissioner Sherri Quarrie

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Public Comments

Nobody asked to speak.

V. Approval of the Agenda

Addition to agenda under *New Business*, item D to read: “Designation of Maximum Millage”

Commissioner Walters moved to approve the agenda as amended; Commissioner Hoover seconded. Motion carried 4-0

VI. Consent Agenda

A. Board & Committee Reports

1. Police Pension Fund Board of Trustees

B. Town Board Resignations

1. Resignation of Joe Hnat from the Code Enforcement Board

Commissioner Walters made a motion to approve the Consent Agenda as presented; Vice Mayor Davis seconded. Motion carried 4-0.

VII. Public Hearings

- A. First Reading of the Bed and Breakfast Text Change Ordinance 2017-01 - Town Attorney Repperger (continued from June 21, 2017) (00:03:14)

Town Attorney Repperger read Ordinance 2017-01 by title.

Died for lack of a motion – This item was resumed in item B

B. First Reading of Referendum Election and Ballot Change, Ordinance 2017-02 – Town Attorney Repperger (00:04:51)

Town Attorney Repperger read Ordinance 2017-02 by title.

Commissioner Walters asked if the ordinance is adopted, would that preclude him from contacting the Town Clerk directly. Town Attorney Repperger answered “effectively yes” and added that the Town Charter says the Town Commission can provide duties to the Town Clerk. Mr. Repperger said that this wasn’t as easy as just changing the language to read that the Town Clerk is under the administrative direction and control of the Town Manager. Collectively, the Town Commission can direct the Town Clerk to perform a certain duty. The way the proposed language is written, it’s the Town Manager’s job to administer the Town Clerk in carrying forward those duties. This will end the independent management of the Clerk by any one Commissioner and makes the Town Clerk just like any other Town employee with the exception of the Town Commission being able to collectively ask the Clerk to perform a specific duty or duties. Commissioner Walters said the ballot language reads “under the exclusive supervisory authority of the Town Manager.” The Town Attorney said if you look at the language in the Charter, it’s not as simple as changing Town Clerk from being under the supervision of the Mayor or the Town Manager; that didn’t go far enough.

Mayor Simmons said he thinks he made a procedural error on the previous item, regarding Ordinance 2017-01, by not going to public comment before a motion was requested. He asked the Town Attorney if he should ask the applicant and his attorney if they would like to make any comments. Town Attorney Repperger said he would have allowed them to make a presentation but because of the fact that the Town is taking no action on the item, procedurally, he’s not sure where that leaves us. Mayor Simmons said the Town revised their rules several months ago such that there is no motion until after public comments. Town Attorney Repperger said this is a different situation because it’s a legislative issue so it’s not like the Town is acting in a quasi-judicial capacity.

Town Manager Day asked Attorney Rezanka and applicant Djon Pepaj to return to the meeting where they can make public comments or give a presentation regarding Ordinance 2017-01 after the completion of the current item.

The Mayor said, according to the proposed language, that the Town Clerk will have the same reporting structure as the Finance Manager. He added that there are pluses and minuses to having the Clerk report to the Town Manager.

Commissioner Walters made a motion to approve, and place on the November 7, 2017 ballot, Ordinance 2017-02; Vice Mayor Davis seconded. Motion carried 4-0.

Revisiting the First Reading of the Bed and Breakfast Text Change Ordinance 2017-01. There was no further discussion so Mayor Simmons opened it up to public comment after apologizing for overlooking this part of the process.

*Kim Rezanka
Cantwell & Goldman, PA
96 Willard St
Cocoa, FL*

Ms. Rezanka said she was present on behalf of Mr. Djon Pepaj and his company LDP, LLC. She said the Commission “showed their hand” which makes her presentation moot. She added that she and Mr. Pepaj didn’t like the way the Ordinance was changed, it doesn’t solve the problem, it’s ambiguous and they believe it’s unconstitutional. She would like to go back to the language she presented in May but said if the Commission is not going to accept what the Town Attorney prepared for them, they certainly aren’t going have an interest in what she proposed in May. She concluded her comments.

Died for lack of a motion (2nd attempt at a motion after public comments)

Town Attorney Repperger said the item died for lack of a motion and given that this was an applicant driven legislative change, is it the understanding of the Commission that no action is effectively a denial of the request? Mayor Simmons responded in the affirmative saying what he believes is that the Commission indicated they didn’t want to make the changes to the ordinance by not making a motion.

The Town Attorney said the situation was unique because it was applicant driven and the Commission felt it wasn’t something that needed to be addressed now but could be addressed in the future.

VIII. Old Business

- A. Discussion and possible action regarding Osprey Nest on Riverside Drive– Town Manager Day (00:22:17)

Town Manager Day was previously directed to look into the cost and feasibility of installing a camera on a pole on Avenue B to view an Osprey nest during the next nesting season. FPL agreed to install the poles in the right-of-way at no cost to the Town so our only expense would be the camera. Since then, neighbors near the site have expressed concern about placement of the poles and nest. This issue was never voted on but did reside on the Action List so it is necessary to discuss and vote on the placement of the Osprey nest.

Commissioner Walters said that there were complaints from residents who felt the new poles would be an eyesore and a privacy issue. He said the camera will not cause a privacy issue because it will only be pointed toward the nest and, though he doesn't think the added pole will be a problem, he acknowledged the concerns of those who live nearby. Commissioner Hoover said he read the emails that had circulated and he's sympathetic to what the residents are saying. He suggested the issue be resolved by taking the time to investigate options for other locations. Discussion ensued regarding Osprey and their territorial nature with the Town Manager saying that if the poles are moved more than 50 feet from the original pole, the birds won't return. Vice Mayor Davis said he liked the idea but he doesn't like making the residents uncomfortable. Mayor Simmons had conversations with two concerned citizens and he feels that there may be a better solution.

Erin Collins

803 Riverside Drive

Ms. Collins said it took her two years to get the nest box where it is now. She received no help from the Town or from FPL so for two years birds were hanging from the poles after being electrocuted. After a woman from Jacksonville agreed to help, a nesting box was put in place and a year or so passed before birds arrived; there was a clutch last year and one this year. She explained the nesting practices of Ospreys saying that they are wonderful to watch but are very messy. Ms. Collins said residents are happy with the nest as it is now and asked why we should fix something that's not broken. She also commented on having a camera installed because of privacy concerns and concluded by saying we have no guarantee how the birds would react to a new pole.

Patti James

807 Riverside Drive

Ms. James said she concurred with Ms. Collins. The birds are a joy to watch but she doesn't like the idea of moving the pole because of how it would affect the use of her property. For security reasons, she is not in favor of installing a camera but thinks it would be a great idea in a more public place. The land

acquisition specialist from Brevard County said there are predetermined uses for rights-of ways and a pole for a bird's nest wasn't among them.

John James

807 Riverside Drive

Mr. James said, speaking as a biologist, we shouldn't interfere with nature. For us to think that we can predict what the birds will do with a new nest isn't realistic and that we should be looking at this from a biological standpoint. He added that Ospreys pick the highest point because it gives them more protection and suggested putting one in the water, like on a buoy, because they fare better on man-made structures.

Commissioner Hoover said he shares the James' and Collins' concerns especially since they all live on heavily trafficked roads where a camera could be more intrusive than on other roads.

Commissioner Walters said because he doesn't have any support on this issue, the item should be removed from the Action List and in its place, add a directive to have the Environmental Advisory Board look for a suitable location. The rest of the Commission unanimously concurred with this recommendation.

IX. New Business

- A. Consideration of June 21, 2017 Town Commission Regular Meeting Draft Minutes as amended– Town Clerk Wilson (00:48:13)

Town Clerk Wilson had no issues related to the changes requested by Mayor Simmons.

Commissioner Walters made a motion to approve the June 21, 2017 Town Commission draft minutes as amended; Commissioner Hoover seconded. Motion carried 4-0.

- B. Consideration of tree replacement in front of the Community Center – Town Manager Day (00:50:20)

Town Manager Day reported that the Parks Board met and discussed replacing the tree in front of the Community Center with a tree that is more appropriate for Christmas decorating. They would like to do this soon so that the tree will have time to fill-out before December. Nobody knew of anybody who would be offended if the tree was replaced. Commissioner Walters said Bruce Black wanted to replace the tree several years ago but that would have necessitated killing the tree that is in place now and has been for about 15 years. Mayor

Simmons said that regular trimming would be necessary for a tree to keep the right shape. The Commission unanimously agreed to replace the tree and requested a proposal from the Town Manager. Because the history of the tree is unknown, it was agreed that the Town Clerk would place a small article in the Beachcomber. If it had been previously dedicated in someone's memory, there would be a rededication ceremony at next year's tree lighting.

Town Manager Day said he would work on a proposal for a new tree.

C. Consideration of time changes for Founder's Day 2018 – Town Manager Day
(00:57:50)

Town Manager Day reported that the Parks Board met and discussed modifying the hours for Founder's Day 2018 to the following:

9:15 pm (8:15 pm in 2017) – stop selling beer tickets
9:30 pm (8:30 pm in 2017) – stop serving beer
10:00 pm (9:00 pm in 2017) – stop playing music

Commissioner Hoover said that if the Commission wants more control of Founder's Day, they could approve of the bands selected. He supports the time changes especially since at that time of year, it is daylight until almost 9:00 p.m. Vice Mayor Davis said we are losing the spirit of Founder's Day by placing the emphasis on serving beer. Commissioner Hoover, a member of the Melbourne Beach Rotary Club, responded that almost all the money they make from beer sales are donated to worthy causes.

Mayor Simmons said the last few years of the event have gone flawlessly and added that he is in agreement with the time changes but would like it to be reviewed every year. After this year's event, he heard that people would like the event to run later.

Patti James

807 Riverside Drive

Ms. James concurred with the Mayor and said she thinks the event should run until 10:00 pm because it is one of the only time people in Melbourne Beach get together to socialize.

Commissioner Walters moved to approve the hours for Founder's Day 2018 as presented by Town Manager Day; Commissioner Hoover seconded. Motion carried 4-0.

Mr. Day said the Town Manager should always attend the event to ensure everything runs smoothly.

D. Designation of maximum millage (01:15:10)

Mayor Simmons said the term “maximum millage” is the specific term that the Town needs to use according to the State Department of Revenue in order for the Town to be truth in millage (TRIM) compliant. The term maximum millage does not imply that the Town Commission will be levying the maximum taxes to the residents of Melbourne Beach. At this meeting, the Town Commission will be setting an amount (maximum millage) that the Town can’t go over when setting the final budget for the 2018 fiscal year. The Town Commission can come down from the maximum millage amount when determining the final budget but can’t go over this amount once set.

Commissioner Hoover made a motion to adopt FY 2017/2018 operating millage rate of 4.3218 mills which is greater than the rollback rate of 3.9289 mills by 10%; Vice Mayor Davis seconded. Motion carried 4-0.

X. **Staff Reports**

A. Town Attorney Report (01:18:30)

The Town Attorney discussed the Town’s Water Franchise Agreement with the City of Melbourne that expires on August 11, 2017. The City of Melbourne recently sent a request to the Town to extend the term of the Agreement for six months. It was determined that the First Amendment implementing the extension must be approved by ordinance but advertising deadlines precluded placing the Ordinance on this agenda, therefore, the first reading will be scheduled for August 16, 2017, with a second reading on September 20, 2017. He asked that the Commission tentatively approve the requested extension.

Vice Mayor Davis made a motion to approve the extension and the drafting of a letter confirming it; Commissioner Hoover seconded. Motion carried 4-0.

The Town Attorney reported that the Medial Marijuana Ordinance will be on the September Planning & Zoning agenda. He also said the Town Planner has completed his review and analysis of the Land Development Code. Mr. Repperger and Mr. O’Gorman are scheduled to meet on July 26th to discuss the Town Planner’s report.

B. Town Manager / Public Works Report (01:25:03)

Mr. Day reported that the rear exterior wall at the Ryckman House has been repaired and a birdhouse installed. He received a quote to refinish the upper level floors and the stairs - \$1,100 for floor and \$600 for stairs. Mr. Day said he could pull funds from Public Works to get this done or add it to the budget. Finally, the cost to replace the roof would be almost \$20,000. The Mayor responded that he doesn't want to spend more money until the roof is evaluated; they'll wait until the budget meetings to discuss further.

The Town Manager said Computer Experts wants to know if the Commission would like to change the policy for password changes to be required every 12 months instead of the current requirement of 3 months. It was agreed by consensus that the requirement to change passwords would occur every 12 months.

The Town Manager reported that he has to deal with an issue on N. Atlantic where outside counsel will need to be engaged because of a perceived conflict of interest with our Town Attorney.

Town Manager Day discussed upcoming meetings. He wanted to schedule a special meeting to discuss reclassifying the Finance Manager's position with an associated raise in pay. The meeting date and time agreed to was July 24th at 6pm with a budget workshop immediately following that meeting.

In response to a question posed by Commissioner Walters about health insurance rates, Town Manager Day said he doesn't have the paperwork back from them with that information.

In conclusion, the Town Manager said the FEMA grant from the hurricane is broken down into three parts. We are receiving a check for about \$7,000 for the first part but it could be another six months before we receive funds for the second and third parts. This delay is due to more information being requested by FEMA.

C. Town Clerk Report – no questions/comments (01:46:08)

D. Departmental Reports: (01:47:02)

1. Building Department – Town Manager Day said we are about 80 permits and \$1 million ahead of last year.
2. Code Enforcement - no questions/comments
3. Police Department – The Mayor asked if the reported disturbances have been caused by vacation rentals. The answer was “no”.
4. Fire Department - no questions/comments
5. Finance Department – no questions/comments

XI. Town Commission Comments (01:48:26)

A. General Comments

Commissioner Walters commented that he wished our legislature would allow Commissioners to call each other regarding certain issues, but the recent ruling failed by three votes. Mayor Simmons said the communication restrictions contribute to gridlock.

The Commission agreed by consensus to have the Town Attorney attend the August 2nd Workshop for the vacation rentals discussion item.

B. Review of Commission Action List

- 6 items were removed from the list
- 4 items were closed
- 3 items remained unchanged
- 3 items were updated
- 3 items are to be discussed at the 8/2/17 Workshop
- 1 item was added

The Action Item referring to Section 1A-7 (d) under Town Official, asks whether or not the Town Commission needs to disclose discussions with Town staff on quasi-judicial matters. The Town Attorney advised the Commission that pursuant, in part, to the operation of Section 286.0115, Florida Statutes, there is no requirement that local jurisdiction Board members sitting in a quasi-judicial capacity on land use matters include staff discussions in ex parte disclosures. Accordingly, the Commission has directed that the requirement under Section 1A-7(d) be removed from current LDC amendment draft.

Commissioner Walters made a motion to direct the Town Attorney to make changes to Section 1A-7 not requiring the disclosure of discussions with Town staff on quasi-judicial matters; Commissioner Hoover seconded. Motion carried 4-0.

Regarding if we should have a caveat regarding notifying that federal flood insurance is not available, Town Attorney Repperger advised the Commission that the Code Requirements are part of the model code promulgated by the State of Florida Division of Emergency Management which were adopted to implement the Town's participation in the National Flood Insurance Program. The Town Attorney said that liability is not a concern.

Commissioner Hoover asked if we have a policy regarding board member communication with the Town Manager. Town Manager Day said when there is an issue, multiple people from one Board will come to him saying different things. The

Commission agreed by consensus to have only the Chairman of each Board communicate with the Town Manager.

XII. Adjournment (02:13:02)

Commissioner Walters made a motion to adjourn; seconded by Vice Mayor Davis. Motion carried 4-0.

Meeting adjourned at 8:43 p.m.

ATTEST:



James D. Simmons, Mayor



Nancy Wilson, Town Clerk