



# M Town of Melbourne Beach

## **REGULAR TOWN COMMISSION MEETING**

**WEDNESDAY, AUGUST 15, 2018**

**6:30 p.m.**

**COMMUNITY CENTER – 509 OCEAN AVENUE**

## **MINUTES**

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

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

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## **PUBLIC NOTICE**

**The Town Commission conducted a Regular Town Commission Meeting  
on Wednesday, August 15, 2018 at the Community Center**

**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 roll call.

Commissioners Present:

Mayor Simmons  
Vice Mayor Davis  
Commissioner Walters  
Commissioner Quarrie

Staff Present:

Town Manager Bob Daniels  
Town Clerk Nancy Wilson  
Town Attorney Cliff Repperger  
Finance Manager Elizabeth Mascaro

Commissioner Absent:

Commissioner Hoover

**III. Pledge of Allegiance and Moment of Silence**

Led by Mayor Simmons

**IV. Special Presentations**

No presentations

**V. Boards and Committees**

No Board or Committee reports

**VI. Public Comments**

No comments were made by the public.

**VII. Approval of the Agenda**

Commissioner Quarrie suggested moving the Finance report to New Business, item B (later moved to item D), so it can be addressed when the bid documents are reviewed.

**Commissioner Walters made a motion to approve agenda as amended;  
Vice Mayor Davis seconded. Motion carried 4-0.**

**VIII. Consent Agenda**

A. July 11, 2018 Town Commission Workshop draft minutes

B. July 18, 2018 Regular Town Commission Meeting draft minutes

C. July 18, 2018 Special Town Commission Meeting draft minutes (continued to July 25<sup>th</sup>)

D. August 1, 2018 Town Commission Workshop draft minutes

E. Reappointment of Kurt Belsten to the Planning & Zoning Board

~~F. Site Plan Review for 400 Riverside, Melbourne Beach, FL~~ (moved to New Business, item A.)

~~G. Site Plan Review for 503 Hibiscus, Melbourne Beach, FL~~ (moved to New Business, item B)

Commissioner Quarrie said that the site plans for 400 Riverside and 503 Hibiscus don't have tree surveys or surveys of existing improvements. In the development application, that information is requested. At a Workshop, the Commission approved the requirement that tree surveys and surveys of existing structures be included with the development application. Mayor Simmons said he remembered discussing outbuildings but he doesn't remember discussing trees though a tree permit is required to remove any trees. He suggested that the two site plans be handled by approving them subject to receiving surveys, as the Town Commission has done in the past. Town Manager Daniels checked with the Town Attorney who said the Building Official refers to our Town Codes when reviewing plans as does the Planning & Zoning Board. As Commissioner Quarrie has stated, this issue was discussed at a previous meeting and it was decided to add the survey requirements to our application package but it was never translated into a Code change which ultimately needs to be done. Mayor Simmons added that invasive plants can be removed without a permit while the removal of other plants requires a permit and he believes, in that case, all that can be removed are those plants that would affect the construction of the house. Town Attorney Repperger said the change to have our Code agree with the requirements stated in the development application package regarding site plans, won't go into effect until the Land Development Code is updated again. Thus, until that time, nobody can be bound by the requirement stated in the application. In the Code, (7A-51), if a tree is being removed, the Town Code is clear that a permit is required but if a tree is not being removed and only a tree survey is being discussed, it is currently not part of the approval process. The Mayor asked the Town Attorney if it is his position that the Town cannot require the location of outbuildings, pools, etc., that may or may not be removed in new construction or an addition without the change to the LDC that reflects what is requested in the application. The Town Attorney responded that it is not a Code requirement but the Code should be changed to make it consistent with what is stated in the development application as set forth by the Town Commission at a previous meeting.

**Vice Mayor Davis made a motion to approve the Consent Agenda minus**



**items F. and G. which will be moved to New Business, items A. and B. respectively; Commissioner Quarrie seconded. Motion carried 4-0.**

**IX. Public Hearings (00:18:22)**

Second and Final Reading of the Marijuana Dispensary Ordinance 2018-03 – Town Attorney Repperger

Town Attorney Repperger read Ordinance 2018-03 by title.

**Commissioner Walters made a motion to adopt Ordinance 2018-03 on second and final reading; Commissioner Quarrie seconded. Motion carried 4-0.**

**X. New Business (00:20:53)**

A. Consideration of site plan for 400 Riverside (moved from Consent Agenda) – Commissioner Quarrie

B. Consideration of site plan for 503 Hibiscus (moved from Consent Agenda) – Commissioner Quarrie

**Commissioner Quarrie made a motion to approve the 400 Riverside site plan subject to receiving improvement and outbuilding surveys and a tree survey.**

Commissioner Walters doesn't want an added burden on the homeowner by requiring another survey. Discussion ensued about how the homeowners would show on the survey what Commissioner Quarrie would like to see. She said they could use their existing survey and draw on it. Mayor Simmons suggested that the homeowners pace off where the trees are on their property; we want to ensure they aren't removing protected trees. Commissioner Quarrie wants to make sure we don't end up with a house that doesn't meet our Code requirements. She would like to approve the two site plans subject to the homeowner providing a drawing showing the location of structures and describing what will happen to those structures and what will happen with the trees. Commissioner Quarrie said that on the last site plan reviewed by the Commission, the homeowner hand wrote on the survey where the trees are located on the property. The goal is to approve two site plans subject to the location of structures and what will happen to those structures and what will happen with the trees and she is content with homeowners printing on their current survey. The Mayor wants the checklist adhered to without making it onerous on the homeowner. The Town Manager added that we are asking for something that is not in the current Code.

*Jimmy Meindl  
160 Deland Avenue, Indialantic*

Mr. Meindl said as a contractor, he would ribbon the trees and submit that information with his application package.

A lengthy discussion ensued about what should be reflected on a survey and in what detail it should be provided.

**Commissioner Quarrie amended her motion to approve the site plans for 400 Riverside and 503 Hibiscus subject to submittal of tree locations on the properties and any outbuildings that will be installed, removed or modified and to provide this information on each property's existing survey; Commissioner Walters seconded. Motion carried 4-0.**

- C. Consideration of July 25, 2018 Special Town Commission draft minutes as amended – Town Clerk Wilson (00:39:32)

**Commissioner Quarrie made a motion to approve the July 25, 2018 Special Town Commission draft minutes as amended; Commissioner Walters seconded. Motion carried 4-0**

- D. Discussion of the Finance Manager's report (moved from Staff Reports on page 225) – Finance Manager Mascaro (00:40:26)

Ms. Mascaro said the targeted expenditure rate for June is 83.33% and the General Fund is at 77.80% overall. The two FEMA stormwater projects at Oak/Cherry and Rosewood/Dogwood have been completed ahead of schedule. The cost of construction is \$90,590 and was allocated out of the FY19 budget but will be paid from the FY18 budget. Ms. Mascaro asked the Commission to approve a temporary transfer of \$90,590.00 from the Reserve Account to cover the cost of the two projects. Upon reimbursement from FEMA, those funds will be returned to the Reserve Account.

The funds allocated in the FY2019 budget for these projects, \$194,346, will be utilized to cover the increased construction costs for Andrews. The newly projected cost for Andrews is \$728,573. There will probably be a shortfall of \$84,227 unless the project comes in under budget, which has happened with prior projects.

Once the following bids have been considered in items E., F. and G., Ms. Mascaro is asking the Commission to approve Resolution 2018-03 allowing the transfer of funds from the Reserve Account to Fund 141 to cover stormwater construction expenses on Oak/Cherry and Rosewood/Dogwood as a budget amendment.

- E. Consideration of bid from Brewer Paving & Development for storm sewer repairs on Andrews – Town Manager Daniels (00:49:33)



Town Manager Daniels explained the bid totaling \$728,574 and said that Brewer is the company we used for the two previous stormwater projects. He wants the Commission to approve the full amount of the bid and he will work on trying to cut costs from there; he's expecting a reduction to about \$600,000. One initial savings will be in the amount of \$32,700 for management of traffic since the Town will be providing that service. Also, the cost of right-of-way preparation will be reduced by Public Works employees helping in that effort. Upon Commission approval of this bid, he also wants to send letters to the affected homeowners letting them know that within 60 days this project will begin thus giving them the opportunity to move whatever they would like to preserve, in their rights of way, to a safer area; Public Works would assist in this effort. Mayor Simmons said that not replanting trees or plants on our rights of way needs to be communicated to the homeowners since that is what caused the collapsed drains in the first place; Town Manager Daniels said he would be communicating that to the homeowners. Commissioner Walters commented on the disruption caused by closing streets and added that when digging out the road, if there are water pipes that look bad, Melbourne should be called to change them at this opportune time.

**Commissioner Walters made a motion to approve the bid from Brewer Paving & Development for stormwater repairs on Andrews in an amount not to exceed \$728,574; Vice Mayor Davis seconded. Motion carried 4-0.**

Mayor Simmons asked where the money is coming from and the Finance Manager answered that she was told by FEMA that we can submit draws during the project. She said that FEMA has also committed money for the completed Ocean Avenue project in the amount of \$15,000. Mayor Simmons is worried that moving forward with these projects is going to leave the Town exposed, especially if we have a hurricane in September. We will be utilizing the \$450,000 bond money (341 Fund) and taking about \$300,000 out of reserves; none of the three projects discussed at this meeting will require drawing from the General Fund.

Commissioner Walters asked about the draw and Finance Manager Mascaro said she's going to ask Brewer Paving to set up a draw schedule. He then questioned the meaning of "substantial completion". He suggested defining it as: "the time and date at which the work has progressed to the point where the Town Engineer has deemed that the work is sufficiently completed in accordance with the contract documents." Town Attorney Repperger said that is verbiage that would be in the contract; what is currently being discussed were bid documents. Town Commissioner Quarrie asked how we protect ourselves if the project isn't completed to which the Town Manager responded that the contract will cover that. She then asked if we should be dealing with VA Paving directly. Town



Manager Daniels said the entire project is being contracted out completely. Their prices are locked in because they provide paving services to the County and can't charge more than that locked in amount. Our price is cost + 20%. Commissioner Quarrie pointed out that the performance bond is extra so the total is really \$757,716.44 not \$728,573.

Town Attorney Repperger asked that the motion be amended.

**Commissioner Walters amended his previous motion to accept the bid from Brewer Paving and Development at a cost not to exceed \$757,716 subject to both projects (Andrews Avenue, Riverside Drive/Riverside Circle) being covered under the same performance bond and to authorize the contract to be developed and executed by the Town Manager and the Town Attorney; Vice Mayor Davis seconded. Motion carried 4-0.**

- F. Consideration of bid from Brewer Paving & Development for stormwater sewer repairs on Riverside Drive and Riverside Circle – Town Manager Daniels

Commissioner Quarrie said on page 122 there is another charge for a baffle box. Town Manager Daniels explained that the charge for a baffle box at the outfall line is an alternate proposal that our engineer doesn't feel we need.

Commissioner Quarrie asked if staff is going to manage traffic and, if so, why isn't that amount subtracted from the bid amount which would reduce the bid total by \$22,975? Town Manager Daniels said that's how they structured their bid. We are providing MOT and that will be reflected in the contract. The Mayor asked the Finance Manager if we approve the two bids, have we exceeded the amount of bond money we currently have in Fund 341? She answered in the affirmative adding that we have the money, just not in that particular fund. In response to a question asked by Commissioner Walters, Finance Manager Mascaro said she isn't sure how much we will receive from FEMA because the money has not yet been obligated. She added that we can obligate ourselves to pay back whatever we take from our reserve account. Also, of concern is how the Town will pay for future jobs.

**Commissioner Walters made a motion to approve the bid in the not to exceed amount of \$275,835 to be paid for utilizing bond money and a loan from the reserve account with the stipulation that the reserve account be reimbursed by FEMA, and/or the General Fund and to authorize the Town Manager and Town Attorney to execute a contract; Commissioner Quarrie seconded. Motion carried 4-0.**

- G. Consideration of bids from Brewer Paving and Brevard Excavating for the Indian River Shoreline Repair at Riverside Drive and Avenue A – Town Manager Daniels (01:39:12)



Town Manager Daniels recommended that the Commission accept the bid from Brevard Excavating in the amount of \$42,505.50; it was the lower of the two submitted bids. Our engineer is concerned that if we have another storm, we could lose the outfall line and baffle boxes at that location. This project has been submitted to FEMA for reimbursement, but the funds have not yet been committed. In the meantime, the cost will be covered by a loan from our reserve account.

**Commissioner Walters made a motion to approve the bid in the amount not to exceed \$42,505 submitted by Brevard Excavating for the shoreline repair at Riverside Drive and Avenue A to be paid for with a loan from the reserve account and to authorize the Town Manager and Town Attorney to develop and execute a contract; Commissioner Quarrie seconded. Motion carried 4-0.**

- H. Consideration of Resolution 2018-03 allowing for the transfer of funds from the reserve account – Finance Manager Mascaro (01:43:51)

Mayor Simmons explained that this transfer of funds will cover the payment for Oak/Cherry and Rosewood/Dogwood in the amount of \$90,590. This transfer was discussed during Ms. Mascaro's report – item D.

**Commissioner Walters made a motion to approve Resolution 2018-03 allowing the transfer of \$90,590 from the reserve account to Fund 141 to cover payment for stormwater projects on Oak/Cherry and Rosewood/Dogwood as a budget amendment; Commissioner Quarrie seconded. Motion carried 4-0.**

- I. Consideration of change to leave policy allowing the transfer of vacation time between employees– Town Manager Daniels (01:45:15)

Town Manager Daniels asked that the Commission approve a new policy allowing employees to donate accrued vacation time to other employees who have exhausted their leave time. He explained that a Melbourne Beach employee recently suffered a tragedy and didn't have adequate leave time to handle the associated responsibilities. It was at that time he discovered that the Town doesn't have a policy for employees to donate their vacation time to those who could use it in their time of need.

**Commissioner Walters made a motion to include the donation of leave time policy into our Policies & Procedures as presented by the Town Manager; Commissioner Quarrie seconded. Motion carried 4-0.**

## **XI. Staff Reports (01:46:40)**



Mayor Simmons commended the Code Enforcement Board for addressing issues after such a long hiatus from conducting Board meetings. The Board has two new members.

Commissioner Walters commended Public Works and volunteer Tom Davis for their work on the gazebo that has saved the Town a lot of money. He also thanked Town Manager Daniels for keeping on top of everything.

Mayor Simmons confirmed that there is a *gofundme* account for the Melbourne Beach School Resource Officer and the proceeds go directly to the Town minus a 2% fee. Commissioner Walters suggested that a similar fund be established for playground equipment.

#### A. Town Attorney Report -

Town Attorney Repperger complimented staff for how they conducted the first Code Enforcement Board meeting since there hasn't been a meeting in a couple of years. He added that the hearing was a little clunky and the flow wasn't great due to the way the Board operates. He reported that both cases were found to be in violation. He also suggested that the Commission may want to think about moving to a Special Magistrate process which he has found to flow better and be more streamlined. This would probably have to go to referendum since Boards are established by charter. Mr. Repperger suggested that the Commission members attend a Code Board meeting to witness how cumbersome it is.

The Town Attorney then explained how recurring and repeat violations differ and how they are handled. He also discussed the levying of fines.

Mr. Repperger mentioned that staff had questioned the validity of Chapter 74-430 which is a local law that limits millage to 10% over the previous year; the Town's millage was thus adjusted to conform. He issued an informal opinion to staff that has been repealed. There's a case from 2002 where the county's charter cap was challenged. One of the challengers raised the issue regarding the local law whereby the judge issued a summary judgment implying that the local law had been repealed. Staff also raised the question at a recent SCLOC meeting and nobody in attendance had any knowledge on the subject. Mayor Simmons said it is likely that next year we won't have to abide by the 10% cap rule. All the State says is that we can't exceed 10 mills.

Mr. Repperger announced that the short term rental ordinance will be presented on September 19th. He's going to forward to the Commission the Flagler County ordinances and he'll have to review them to see what is important for us to legislate. He talked to the attorney for Flagler County who said they put a lot of time into writing the ordinance which helped them win their case.

#### B. Town Manager / Public Works Report

Town Manager Daniels announced that work on the pier is complete. Once some light ballasts are replaced, we'll have a soft opening. In about 2 weeks, after the sign for Florida Inland Navigation District is erected, which is a requirement of the grant, we're inviting Jerry Sansome from FIND, David Jacobs from Land & Sea and the Commission members for a ribbon cutting ceremony.

At the 1<sup>st</sup> Avenue crossover east of Atlantic, there has been some flooding in the roadway. Town staff got some crushed rock delivered with which they were able to smooth out the area. Hopefully, that will last awhile. At Sand on the Beach, the crossover area has been cleaned up and has stayed that way; the owner is in compliance.

He also reported that he found a new truck for public works for the budgeted amount of \$25,000 so they will be able to have the proper equipment in order to perform their jobs. We can't get the interest rate for financing until delivery is made so the Town Manager would like Commission permission to order the 2 vehicles (police car and truck) so when they come in, we can lock in good interest rates.

**The Commission consented to allow the Town Manager to order the two vehicles. 4-0.**

Mr. Daniels reported that the Parks Board asked for the Ryckman Park fundraising event be moved to November 9<sup>th</sup> and 10<sup>th</sup> because it will be cooler. They would also like permission to hold a 5K and Kid's run on Sunday morning; this should bring in some money. Mayor Simmons suggested that the Town Manager talk to Rotary about what their profit is from from the Pineapple Man event. The Commission asked the Town Manager to explore more options and return to them with a budget.

**The Commission consented to allow the date for the Ryckman Park event to be changed to November 9<sup>th</sup> and 10<sup>th</sup>. 4-0.**

The Town Manager announced that whenever grants that FEMA reimburses total \$750,000 or more, a single audit is triggered which the auditors must perform separately.

Mr. Daniels said he'd distributed his evaluation to the Commission members and he would like them to be returned by August 31<sup>st</sup>.

**C. Departmental Reports:**

1. Building Department – no comments
2. Code Enforcement – Town Manager Daniels was asked to look into training classes for the Code Enforcement Board members.

**The Commission took a break at 9:05 p.m. and reconvened at 9:12 p.m.**



3. Police Department – no comments
4. Fire Department – Mayor Simmons commented that the reports are now easier to read and understand. Commissioner Quarrie said their rating was good news though she was confused by the report; it was determined that the Chief interpreted the scale backwards. Commissioner Walters asked why MBVFD responds when EMS is on scene. Town Manager Daniels said that as a rule we shouldn't respond but there are some circumstances where it's appropriate such as when there is an associated fire or when we are able to respond faster.
5. Finance Department – no report

## **XII. Town Commission Comments**

- A. General Comments – Mayor Simmons attended the annual Ethics meeting and said when Commissioners post to Facebook, text message, tweet, or communicate electronically they must take a screenshot of the post and send it to the Town Clerk. He also said that ADA requirements may require us to provide closed captioning to our audio recording of meetings. Mayor Simmons also requested that Commission members send any comments to the Town Clerk before next month's review of the LDC.
- B. Review of Commission Action List
  - 4 items were added:
    1. Stormwater sewer repairs on Andrews
    2. Stormwater sewer repairs on Riverside Drive and Riverside Circle
    3. Indian River shoreline repair at Riverside Drive and Avenue A
    4. Update to LDC requiring that surveys show outbuildings that will be installed, removed or modified and to show tree locations for single family residences.
  - 1 item was closed
  - 14 items were updated

## **XIII. Adjournment (03:02:00)**

**Commissioner Walters made a motion to adjourn; seconded by Commissioner Quarrie. Motion carried 4-0.**

Meeting adjourned at 9:32 p.m.

**ATTEST:**

  
James D. Simmons, Mayor

  
Nancy Wilson, Town Clerk