

Town of Melbourne Beach

**REGULAR TOWN COMMISSION MEETING
WEDNESDAY SEPTEMBER 18, 2019 at 6:30 p.m.
COMMUNITY CENTER – 509 OCEAN AVENUE**

MINUTES

PUBLIC NOTICE

**The Town Commission will conduct a Regular Town Commission Meeting
on Wednesday September 18, 2019 in the Community Center
to address the items below.**

Commission Members:

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

Staff Members:

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

I. Call to Order – Led by Mayor Simmons

Mayor Simmons called the meeting to order at 6:30 p.m.

II. Roll Call

Town Clerk Wilson conducted the roll call.

Commissioners Present:

Mayor Jim Simmons

Vice Mayor Wyatt Hoover

Commissioner Steve Walters

Commissioner Corey Runte

Commissioner Absent:

Commissioner Sherrie Quarrie

Staff Present:

Town Manager Elizabeth Mascaro

Town Clerk Nancy Wilson

Police Chief Melanie Griswold

Town Attorney Clifford Repperger

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Presentations

- A. Introduction and swearing in of new Police Lieutenant, Jason Epling – Chief Griswold

Chief Griswold introduced Lieutenant Epling after which he was sworn in.

The Lieutenant gave the audience a synopsis of his 24 year background in law enforcement.

A 10 minute break was taken for a meet and greet.

Town Clerk Wilson conducted the roll call.

Commissioners Present:

Mayor Jim Simmons

Vice Mayor Wyatt Hoover

Commissioner Steve Walters

Commissioner Corey Runte

Commissioners Absent:

Commissioner Sherri Quarrie

Staff Present:

Town Manager Elizabeth Mascaro

Town Clerk Nancy Wilson

Police Chief Melanie Griswold

Town Attorney Clifford Repperger

B. Proclamation recognizing Constitution Week – Mayor Simmons

Mayor Simmons read the proclamation. A representative was not present.

C. Sustainability Project Plan - Curtis Byrd, Environmental Advisory Board Chairman

Dr. Ken Lindeman from F.I.T. introduced the plan and gave background information on the project. Environmental Advisory Board Chairman Curtis Byrd presented the first part of the plan followed by a wrap up by Dr. Lindeman. Funding and grant possibilities were also discussed along with establishing a sustainability webpage and hiring someone who would be a dedicated sustainability employee. EAB, with guidance from F.I.T., has worked on the plan for over a year. The plan is divided among 6 focus areas and further broken down into 15 priority action targets. Mayor Simmons asked the Town Manager to work with EAB to establish a long term plan for bigger projects so they can be budgeted over a period of time.

The Commission consented to having the Environmental Advisory Board move forward with implementing their plan. 4-0.

EAB is going to come back to the Commission at a later date with specific sustainability projects.

*Bill Deluccia
416 Melbourne Avenue
Indialantic*

Mr. Deluccia represents *Surfrider Foundation* and he was in attendance to support the efforts of EAB's sustainability plan. He offered his help to EAB and added that he's working with the Town of Indialantic to transform its landscapes to native plants. They are also evaluating their use of fertilizers in parks and on public properties.

*Linda Marzano, Global Sustainability Group (GSG)
442 River View Lane*

Ms. Marzano expressed her excitement about the sustainability plan and offered her help. She added that 46 Melbourne Beach residents have

contributed to GSG's effort to purchase trees for planting along Oak Street. Town Manager Mascaro said the Town has received \$650 from residents toward purchasing trees.

V. Boards and Committees

No reports

VI. Public Comments

No public comments.

VII. Approval of the Agenda (01:13:04)

Vice Mayor Hoover made a motion to list the lot coverage and residential lighting ordinances on the agenda, add Resolution 2019-07 under New Business as a walk-on and discuss the previous Town Manager's settlement proposal under New Business as a walk-on; Commissioner Runte seconded. Motion carried 4-0.

VIII. Consent Agenda (01:14:58)

A. August 19, 2019 STCM draft minutes

B. Site plan review for 403 Poinsettia

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

IX. Public Hearings (01:15:31)

A. Final Reading of Lot Coverage Ordinance 2019-04 – Town Attorney Repperger

The Town Attorney read the ordinance by title:

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN OF MELBOURNE BEACH REGARDING LOT COVERAGE REQUIREMENTS; AMENDING SECTION 1A-3 BY CREATING THE DEFINITION OF PERVIOUS AREA AND AMENDING THE DEFINITION OF IMPERVIOUS SURFACE; AMENDING SECTION 7A-30 TO ADD A MINIMUM PERVIOUS AREA PERCENTAGE FOR THE 1-RS, 2-RS, AND 3-RS ZONING DISTRICTS; AMENDING SECTION 7A-31 TO ADD A MINIMUM PERVIOUS AREA PERCENTAGE

FOR THE 1-RS ZONING DISTRICT; AMENDING SECTION 7A-32 TO ADD A MINIMUM PERVIOUS AREA PERCENTAGE FOR THE 2-RS ZONING DISTRICT; AMENDING SECTION 7A-33 TO ADD A MINIMUM PERVIOUS AREA PERCENTAGE FOR THE 3-RS ZONING DISTRICT; PROVIDING A SERVERABILITY/INTERPRETATION CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

Vice Mayor Hoover made a motion to adopt on final reading, Lot Coverage Ordinance 2019-04 that requires new builds and significant remodels to retain a minimum pervious area per lot; Commissioner Runte seconded. Motion carried 4-0.

- B. Final Reading of Residential Lighting Ordinance 2019-05 - Town Attorney Repperger

The Town Attorney read the ordinance by title:

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA RELATING TO RESIDENTIAL LIGHTING; CREATING SECTION 7A-71, ARTICLE IV OF CHAPTER 7A OF APPENDIX "A" OF THE TOWN OF MELBOURNE BEACH LAND DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY/INTERPRETATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

Vice Mayor Hoover made a motion to adopt Residential Lighting Ordinance 2019-05 on final reading; Commissioner Runte seconded. Motion carried 4-0.

X. Old Business (01:20:11)

Consideration of contract for Town Manager Mascaro – Town Attorney Repperger

The Town Attorney said the terms of the agreement are similar to what was offered to previous Town Manager Daniels. The term is for 3 years and the benefits are almost identical to what Mr. Daniels received upon hiring.

Vice Mayor Hoover asked that the 2 references to "his" be changed to gender neutral references.

Commissioner Walters said that the 1st year compensation is \$90,000, 2nd year \$96,500 and 3rd year \$100,000 but nowhere does the contract say those increases are based on excellent evaluations by the majority of the Commission. Also, he took exception to the inclusion of “other standard fringe benefits” as offered to other employees; he doesn’t like that being left open. Her exact benefits should be listed, specifically stating that she doesn’t receive compensatory time. Commissioner Walters also commented on retirement benefits since there have been problems in the past with managers joining their own retirement plan; he does not want her joining ICMA. The Town Manager explained that the 25.41% that is collected for Senior Management in the FRS plan is not paid to the person for whom the funds are collected, that person gets the same paid into FRS as a regular employee which is 8.47%; the surplus is used to fund the pension plan. The Town is not going to pay into FRS at the senior management rate; Ms. Mascaro will instead be enrolling in the ICMA plan at a significant cost savings to the Town, but, will continue to be owed FRS benefits from when she was the Town’s Finance Manager. In response to a question from Commissioner Walters, the Town Manager responded that the audit resulted from the position of Town Manager not being reported to FRS which had not been done since the inception of the plan.

Mayor Simmons said the benefits in the contract were drafted by Labor Attorney Andy Hament several years ago, adding that the Town Manager is not entitled to compensatory time. He added that Commissioner Walters’ concern about increases being based on excellent evaluations by the majority of the Commission has not been in previous contracts and regarding the 3 year term, the Commission always has the right to terminate the Town Manager.

Commissioner Runte suggested that the section under *Term* that reads: “The Commission and the Manager will confer at least sixty (60) days prior to the end of the term of this Agreement to determine whether the parties are interested in extending or renewing the Agreement” should be clarified.

Vice Mayor Hoover said the Commission should incentivize the Town Manager to do well. He noted that Indialantic’s new Town Manager had a starting salary of \$102,000 with no experience and Ms. Mascaro’s starting salary is substantially lower than that. He’s comfortable with the wording as it stands.

Vice Mayor Hoover made a motion to approve the employment agreement with the following changes: 1) compensatory time can’t be accumulated 2) Town Manager will send to the Commission a notice of intent within 60 days prior to the expiration of the contract 3)

change pronoun “his” to be gender neutral; Commission Runte seconded.

Commissioner Walters thinks the Town dumbed down the qualifications for the Town Manager position adding that Ms. Mascaro didn't meet minimum qualifications and that the Town should have followed the standard procedure. For those reasons, he will not be voting in favor of the contract.

Motion carried 3-1 with Commissioner Walters casting the dissenting vote.

XI. New Business (01:42:06)

- A. (add-on) Consideration of Resolution 2019-07 supporting Senator Debbie Mayfield's efforts to ensure the safety of all passenger rail systems – Mayor Simmons

Mayor Simmons read resolution title and Sections 1-3:

A RESOLUTION OF THE TOWN OF MELBOURNE BEACH BREVARD COUNTY, FLORIDA, IN SUPPORT OF FLORIDA SENATOR DEBBIE MAYFIELD'S EFFORTS TO ENSURE THE SAFETY OF ALL PASSENGER RAIL SYSTEMS IN FLORIDA BY ENCOURAGING THE GOVERNOR AND FLORIDA DEPARTMENT OF TRANSPORTATION OF FULFILL THE RECOMMENDATIONS WITHIN THE OFFICE OF PUBLIC POLICY AND GOVERNMENT ACCOUNTABILITY'S STUDY REGARDING PASSENGER RAIL; AND PROVIDING AN EFFECTIVE DATE

Vice Mayor Hoover made a motion to approve Resolution 2019-07; Commissioner Runte seconded. Motion carried 4-0.

- B. Consideration of August 21, 2019 Regular Town Commission Meeting minutes – Town Clerk Wilson

Vice Mayor Hoover made a motion to approve the minutes from August 21, 2019 as amended; Commissioner Runte seconded. Motion carried 4-0.

- C. Discussion and possible action regarding Melbourne Beach tennis court usage – Town Manager Mascaro

Town Manager Mascaro said she's received complaints about how much time is allocated to the Melbourne Beach Tennis Association for exclusive use of the tennis courts. They have it reserved from Monday – Friday, 8-10am which is prime time for playing. At one point, the Commission approved exclusive use of the courts but it was never codified. Further, the original

deed states that utilization of the courts is on a first come, first served basis. The Town Manager wants the Commission to consider changing this; perhaps 3 days a week utilizing only 1 court. Mayor Simmons thinks the policy was set up when the Association had more members. He added that the members have contributed a lot over the years and he'd be interested in working on a compromise with the Association.

Vice Mayor Hoover agreed with the Mayor and would like the Association to be more flexible to make it fair for others.

There was Commission consensus to have the Town Manager open a dialogue with the MBTA members to come up with a compromise and then determine a policy for usage.

D. (add-on) Consideration of severance proposal submitted by previous Town Manager Daniels – Town Attorney Repperger

Town Attorney Repperger said that when this issue was last discussed in June, Mr. Daniels had made a proposal to have his severance amount increased by 3 months' salary (to 6 months total) which the Commission rejected. After that, there was no communication with Mr. Daniels until September 13th when he proposed a new severance agreement. He is now asking that the Town pay the amount of the penalty he was assessed from FRS which is \$4,704.54 because he feels the Town misled him into believing he didn't have to join FRS. The Town Attorney said the contract was very clear about Mr. Daniels having the right to exercise his option to participate in FRS or not. The issue isn't whether the position was inside or outside FRS, the issue was whether Mr. Daniels was hired within a relevant timeframe related to his retirement such that he would have been subject to a penalty. Mr. Daniels was well aware, because it was stated in his new hire package, that the Town is an FRS entity. In the package is a certification form that provides on it that if a person is an FRS participant who is hired within 6 months of retirement, there can be a penalty. FRS pursued Mr. Daniels for receipt of benefits for which he was not entitled because of being rehired within 6 months of retirement. The Town Attorney said his interpretation of the Department of Administrative Hearing's resolution is that the Department accepted that Mr. Daniels had retired outside of the 6 month window but he wasn't permitted to receive benefits for 12 months and he started collecting at 10 months; those 2 months of benefits is the amount of the penalty. Town Attorney Repperger said that Mr. Daniels had all the relevant information critical to his making an informed decision about the FRS plan. He doesn't

see any justification for the Town to pay the \$4,704.54 penalty but it's for the Commission to decide.

Vice Mayor Hoover felt that Mr. Daniels was responsible for knowing and understanding his retirement plan. He asked if there is any way to cap this issue and get Mr. Daniels to sign his separation agreement. The answer from the Town Attorney was "no". The Vice Mayor then asked if the Commission could have the Town Attorney tell Mr. Daniels that they would like to cease further dialogue with him. Town Attorney Repperger answered in the affirmative.

Commissioner Walters said what he just heard from the Town Attorney and what Mr. Daniels had told him were completely different.

There was Commission consensus to convey to Mr. Daniels that the Town will pay his severance in accordance with his contract but there will be no further contact via the Town Attorney. Any subsequent contact will be through the Town Manager or Town Commission. 4-0.

XII. Staff Reports (02:09:47)

- A. Town Attorney Report – will address under Action Items
- B. Town Manager Report – She reported the Town didn't sustain any appreciable damage during Dorian though the Fire Department window that leaked during a previous storm, leaked during this one – an assessment has been made by our insurers. The Police and Fire Departments did a great job during the storm; Deputy Fire Chief Brown kept the Town updated via social media as well as keeping the EOC up-to-date. The generator worked perfectly when there were intermittent outages. At the 6th Avenue dock, Public Works built up the dock walls to stop further undermining from waves. She said that new dates have been posted by the Fire Department for the **STOP THE BLEED** program. The United Way would like for government offices to erect "Little Free Libraries" to promote literacy.

The Commission consented to allowing the Town Manager to move forward with "Little Free Library" implementation.

Commissioner Walters asked if Mr. Schaefer was promoted to Building Clerk; the Town Manager answered in the affirmative saying he moved to the Building Department in June. The Commissioner said he hopes stop signs are ordered soon since he's seen 10 that are in bad shape. He was disappointed in the advertisement for the budget ads though it was no fault of the Town.

Vice Mayor Hoover asked about the construction at 304 Hibiscus; he's concerned that construction debris is going into the storm drain. There's a huge sand mound in between the 2 drains, some of which is likely to enter those drains. The ditch witch will most likely be needed for those drains soon. Commissioner Runte said they are required to have a silt fence around the property.

C. Town Clerk Report – no report

D. Departmental Reports:

1. Building Department – no comments
2. Public Works Department – Commissioner Walters said he's glad to see that staff is completing projects around Town instead of hiring it out. The Public Works Supervisor thanked the Commission for the good equipment they were allowed to purchase.
3. Code Enforcement – no comments
4. Police Department – Chief Griswold recognized her officers for their work during Hurricane Dorian. She also thanked the Fire Department and PD's Administrative Assistant.
5. Fire Department – no comments
6. Finance Department

Vice Mayor Hoover made a motion to approve the finance report; Commissioner Runte seconded. Motion carried 3-1 with Commissioner Walters casting the dissenting vote.

XIII. Town Commission Comments (02:28:02)

A. General Comments – there will not be a Workshop on October 2nd.

B. Review of Commission Action List

XIV. Adjournment


Vice Mayor Hoover made a motion to adjourn; Commissioner Runte seconded. Motion carried 4-0

The meeting adjourned at 9:29 pm

ATTEST:



James D. Simmons, Mayor



Nancy Wilson, Town Clerk