



Town of Melbourne Beach

**REGULAR TOWN COMMISSION MEETING
WEDNESDAY, DECEMBER 19, 2018
6:30 pm
COMMUNITY CENTER – 509 OCEAN AVENUE**

DRAFT MINUTES

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

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

PUBLIC NOTICE

**The Town Commission conducted a Regular Town Commission Meeting
on Wednesday, December 19, 2018 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 conducted the roll call.

Commissioners Present:

Mayor Jim Simmons

Vice Mayor Wyatt Hoover

Commissioner Steve Walters

Commissioner Sherri Quarrie

Staff Present:

Town Manager Bob Daniels

Finance Manager Elizabeth Mascaro

Town Clerk Nancy Wilson

Town Attorney Clifford Repperger

Commissioner Absent:

Commissioner Corey Runte

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Special Presentation

V. Boards and Committees

Discussion regarding appointments to the TPO, SCLOC, South Beaches Coalition and the Library Board

The following was decided:

- The Town Manager will attend the Space Coast Transportation Planning Organization meetings
- Mayor Simmons will be the Melbourne Beach voting delegate for the Space Coast League of Cities; Vice Mayor Hoover will serve as the alternate
- Commissioner Quarrie will continue serving on the South Beaches Coalition committee
- Commissioner Walters and Carolyn Feltus-Atkinson will continue to serve on the Library Board

VI. Public Comments

Frank Thomas

606 Atlantic

Mr. Thomas said he has been attending Commission meetings for 57 years. He invited the Commission members to the New Years' Day walk that he has been conducting for 35 years.

VII. Approval of the Agenda

Mayor Simmons asked that the discussion regarding the FRS audit be addressed before the Town Manager contract consideration.

Commissioner Quarrie made a motion to move the consideration of the Town Manager's contract to New business item "F" and approve the agenda as modified; Vice Mayor Hoover seconded. Motion carried 4-0.

VIII. Consent Agenda

- A. Approval of the November 7, 2018 Workshop draft minutes
- B. Resolution 2018-11 Town of Melbourne Beach becoming a member of the *American Flood Coalition*.

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

There are no dues associated with membership in the *American Flood Coalition*.

IX. Public Hearings

There were no public hearings.

X. Old Business

~~A. Consideration of Town Manager contract — Town Manager Daniels~~
Moved to New Business "F"

- B. Consideration of policy to ban plastics and EPS products on Town property – Town Manager Daniels

Town Manager Daniels said he took the language the Commission approved for the Plastics Ban press release and the Town facility rental policy and had it incorporated into a policy for employees. Mayor Simmons and Vice Mayor Hoover suggested some edits to be incorporated into the policy. Mayor Simmons asked for the plastics ban language to be included in our procurement policy.

Language regarding penalties for non-compliance is included in our facility rental agreement.

Vice Mayor Hoover made a motion to approve the plastics ban policy as revised; Commissioner Quarrie seconded. Motion carried 4-0.

- C. Discussion and possible action regarding solid surface driveways – Mayor Simmons (00:20:21)

Mayor Simmons said this topic was discussed during the Land Development Code workshops but he wasn't sure what the Commission decided. The language reads: *No off-street parking of vehicles is allowed except on hard surfaced areas. Hard surface shall include asphalt, concrete or other similar stabilizing material (marl was removed). Pervious surfacing material considered by the Planning and Zoning Board may be approved by the Town Commission as part of the site plan review and approval process where circumstances of use are conducive to this type of pavement.*

Commissioner Quarrie said she thought the Commission had decided that driveways aren't required. The Mayor said that the reason we didn't want to allow parking on grass is because we didn't want people parking all over front yards so he asked if the Commission would like to require designated parking areas on properties even if the area is grass?

There was Commission consensus to leave the verbiage as it is currently in the LDC.

- D. Discussion and possible action regarding the possession of backyard chickens in residential areas of Melbourne Beach – Town Manager Daniels (00:25:40)

Commissioner Quarrie looked into Brevard County's rules regarding chickens and commented that Satellite Beach provides more oversight such as requiring a building permit for a coop. The complaint she received was that chickens are walking around the neighbor's yard depositing their waste and the smell is offensive.

The Commission discussed parameters and regulations that could be imposed upon chicken ownership whereupon the Town Attorney recounted a recent code enforcement issue that got down to whether or not a chicken is considered a pet and the Code Enforcement Board ultimately decided that chickens are pets and are allowed under the current code.

Commissioner Walters recounted three meetings in 2011 and 2012 where the topic of chickens was discussed and it was decided that residents could have them. He added that he's never had a complaint about chickens and suggested that if there is a problem, the Code Enforcement Officer can address it citing the County ordinance.

There was Commission consensus not to take any action on backyard chicken ownership; if odor becomes a problem, the Code Enforcement Officer can address the matter.

E. Discussion and possible action regarding LED street lighting – Town Manager Daniels (00:36:44)

Town Manager Daniels said he's been talking with Franc Arbide from FPL about getting a map of the Town's street lights and options of light fixtures and associated costs for Ryckman Park.

Commissioner Walters asked about brightness stating that the LED's should be at least as bright as the current lights. The Town Manager said he will talk to the Manager in West Melbourne about any complaints they have received since their conversion to LED's; he'll also get input from FDOT.

Mayor Simmons received an email from John Webber, who has knowledge on the subject, and his opinion is that we should go with 3000K everywhere since 4000K is only needed on high speed (55 mph or greater) roadways and they aren't as effective in high fog areas. The AMA and wildlife experts say that anything over 3000K is disruptive to people and wildlife. The Mayor likes LED lights but doesn't want any 4000K's; more light is not necessarily better. He added that LED's are more directional which some people may like and others won't. If we go to the residents, we should go to them with a proposal and the reasons behind the proposed solution. Vice Mayor Hoover agreed with the Mayor with the exception of areas where people may be walking at night. Commissioner Walters is for doing whatever will make it as bright as it is now adding that once the lights are installed, we can change the wattage.

Commissioner Quarrie presented a chart of the lighting on Ocean Avenue and the Commission members reviewed it with her. She said the north side of Ocean Avenue and the grocery store parking lot is too dark, thus, she thinks 4000K lights are warranted in some areas. She'd like more information before making any decisions. Vice Mayor Hoover added that we could add an arm to an existing pole for more light. Vice Mayor Hoover pointed out that wiring is exposed at the base of some lights in Ryckman Park.

There was Commission consensus to discuss LED lighting further after more information is received from FPL.

XI. New Business

- A. Consideration of the November 14, 2018 Regular Town Commission draft minutes as amended – Town Clerk Wilson (00:55:41)
- B. Consideration of the December 5, 2018 Town Commission Workshop draft minutes – Town Clerk Wilson

Vice Mayor Hoover made a motion to approve the minutes as amended from November 14, 2018 and December 5, 2018; Commissioner Quarrie seconded. Motion carried 4-0.

- C. Consideration of Vice Mayor appointment – Town Clerk Wilson (00:56:29)

Commissioner Quarrie made a motion to reappoint Vice Mayor Hoover as Vice Mayor as discussed; Commissioner Walters seconded. Motion carried 4-0.

- D. Consideration of proposal from GovPilot, a government management software for building and code enforcement applications – Town Manager Daniels (00:58:06)

Town Manager Daniels said he would like to modernize the Town's permitting and building department software. Currently, that department is using an Access database which is a rudimentary system and lacks adequate data security. Commissioner Runte previously recommended GovPilot when the Commission discussed using forms to track contacts made to Town Hall; we'd be able to manage multiple needs. Computer Experts verified that the GovPilot software is compatible with our system. The initial cost was \$17,500 but if we sign a contract by the end of the year, we will pay \$8,750 per year for a 3-year agreement with primary funding coming from the Building Department. Commissioner Walters said that he wants to ensure no additional costs are incurred and added that GovPilot has received good reviews.

In response to a question asked by Vice Mayor Hoover, the Town Manager responded that the contact forms are part of the Code Enforcement module but we can tailor the forms to our needs.

Commissioner Walters made a motion to agree to a 3 year contract with GovPilot in an amount not to exceed \$8,750 per year with no additional costs; Vice Mayor Hoover seconded. Motion carried 4-0.

- E. Discussion regarding Florida Retirement System audit – Town Manager Daniels (01:06:23)

Town Attorney Repperger said that a number of findings were sent to the Town that we were supposed to have responded to whether or not we concurred. We are not likely to concur with them but we don't have all the pieces to the puzzle. The Inspector General's office is engaged in fact finding and will turn their findings over to the Division of Retirement Management Services at which time the Town will have time to respond. The Town Manager reached out to the Linn Law Firm who has dealt with FRS issues; they are based in Tallahassee. A proposal to engage their services is attached. The Town has the option of engaging a firm to file a response with whatever stipulations the Town wants.

Commissioner Walters is not in favor of hiring an attorney we know nothing about. He asked about a time limit and if they have decided that we are guilty; Finance Manager Mascaro answered no to both questions. He wants to hear from the State before moving forward. We may agree with the audit and ask for a waiver. He doesn't want to have an open ended agreement with an attorney at \$325/hour. The Town Attorney added that there are initial filings that say the Town should have been a participant in FRS.

Town Manager Daniels said we are looking at preliminary findings to see if we concur or don't concur. He was seeking legal advice because he doesn't want to put something down in a form that could harm the Town in the future. Town Attorney Repperger said there is a set of forms we'll have to file adding that there are a number of reasons why we may not concur. A lot of the puzzle pieces are still needed; this isn't an easy exercise.

Mayor Simmons suggested that our Town Attorney be the point person here and not the Town Manager because of a potential conflict. Later, if we determine we need to engage an expert, we'll cross that bridge then.

There was Commission consensus to have the Town Attorney be the point person with the State on matters related to the FRS audit.

***F. Consideration of Town Manager contract – Town Manager Daniels (01:19:48)
Moved from Old Business “A”***

Mayor Simmons said he reviewed the contract line by line and it included all the items the Commission discussed.

Vice Mayor Hoover said he thought about the whole situation and he still has concerns about how the contract was misrepresented to the Commission by Town Manager Daniels. He doesn't feel the Town Manager has been up front with the Commission and cited several examples. In conclusion, he said that in his opinion, it's not in the best interest of the Town to move forward with the Manger's contract and he won't be voting in favor of keeping him.

Commissioner Walters said he listened to the Workshop audio where the Manager's contract was discussed. He then read from a letter he had written to the Town Manager in which he addressed the issues that were discussed at the Workshop and where he found no wrong doing on the part of the Manager. Commissioner Walters is happy with the Manager's performance adding that everybody makes mistakes. He said the other Commission members are civilians and have never been municipal employees.

Mayor Simmons said that Commissioner Walters inferred things that were not said. He said the contract was given to the Commission members 4 days before the meeting and there were significant changes made to it that were not

identified. Had he not reviewed the contract line by line, he would not have seen the changes; he cited some of those changes. The Mayor said that the Town Manager only admitted to a mistake after he was caught to which Commissioner Walters responded that he was simply negotiating. Vice Mayor Hoover said it happened a second time when the contract was presented to them 6 weeks later. At that time, more changes they hadn't agreed to were incorporated into the contract. The Mayor accepted that Town Manager Daniels may have been negotiating but objected to how he modified the contract, i.e., there were no track changes. The Mayor added that he's not comfortable moving forward on a 2 year contract that continues a retirement contribution that may come back as being incompatible with requirements under FRS. He'd be more comfortable extending the current contract for one month to see where we stand with the audit. Commissioner Walters asked Finance Manager Mascaro if the State is telling her that every employee has to be a member of FRS. Town Attorney Repperger answered that is indeed what they are saying. Ms. Mascaro responded that there are many municipalities that agree not to participate in FRS but in 2006, the Town decided to go with that retirement program and the Town Manager at the time was allowed to opt out retroactively. Mayor Simmons said there are ways a Manager can opt out of being in FRS.

The Mayor reiterated his reticence in signing the contract until the FRS audit has been completed. Commissioner Walters suggested approving the contract without that language.

Commissioner Quarrie understands Vice Mayor Hoover's concerns but she feels the Town Manager has done an excellent job. She has concerns about the FRS issue and feels that the Mayor's suggestion of postponing the matter is a good idea.

In response to a question posed by the Mayor, the Town Manager said he would enter into a 2 year agreement that does not define retirement. The previous wording under Retirement reads:

Retirement. The Town shall contribute into a deferred compensation account that satisfies Federal Internal Revenue Service deferred compensation plan requirements or retirement plan chosen by the Town Manager, an amount equal to 8.260% of the Town Manager's base salary. Contributions shall occur per pay period. Payment into a deferred compensation plan by the Town will negate the Town's responsibility to pay into any other retirement program provided by the Town. Upon separation from employment, any funds in the Manager's deferred compensation account will be transferrable to the extent allowed by such deferred compensation plan and applicable law.

The wording to be provided by the Town Attorney and incorporated into the contract reads:

Retirement. The Town shall contribute an amount equal to 8.260% of the Town Manager's base salary into a non-interest bearing escrow account. Contributions shall occur per pay period. Contributions shall continue until resolution of a Florida Retirement System Audit which is being conducted at the time of execution of this Agreement. Upon resolution of the Florida Retirement System Audit issue, the total amount of escrow contributions shall be disbursed into a retirement account allowable by law as agreed to by the Town and Town Manager

Commissioner Walters made a motion to approve the Town Manager's contract provided in the agenda packet, subject to the Town Attorney providing a revision to the retirement section (as noted above) until there's a resolution of the FRS issue; Commissioner Quarrie seconded. Motion carried 3-1 (Vice Mayor Hoover dissenting).

The Town Manager's salary, in the amount of \$96,500 per year, will be effective December 27, 2018.

XII. Staff Reports

A. Town Attorney Report

The Town Attorney did not get the vacation rentals ordinance completed because of the FRS issue. Commissioner Walters asked about a charge of \$1659 on his bill. The Town Attorney said that was for prosecuting 3 Code Enforcement cases. Responding to a previous request to recommend a Code Enforcement attorney, he suggested Stuart Katz who is the best option, but there are other possibilities. If down the road, the hearings become difficult, the Town may want to utilize a magistrate though Mr. Repperger would still be prosecuting the cases.

Amy Rickman
303 Sunset

Ms. Rickman's family moved here 70 years ago and she's interested in the issues involving short term rentals; she watches the Florida Legislature broadcasts on the subject. She feels that if you live in a single family zoned neighborhood it should stay that way. Mayor Simmons said nobody disagrees with her except the Florida Legislature. He added that any Ordinance we enact will require an annual renewal for VRBO registrations.

B. Town Manager Report

Mr. Daniels reported on the success of our holiday events. The Fire Department raised about \$1000 at their pancake breakfast that they are contributing to the playground fund.

There is a certain amount of money allocated to trimming in *Fertig Sharper Cuts'* contract. The seagrape trees and invasive plants by the crossovers and the

bench area are overgrown; DEP is going to issue a permit to trim the seagrapes in those locations and we'll utilize *Fertig* to do the trimming.

Commissioner Walters mentioned a sign at the intersection of Riverside and Ocean that needs replacing. The Town Manager said he'd look into it. He also suggested including more information on the Public Hearing notice signs that are posted prior to Board of Adjustment meetings. Commissioner Walters said the Code Enforcement Officer needs to respond more quickly to code complaints that are sent via email. He asked how we determine our right-of-way. The Town Manager said it's 25 feet from the center line of the roadway.

The Mayor said the Commission needs to make a recommendation regarding the continuing of the Civil Service Board since it is in our Charter

C. Town Clerk Report

Commissioner Walters recommended that the Town Clerk work with an employee at the Supervisor of Elections during the election time so we don't incur charges by the Town Attorney.

D. Departmental Reports:

1. Public Works Department – the Supervisor is moving forward with mentoring the employees in that department
2. Building Department – no comments
3. Code Enforcement – the Town Manager was asked to work on the formatting of this report
4. Police Department – no comments
5. Fire Department – no comments
6. Finance Department – Commissioner Walters asked about how the bills are computed when staff gets fuel at Exxon. Finance Manager Mascaro said we don't pay taxes and the Officers have their own fleet cards so when they get gas it registers to our municipal account which is how purchases are tracked.

XIII. Town Commission Comments

- A. General Comments – Suggested moving January 2, 2019 Workshop (discussion about golf cart certification and parking) to January 9th so as not to disrupt anybody's vacation plans.

There was Commission consensus to move the January 2, 2019 Workshop to January 9, 2019.

Commissioner Walters thanked the Town Manager for not walking out of the October 3rd Workshop where his contract was discussed and thanked him for the great job he's doing.

Mayor Simmons asked the Code Enforcement Officer about the *Sand on the Beach* code issue. She said our Turtle Lighting Ordinance is a mess but Brevard County has one that is very clear and she had given a copy of it to our Town Manager. The Mayor asked when it will be brought back to the Commission. The Town Manager said it is one of the things he wants to address with the Town Attorney. This will be added to the Action Items list.

Mayor Simmons said that we also need to look into drafting a residential lighting ordinance. There is a resident in Town whose neighbor is using their outside lights as a weapon. This will also be added to the Action Items list.

B. Review of Commission Action List

- 2 new items
 - Turtle Lighting Ordinance
 - Residential Lighting Ordinance
- 4 closed items
- Due dates updated on the balance of the action items

Commissioner Walters asked about the man who volunteered to pay \$12,000 to partly fund the School Resource Officer and who had a GoFundMe page. The Town Manager said he would follow-up with him.

XIV. Adjournment

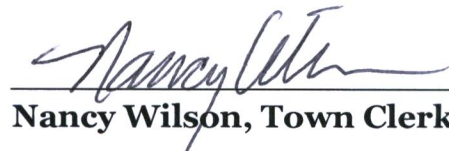
Vice Mayor Hoover made a motion to adjourn; seconded by Commissioner Quarrie. Motion carried 4-0.

Meeting adjourned at 9:04 p.m.

ATTEST:



James D. Simmons, Mayor



Nancy Wilson, Town Clerk