



Town of Melbourne Beach

TOWN COMMISSION WORKSHOP

WEDNESDAY, OCTOBER 3, 2018

6:00 p.m.

MASNY ROOM – 507 OCEAN AVENUE

MINUTES

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

Town Manager Bob Daniels
Town Clerk Nancy Wilson

PUBLIC NOTICE

**The Town Commission conducted a Town Commission Workshop
on Wednesday, October 3, 2018 in the Masny Room
to address the items below.**

I. Call to Order – Led by Mayor Simmons

Mayor Simmons called the meeting to order at 6:00 p.m.

II. Roll Call

Town Clerk Wilson led the roll call.

Commissioners Present:

Mayor Jim Simmons
Vice Mayor Wyatt Hoover
Commissioner Sherrie Quarrie

Staff Present:

Town Manager Bob Daniels
Town Clerk Nancy Wilson

Commissioner Absent:

Commissioner Steve Walters

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

Mayor Simmons asked that the Andrews Drive issue be added to New Business as item B. There was consensus to add that item to the agenda.

Commissioner Quarrie asked to add to the agenda as item C under Old Business the subject of stormwater retention. There was consensus to add that item to the agenda.

IV. Public Comment

No public comments

V. New Business

A. Introduction of Kimberly Adkinson-Cowles who has submitted an application for the Code Enforcement Board

Mayor Simmons explained the responsibilities of the Code Enforcement Board members saying that this is not an advisory board and decisions made bind us legally and financially. Quasi-judicial board members act as judge and jury and they must be impartial and must always disclose any contacts made that are related to code issues that come before them. If approved by the Commission, Ms. Adkinson-Cowles will get a copy of our Land Development Code and will receive an agenda prior to the meetings that outline the cases to be discussed. Mayor Simmons explained the code enforcement process and said we try to be proactive and fair.

Commissioner Quarrie said that our new Code Enforcement Officer is really good and she's great at trying to help residents when there is an issue.

Ms. Adkinson-Cowles was told that she would serve as an alternate member. She has already completed her Form 1 – Statement of Financial Interests.

The Commission will vote on her appointment at the October 17th meeting.

B. Discussion regarding the resident issues on Andrews Drive resulting from the stormwater project – added to the agenda by Mayor Simmons (00:14:50)

Mayor Simmons said that he received a call from a resident who was upset because he did not receive notice until the day before that construction was beginning on Andrews; this meant he was unable to remove some rare plants on his property so they have been destroyed. Other residents on Andrews were similarly upset that they didn't receive adequate notice. Town Manager Daniels said the first project was supposed to be the outfall line and he had drafted a notice letter but he didn't specify dates because the start date was not nailed down. On Thursday, they began working with FPL to move a power pole out of the way of the outfall line. This is a FEMA project so it has to be completed by the end of December in order to get it funded. Because of the power pole issue, the Town Manager was notified that the contractors were going to start work on the west end of Andrews first and that's when staff began notifying residents. However, they began working at Banyan which is at the east end of Riverside.

Commissioner Quarrie said that at the end of Pine there is a melaleuca tree that's being removed and she asked the Town Manager if he knew about that. He responded that the whole project includes a 15 foot right of way where nothing should be planted. She asked if the contractors are cherry picking what gets removed based on the equipment they have to which Mr. Daniels responded that they are progressing in a line. Commissioner Quarrie referenced an email from Brewing Paving & Development and asked if they are responsible for deciding in what direction construction will go; the Town Manager responded that the subcontractor made that decision.

Vice Mayor Hoover asked how we go about contacting residents. Town Manager Daniels said he walked the neighborhood and talked to five people directly and Public Works employee Greg Schaefer went to every house and left a letter. Commissioner Quarrie asked if there was anything else we could have done to notify people. The Town Manager said we

could have sent the letter out earlier but it wouldn't have included an accurate start date. He said for the last couple of months, residents on Andrews have known about an upcoming project but apparently, he didn't contact everybody.

Mayor Simmons said he's not buying the Town Manager's explanation. He said we owe it to our residents to give them time to do something with what's planted in the median. He didn't realize how hit and miss the contact process was, notices should have been sent out months ago. One person said that their first notification was yesterday; people are rightfully mad. Town Manager Daniels then asked the Mayor if he wanted to stop the project in order to give proper notice to the residents to which he responded that he did not want to stop the project but the lack of notification resulting in plantings being removed is unacceptable.

Public Comment

Robin Petersen
324 Banyan Way

Mr. Petersen said he returned home the night before at 7:00 pm and there was a backhoe over a recently planted expensive plant. Two to three days earlier, there was a blue line sprayed in his grass which was 15 feet off the road. There was also a good growth of rare black bamboo planted that he had to put a surveillance camera on because people kept stealing it. Greg Schaefer told him that construction work would not interfere with the bamboo. The night before this happened, there was a letter placed in his door dated September 13th that said work should begin within 30 days. He also had a ponytail palm that he has hand carried to his different residences since 1986. He has pictures of what was mowed down and there is not one stick of bamboo remaining. A surveillance camera sign was also removed. When he saw what had happened, he tried contacting the Town Manager but couldn't get him; at least Greg Schaefer was available. In conclusion, he said he wants to be compensated for what he has lost.

Vice Mayor Hoover asked if we had staff on site when this was going on. Town Manager Daniels replied that the crew was supposed to be there that morning but he doesn't think they showed up until 1:00 p.m. Mr. Petersen said it was his understanding that the crew was starting at Riverside, otherwise, he would have moved his plants. The Vice Mayor then asked Mr. Daniels if he had contacted any of the contractors once he saw that they were starting at the wrong end of the street. He responded that he called our engineer and the owner of Brewer Paving. When he refers to the "crew", he is talking about our subcontractor, Brevard Excavating. Commissioner Quarrie asked if our engineer was responsible for deciding that we start on the east

end of Riverside. He was not. There was an internal communication issue with the subcontractors.

Mayor Simmons said there are two problems: one was that they started at the opposite end of the street and the other was that notification wasn't adequate.

Vice Mayor Hoover asked what the contractors said when asked why they started at the wrong end of Andrews and the Town Manager responded that they said that's where they thought they could start but they will move to the opposite end the next day.

Commissioner Quarrie asked the Town Manager what residents he thinks haven't been notified and then asked if letters are being delivered; she asked about proof that all the residents have been notified. The Town Manager said a letter was placed on doors and he's contacted at least five residents himself. Vice Mayor Hoover asked if he is keeping a list of who has been contacted by street number. He responded that he's talked to Thys Stelling and he's been on board with this project. The Mayor then interjected that Thys is not happy that the first official notification wasn't received until the night before. The Town Manager argued that we didn't know when the official start date was going to be until just before the work began. It was pointed out that the Town received notification on Thursday and that official notifications could have been delivered on Friday. In response to a question, the Town Manager conceded that the December 31st deadline was self-imposed (in order to allow time for project slips and paperwork completion) and that the FEMA deadline is mid February.

Commissioner Quarrie said that we need a better list about how notifications were given then figure out what we are going to do so we can complete the project and get reimbursed by FEMA. Town Manager Daniels suggested that we halt the project and send out an official notification, return receipt; this would delay the project by a couple of weeks. Commissioner Quarrie then asked if we could circumvent the delay by legally notifying people. The Town Manager suggested that a new letter be drafted and delivered door to door immediately, making note of the time and place. Mayor Simmons liked the idea of face to face contact but it's not an accountable system; conversation with a few people on the street doesn't work and we dropped the ball big time. Commissioner Quarrie agreed with the Mayor but said we also have to protect the other residents by ensuring we get the money back from FEMA; we are asking 12 residents to help us get our money back. When asked the date of project completion, the Town Manager answered December 31st but it could be sooner. The Mayor said we need to get out letters to the residents ASAP. Town Manager Daniels said notice was lacking and he apologized but he was trying to err on the side of caution to get the project completed. When asked

again about who was contacted, the Town Manager mentioned some names but had no concrete evidence of those contacts such as names, times, method of contact, etc.

Mayor Simmons asked Mr. Petersen to submit a list of destroyed plants and their values to Town Hall for reimbursement. Once that is received, it can be placed on an the next agenda for approval.

Cory Runte
605 Hibiscus.

He recounted a project he worked on years ago. His company was the prime contractor for the job and they were required to submit a phasing logistics plan and a public relations plan. They were required to meet with all the businesses affected. This wasn't done for the Andrews project. He then asked if phasing or scheduling was part of the contract and, if so, the contractors need to be held accountable. The Town Manager said the problem we were running into was the timeframe. Mr. Runte said as a taxpayer, he's worried that there wasn't phasing or scheduling as part of the contract because it opens up the Town to huge liability. When phasing or scheduling is included in the contract, residents should receive that information.

Kate Wilborn
502 2nd Avenue

Ms. Wilborn said she agrees with Mr. Runte. The Town should have more accountability from our contractors. The residents and flooding should be the Town's top priorities.

Deborah Marchese
310 1st Avenue

Ms. Marchese said that everybody has planted in that setback area because they don't know the code. She said she can't see some stop signs and has to edge her way onto the road at intersections. Letters should be sent to residents telling them that they can't plant in the right of way. Mayor Simmons said that hasn't been done but homeowners have been told to trim back their plants through code enforcement. Plantings are allowed, however, if a permit is pulled.

Commissioner Quarrie said that we could add to the application package that for any renovation or redevelopment, the landscape plan can't include anything on the Town's right of way and anything that's currently in place, must be removed.

Town Manager Daniels left the meeting in order to draft a new letter for the residents on Andrews Drive. A police officer will deliver the letters that evening.

VI. Old Business

A. Discussion regarding updates to the Land Development Code – Mayor Simmons (01:08:45)

Mayor Simmons said there were three outstanding issues that the Town Commission asked the Planning & Zoning Board to take a look at after the last codification of the Land Development Code. They are:

- Fill Height Standards
- Define Minor Grading and Minor Fill
- Clarify language in 7A-87: uses *Under Special Exception Provisions*

Mayor Simmons said he does not agree with Planning & Zoning Boards suggestions.

Commissioner Quarrie would like to authorize the funds for whatever entity we need to use, to put together a plan for grading, elevations and retention for every redevelopment. She said we all agreed what we wanted to do which is to keep water on the property. She added that there's a breakdown of what is happening at our meetings and what we are getting back. Mayor Simmons said more and more runoff is ending up on our streets. The Commission members discussed possible ways to ensure runoff is handled properly and from whom we should seek advice.

Corey Runte
605 Hibiscus

Mr. Runte said he would not be comfortable having a building official deal with any civil analysis. He suggested we consult with a civil engineer.

The takeaways from the discussion regarding the LDC were:

- The Commission decided to ask Scott Glaubitz from B.S.E. to address the issues of minor grading/minor fill and fill height standards (stormwater runoff and retention on properties) at the November 7th Workshop @6pm. Ask EAB Intern Kaitlin to attend the meeting.
- The clarified language in 7A-87, *Uses Under Special Exception Provisions*, provided by Mayor Simmons, is the version preferred by the Planning & Zoning Board and Commission members:

Para 7A-87 (Uses Under Special Exception Provisions)

1. Any use for which a special exception has been approved by the Board of Adjustment shall be deemed to be a conforming use on the subject premises so long as the special exception is allowed in the zoning district as per this Code;

2. If a special exception use is eliminated from this Code for the applicable zoning district, a previously granted special exception shall no longer be deemed to be a conforming use, but will henceforth be deemed to be a non-conforming use;

3. Boundaries -

1. No special exception shall be expanded or enlarged beyond the boundaries of the tract or parcel of land as specifically defined in the special exception without Town approval;

2. Non-conforming uses in existence prior to October 31, 1990 (with or without an approved special exception) shall not be expanded or enlarged beyond the boundaries of the tract or parcel of land without Town approval.

4. Structures

1. No structure constituting any part of any Board of Adjustment-approved special exception may be expanded or enlarged without Town approval;

2. No non-conforming structure which has been in existence prior to October 31, 1990 (with or without an approved special exception) may be expanded or enlarged without Town approval;

3. Structures associated with special exceptions approved by the Town on or after October 31, 1990 shall not be expanded or enlarged without Town approval of the site plan.

5. After January 1, 2015, all Board of Adjustment-approved special exceptions shall be conditioned upon development and use consistent with the site plan accompanying the approved special exception.

One note - I used "Town" and "Board of Adjustment" as was in the original. I think we should consider changing "Town" to "Board of Adjustment" throughout. I would hate to have somebody think they had "Town" approval after talking to our Building Official or Building Admin or Town Manager or...

- A change made on p. 213 should also have been made on p. 216 g.1:
Upon the site plan being approved and a building permit being issued, the development shall be built substantially in accordance with the site plan and the plans and specifications. Deviations from the approved site plan being made are subject to the approval of the Town Manager and Building Official. Substantial deviations as defined by the Town Manager or Building Official require approval of the Town Commission and will follow the initial site plan approval process.
- Add the definition of “hostel” to the vacation ordinance
- Prohibit marl driveways

- Commissioner Quarrie answered the question asked by Finance Manager Mascaro regarding whether or not a person can charge a fee in our parks; she referred to 7A-39 which says we can't allow people to charge fees in the park for any activity.

A break was taken at 7:47 p.m.

The meeting reconvened at 7:55 p.m.

Town Clerk Wilson led the roll call.

Commissioners Present:

Mayor Jim Simmons
Vice Mayor Wyatt Hoover
Commissioner Sherrie Quarrie

Staff Present:

Town Manager Bob Daniels
Town Clerk Nancy Wilson

Commissioner Absent:

Commissioner Steve Walters

The Commission consented to changing the November regular meeting to November 14th from November 21st so as not to interfere with the Thanksgiving holiday.

If possible, the Commission would like to also have the LED lighting topic discussed at the November 7th Workshop

B. Discussion regarding Town Manager Daniels' employment contract – Commission Walters and Mayor Simmons (02:00:32)

Town Manager submitted changes to his contract a lot of which were driven by Commissioner Walters. He said his contract expires on November 27th and by that time his residence must be within 30 miles of the Town. Mayor Simmons said he would like to add to that paragraph, "his and his family's residence must be within 30 miles of the Town" because the intent is for his family to reside locally. The Town Manager was not OK with that stipulation and said his wife is currently trying to gain employment in this area and that's not going to happen by November 27th; he can't have two houses with only one paycheck. He added that his current contract doesn't include "family" as it relates to residency and he doesn't have a problem with his family being here but he does have a problem with the requirement that they be here by November 27th. He asked for some leeway with that requirement. Vice Mayor Hoover said he's had ten months to move his family to the area. Discussion ensued about the intent of the residency requirement in the contract with the Mayor saying that the Town Manager knew that the requirement included his family. Mr. Daniels was told that we've had this problem with

multiple Town Managers who ultimately leave because their families live elsewhere.

Mayor Simmons said because this requirement wasn't specifically worded in the contract, he is willing to make a concession and asked Mr. Daniels how much time he needs. Mr. Daniels specified six months which would take the date to May 27, 2019 and added that if it doesn't work out, they can part ways. Mayor Simmons responded that just because he's in default on his contract doesn't mean he has to be terminated. All he is trying to do is protect the Town.

Commissioner Quarrie asked if what we are saying is that the wife is what constitutes family because she knows Mr. Daniels has family in the area. Vice Mayor Hoover said we mean immediate family which includes a spouse and children.

After further discussion, the Commission agreed to extending the residency requirement deadline to May 27, 2019 and stipulated that the property he purchases to meet that requirement must be his homesteaded residence.

Under Salary, the Town Manager is currently making \$86,000 and is asking for \$98,000 which is what the previous Town Manager was offered. Mayor Simmons said the amount budgeted for his increase but not yet approved is \$96,500. The Commission agreed to pay the Town Manager the budgeted annual amount of \$96,500.

Both Mayor Simmons and Vice Mayor Hoover said that the revised contract is significantly different from his original contract and that none of the changes were pointed out, rather, they had to do a line-by-line comparison to see what had changed. When asked who edited the contract, the Town Manager said that he was told by Commissioner Walters to make the changes that he felt were necessary. He said he's not trying to slip anything by anybody. Mayor Simmons said he's in favor of negotiating a one year contract in order to give the Town Manager time to do some of the things they have talked about; he wants to see better performance.

Commissioner Quarrie said that in order to get a mortgage, a contract is what must be shown to qualify. If we want somebody to live within 30 miles of the Town, showing employment stability is important.

Also under Salary, the Commission agreed to keeping in the sentence "Salary for additional years of employment will be at any percentage increase in wages received by Town Employees" and remove "The

Commission may from time to time at its discretion increase the Manager's salary based on performance and/or cost of living increases."

Under Benefits, the Commission agreed to adding dental benefits to the contract though he is already receiving that benefit. They also agreed to strike the 200 hours of annual leave and keep the benefit at 120 hours. Additionally, the Commission added back in the sentence: "The Manager will not be eligible for compensation for unused sick leave during employment or upon termination of employment for any reason."

Update regarding the notification of residents on Andrews about the stormwater project: Town Manager Daniels said that Sergeant Smith got back from delivering the letters to the residents on Andrews Avenue. He reported that the majority of the people knew about the project two weeks ago; two residents did not; three people were not at home.

Under Retirement, the Commission decided to strike the requested 10% contribution to a retirement account and instead contribute what the other employees receive which is 8.260%.

Under Expenses, the Commission agreed to strike the requested stipend amount of \$400 per month for use of a personal vehicle and instead pay the actual additional cost of commercial coverage on his personal policy along with mileage reimbursement. Also added to the contract was a computer. The Town Manager will look into the possibility of getting a laptop.

Under Life Insurance, the Commission agreed to pay up to \$2,000 annually for a life insurance policy.

Under Term, the Commission agreed to a 2 year contract instead of the requested 3 year term.

Severance Pay, was in Jamie Titcomb's contract and was paid for 90 days when there was termination without cause. Termination By Town Without Cause is a separate item under Term and Termination and the Commission changed the requested 90 days to 60 days in two places.

Under Resignation By Manager, the Commission added "Vacation and Sick Leave may be restricted after written notice is given unless it is approved by the Commission." This sentence will be inserted before the last sentence in that section.

The Mayor asked that the changes be made and that the updated contract be placed on the October 17th meeting.

C. Discussion regarding stormwater retention – Commission Quarrie


This topic was discussed during the LDC discussion and will be addressed at the November 7th Workshop.

VI. Adjournment

Commissioner Quarrie made a motion to adjourn; Vice Mayor Hoover seconded. Motion carried 3-0.

The meeting adjourned at 9:04 pm.

ATTEST:



James D. Simmons, Mayor



Nancy Wilson, Town Clerk