

**TOWN OF MELBOURNE BEACH
MINUTES
TOWN COMMISSION - REGULAR MEETING
Wednesday, February 17, 2010
Community Center - 509 Ocean Avenue
6:30 PM**

I. CALL TO ORDER

Mayor Karpie called the meeting to order at 6:31 pm.

II. ROLL CALL

Present were:

Mayor Rita Karpie
Vice Mayor Chad Tennant
Commissioner Price
Commissioner Evans
Commissioner Marshall

III. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

Commissioner Price led the Pledge of Allegiance.

IV. PROCLAMATIONS AND AWARDS

Proclamation to the Ancient Order of Hibernians in America in support of recognition of Irish American Heritage month.

Vice Mayor Tennant read the proclamation. There was no one present to accept it.

V. PRESENTATIONS BY SPECIAL GUESTS

1. **Presentation by Colleen Lindler, intern from the Florida Institute of Technology, to review accomplishments related to the stormwater management program during her internship with the Town of Melbourne Beach.**

Ms. Lindler was unable to attend this meeting due to medical reasons. This item was postponed until the next regular Town Commission meeting on March 17, 2010 with a consensus among the Commission.

VI. BOARDS AND COMMITTEES

1. **Reports by all Boards and Committees**

Susan Dieterle of the Historic Preservation and Awareness Board came forward and stated that the Board received a proposal for the use of the Ryckman House

after they finish the completion of the interior. She asked the Commission for a recommendation to send this proposal to the Planning and Zoning Board to see if it was in compliance with the Comprehensive Plan. She said it would be used as a venue for local art and history and it would be open 5-6 days per week.

Commissioner Evans questioned whether or not this recommendation should go before the Parks Board and not the Planning and Zoning Board.

Mayor Karpie felt that it would be appropriate to have both boards look at it but she feels that it would fall under Parks and Recreation. The Mayor asked Town Manager Bursick for his opinion.

Town Manager Bursick stated that it would be appropriate for their board to be heard before both boards to make sure it's compatible with the listed uses of that zoning district.

2. Appointments and Reappointments

None

3. Appointment of the Citizen of the Year Selection Committee.

The Town Commission suggested the following people to represent them for the Citizen of the Year selection committee.

- Mayor Karpie chose Betsy Baird
- Commissioner Evans chose Ann Downing
- Vice Mayor Tennant chose Frank Thomas
- **Commissioner Marshall chose Gail Gowdy.
- **Commissioner Price chose Bill Stacey.

*** denotes selected after meeting occurred***

Commissioner Price and Commissioner Marshall did not choose their representatives and will turn in their selections at a later date.

4. Appointment of the Junior Citizen of the Year Selection Committee.

The Town Commission suggested the following people to represent this board.

- Mayor Karpie chose Ed Struttman
- Commissioner Evans chose Marty Remark
- Vice Mayor Tennant chose Tom Shaw
- ** Commissioner Marshall chose Jeanne Allen
- ** Commissioner Price chose Paul Guglietta

*** Denotes being selected after meeting occurred***

Commissioner Price and Commissioner Evans did not choose a representative and will designate their selection at a later date.

VII. PUBLIC COMMENT

After being acknowledged by the Mayor, any member of the audience may address the Commission after first stating their name and address for the record. Members of the Public should prepare their comments and remarks in advance. Each individual will have three (3) minutes to address the Commission on any topic(s) relating to Town business, including items that may or may not appear on the current agenda, which may be extended as approved by the Commission.

Note, State law and administrative rules prevent the Town Commission from taking any formal action on any item discussed at this time. The Town Commission may schedule such items as regular agenda items and act upon them on them in the future.

Susan Dieterle, 531 Sunset, gave a report on the Community Night supper. She said that they had a kick-off event catered by Beach Street Eatery and had 69 people in attendance. They raised enough money to pay for the dinner and are preparing for the next supper which is scheduled for February 24, 2010. She stated that they would be asking for a \$5.00 donation from residents for attendance at the event.

Tom Shaw, 406 Riverside, stated that on the Town's website not all of the links are accessible and that this is not an acceptable means of communicating with the residents.

Interim Town Clerk Danielle explained to Mr. Shaw that the Town staff would be receiving a training seminar regarding the website on March 2, 2010 and that hopefully this will resolve the issue.

Marty Remark, 707 Atlantic Street, had a request regarding the historic tracking dome. She said that she had a memo for people to sign if they believed that it was important to preserve the historic shuttle tracking dome in Melbourne Beach which is part of the beginning of the space exploration in 1955 and is irreplaceable evidence for future generations. She added that she would like to place the memo on the back table to gather signatures.

By a consensus the Commission agreed that this was acceptable.

Frank Thomas, 606 Atlantic, recommended that the sprinklers in Ryckman Park be kept from hitting the Ryckman House and Old Post Office.

Mark Emerson, 512 Ocean, asked if the solid waste contract was changed to one pickup per week.

Mayor Karpie stated that there had been no effective change and that the Town reserved the right to ask the provider for a trial period of once per week to see if it was acceptable to the Town residents.

Mr. Emerson was concerned about changing the pickup to one day per week because his neighbor has an abundance of garbage and sometimes forgets to take it out during the week and it sometimes creates a foul odor.

VIII. CHANGES TO THE AGENDA

The Mayor requested that the following items be removed from the agenda to be heard at a future date.

- X. Public Hearings item# 3- storm water runoff and fertilizers Ordinance
- X. Public Hearings item # 4 – Elections Ordinance
- XI. Old Business items # 1 and 2
- XII. New Business items 7 and 8

Town Manager Bursick also requested that item #2 under New Business regarding the award of the bid for the “special needs” ramp in Ocean Park be removed from the agenda.

Commissioner Evans asked the Town Manager if the reason he was removing that item was because it would interfere with turtle season.

Town Manager Bursick stated that it could interfere and that’s why he is removing this item at this point. He stated that the Town may not be ready to award this bid before turtle season. The Town is currently trying to work that out with the contractor and DEP to see if they have the ability to get construction completed before turtle season begins.

The Mayor stated that none of the above items are time sensitive. She suggested that the Commission schedule another meeting two weeks from tonight which would be on March 3, 2010.

Vice Mayor Tennant asked the Town Manager if the Independent Inspections item was time sensitive.

Town Manager Bursick replied that it can wait until the next meeting. The contract is for a six month period and will expire on March 22, 2010.

There was a consensus among the Commission to postpone the above items to a future date.

IX. CONSENT AGENDA

This section is reserved for routine, non-controversial items requiring commission action. These items are handled with a singular motion and without commission discussion or public comment. Any commissioner may request that an item be removed from consent agenda for discussion under New Business. Members of the Public may also request that items appearing under Consent be removed for further Commission discussion. This shall be done under the Public Comment portion of the agenda or by approaching a member of the Commission with the request PRIOR to the start of the meeting.

1. Approval of Minutes- December 15, 2009
December 16, 2009
January 18, 2010
January 19, 2010
January 20, 2010
January 27, 2010
January 27, 2010 2nd meeting
January 27, 2010 3rd meeting
February 3, 2010
February 3, 2010 2nd meeting

Commissioner Price made a motion to approve the consent agenda which consists of ten sets of minutes.

Commissioner Evans seconded the motion.

Mayor Karpie requested that the January 27, 2010 meetings #1 and #2 be removed to new business.

Commissioner Price amended his motion to approve all minutes except the two sets of minutes from January 27, 2010.

Commissioner Evans seconded the motion.

The Mayor called the vote. The motion passed by a vote of 5-0 to accept all minutes except two sets from January 27, 2010 to be reviewed under new business.

X. PUBLIC HEARINGS

Members of the Public may address the Commission, one (1) time, for no more than three (3) minutes on each item presented under Public Hearings.

1. **First reading of Ordinance No. 2010-01, amending the Land Development Code to provide for site plans in the 1RS, 2RS and 3RS zoning districts to be heard by the Planning and Zoning Board.**

Town Attorney Gougelman read the ordinance by title only.

Commissioner Price made a motion to approve.

Commissioner Marshall seconded the motion.

Vice Mayor Tennant wanted clarification if this ordinance gives the Commission the option of having Planning and Zoning look at a site plan but not all site plans will automatically go through them unless directed by the Commission.

Town Manager Bursick stated that was correct except for commercial and multi family. He stated that those already go to Planning and Zoning to be reviewed before being sent to the Town Commission and that this would only apply to the 1RS, 2RS and 3RS zoning districts.

Vice Mayor Tennant asked if the Town expects any delay or increased cost to the residents to go through the extended review.

Town Manager Bursick explained that it would take more time to go through the process but that it is normally not an issue.

Vive Mayor Tennant asked who would bring it to the Town Commission and ask for direction. He wanted to know if it would be done automatically.

Town Attorney Gougelman stated that there are two ways that this can happen.

1. The proper way.
2. The improper way.

He stated that the Commission could determine to add this type of site plan to Planning and Zoning's review by basically turning the switch on. He went on to say that the Commission could turn the switch off anytime they think it's appropriate but if the Commission turns on the switch for arbitrary reasons that could create a problem.

Commissioner Price asked if it was Mr. Gougelman's suggestion that the Commission turn it off unless the Town has the ability to do the reviews with the Building Official. He stated that it is putting an additional burden on the Planning and Zoning Board and that the Town would only turn on the switch if they didn't have the ability to do in house reviews.

The Mayor asked the Town Attorney for clarification on wording. She read page 7, sections (3) (4) and (5) and asked who the Zoning Official was.

Town attorney Gougelman replied that it was currently Dennis Ragsdale and that under the Land Development Code his official title would be a zoning official.

The Mayor asked if there was any public comment and there was none.

The Mayor called the vote. The vote was 5-0 with the motion being carried for the first reading.

2. First reading of Ordinance No. 2010-02, amending the Land Development Code to provide for development of non residential building lots that are non-conforming due to insufficient depth.

Vice Mayor Tennant made a motion to approve Ordinance No. 2010-02. Commissioner Evans seconded the vote.

Vice Mayor Tennant asked if the non-conforming lots could be commercial and residential.

The Town Attorney stated that this particular provision that the Planning and Zoning Board has recommended that the Commission add to the code relates to non-residential buildings and uses permitted by special exception so it would not be a single family residential type situation.

Vice Mayor Tennant asked Town Manager Bursick how many lots fall under this category.

Town Manager Bursick replied that there are three lots that the Town knows of and their combined lots.

Vice Mayor Tennant wanted to clarify that this allows the owners of those lots to build on them and use them for items that were prohibited in the past as long as they go through the site plan review and have set backs and height restrictions and all of the normal requirements.

Town Manager Bursick stated that all of the other code requirements would apply to the development.

Town Attorney Gougelman said that it was discovered at a Planning and Zoning Board meeting when they were going through this and was probably left out of 7 A-81 when it was originally drafted. He said that there are not many lots in town that it would affect and that's one reason why it was overlooked. He also said that he had seen a similar case in Indialantic and if you take that ruling and apply it to this situation that this amendment is probably consistent with that of the circuit court ruling.

Commissioner Price wanted to make the point that they were grandfathering in the lots that were platted prior to 1972 and they are non-residential lots.

The Mayor asked for public comment and there was none.

The Mayor called the vote. The Commission voted 5-0; the motion is passed.

The Commission voted that items 2 and 3 be moved to a future date.

XI. OLD BUSINESS

Items #1 and #2 moved to a future date per consent from Commission.

XII. NEW BUSINESS

1. Items pulled from the Consent Agenda

The Mayor wanted to discuss the minutes from January 27, 2010 STCM #1 and STCM #2.

Commissioner Price made a motion to approve.

Commissioner Marshall seconded the motion.

The Mayor said that on page 2 of the first set of minutes Commissioner Price made a motion and Commissioner Evans seconded the motion but there was no vote and on page 5 Commissioner Price agreed to accept the motion and Commissioner Marshall accepted it. She stated that the transcription is correct and the Commission needs to clarify this as a matter of housekeeping.

The Town Attorney suggested that the Town Clerk make a drafters note that “no vote was held on this motion”.

Commissioner Price added that it was the consensus of the group to approve the motion.

On the second set of minutes from January 27, 2010 the Mayor stated that the minutes reflect that the Mayor made the motion to adjourn and this can't happen unless she passes the gavel.

Commissioner Price said that the motion was called by all of the Commissioners.

Commissioner Marshall suggested adding another drafter's note to this effect.

Commissioner Price stated that the minutes are a great improvement and that they are very good.

The Mayor called the vote. The Commission voted 5-0 to accept both sets of minutes with corrections.

2. **Discussion and possible action regarding an award of bid to Don Facciobene, Inc. in the amount of \$38,900 for the construction of a “special needs” dune crossover ramp at Ocean Park.**

This item was moved to a future date by the Commission.

3. **Discussion and possible action regarding the authorization for the Town Manager to execute documents necessary for the renewal of employee’s life and dental insurance.**

Town Manager Bursick gave a brief description of the life insurance plan stating that life insurance is paid for by the Town for the employees. He said that he was recommending that the Town continue with Hartford Life Insurance for this coverage. It’s the same provider that we have used in the past years at the same cost and that it is an expense of \$108.00 per month to cover all employees. He said that the Town obtained four other quotes from different providers and the benefits were less favorable than what we currently have and the rates were comparable to what the Town is paying now. For the dental insurance coverage Town Manager Bursick recommended staying with Delta Dental. This is an optional coverage for employees which is paid for by the employees. He stated that as noted in his write up the Town currently offers a HMO and a PPO plan and unfortunately there was a threshold of employees that must sign up for each of those plans. At this time the Town may not have enough employees to obtain a HMO or PPO plan. He said that the employees are meeting with the representative tomorrow and she may have some individual plans that employees can sign up for if they are still interested in maintaining coverage.

Commissioner Evans made a motion to authorize the Town Manager to execute documents necessary for the renewal of employee’s life and dental insurance.

Vice Mayor Tennant seconded the motion.

The Mayor asked if there was discussion and there was none.

The Mayor asked for public comment and there was none.

The Mayor called the vote. All Commissioners were in favor 5-0; motion carried.

4. **Discussion and possible action regarding the performance evaluations of the Town Manager.**

Commissioner Price made a motion that the Commission accept the evaluation as presented by the various Commissioners and that these are the evaluations for record for this date for the Town Manager.

Commissioner Marshall seconded the vote.

Mayor Karpie asked Commissioner Price if he would consider a re-evaluation period in his motion.

Commissioner Price said that he would rather speak about this at the workshop that is scheduled.

Vice Mayor Tennant stated that the scores represent an overall average of 91% which means the Town Manager falls into the very good range. He stated that the Town Manager was very good in his perspective.

The Mayor asked if there was any public comment.

Eddie Struttman, 802 Pine Street, said that he wanted to thank the Town Manager for the community spirit that he has brought back to Melbourne Beach. He said that the Town Manager is always accessible and that he is doing a great job.

The Mayor called the vote. All Commissioners were in favor 5-0; motion carried.

5. Discussion and possible action regarding the adoption of Resolution related to offshore oil drilling.

The Mayor stated that this Resolution came to her through the City of Titusville because they adopted it. She stated that basically there has been a ban on offshore drilling in effect since 1981 and that ban is being lifted. She said that our neighbors on the gulf coast are very concerned about the near possibility of offshore drilling that would be within 3-10 miles of the beaches primarily because a majority of their income comes from tourism and those beaches. The Florida League of Cities has adopted a legislative policy urging an unbiased study commission regarding the potential impact from both environmental and economic off shore drilling. She asked if the Commission would also like to prepare a resolution similar to that of the City of Titusville on this issue.

Commissioner Price made a motion to prepare such a resolution similar to that and have it drawn up by our Town Attorney for the Commission's approval at a future meeting.

Commissioner Evans seconded the motion.

The Mayor asked for discussion.

Commissioner Marshall asked if anyone really pays attention to these resolutions.

Town Attorney Gougelman stated that it was in the eye of the beholder and if you don't pass resolutions of this sort the people that want to build would immediately say that none of the cities were opposed. He stated that the Commission is doing

two things. You're going on the record and taking a position for the Town. He said that if there is a tidal wave of these resolutions that it attracts attention.

Vice Mayor Tennant said that he had a couple of issues with the inconsistencies in the resolution that came from Titusville. He said that Section One is biased before you start and conflicts with the rest of the resolution. He said that he couldn't support the resolution as it stands.

Mayor Karpie asked Vice Mayor Tennant if it was his suggestion to amend this resolution.

Vice Mayor Tennant stated that he would like to eliminate section one and that he has no issue with the rest of it.

Commissioner Price said that this same question came before the Florida League of Cities meeting and the final motion was to the effect that they were opposed to offshore drilling but softened the wording. It was a statement opposing it but opening the door. The reason that they did that was to give science a chance to go forward.

Vice Mayor Tennant responded to Commissioner Price by saying that if you want zero risk then we need to stop all development in the state and not hurt any more of our natural resources.

The Mayor asked if there was any public comment.

Joanna Mosher, 510 Andrews Drive, said not to lift the ban and let them do the research. If the research is good they can lift the ban but leave it as it is.

Frank Thomas said that we are responsible for one square mile of beach front and that we need to do what is best for us. He stated that he was opposed to any sort of oil drilling.

George Walters, 323 Second Avenue, said that he agrees with Vice Mayor Tennant in that we need to do something. He said that he wouldn't like it but it's the only way we can help ourselves out until we come up with a better method. He felt that it would definitely improve the fishing.

Ann Downing, 801 Pine Street, asked if it really helps the fishing and is it that important to the issue of oil drilling.

The Mayor answered her by saying that it changes the relief in the ocean bottom that provides a habitat for the fish. In that respect an oil rig would provide a vertical dimension and so do reefs.

Ms. Downing said that was a valid point but she opposes the oil drilling.

Commissioner Evans asked Commissioner Price if he would consider amending the resolution so that the Commission adopts one that more closely resembles the League of Cities resolution as opposed to the Titusville resolution.

Commissioner Price said that the motion was fashioned in such a way to give the Commission a chance to write the resolution.

Mayor Karpie asked Commissioner Evans if she was recommending to see the resolution that was drawn up by the Florida League of Cities rather than Titusville.

Commissioner Evans stated that not having seen the other one that she wouldn't say yes to that but that the Town could use that as a guide for writing up our resolution.

The Mayor asked Commissioner Evans if she was suggesting that the Commission defeat the motion and request further information because the motion was to approve the resolution.

Commissioner Evans said that she seconded that the Commission would create a resolution showing how we felt about the issue.

Commissioner Price suggested bringing it to the next meeting.

The Mayor said that the amendment to the motion was just to follow through with this.

Vice Mayor Tennant said that he would like to add a paragraph to the resolution and asked if that was possible.

Town Attorney Gougelman answered that when the resolution comes back before the Commission you would then have an opportunity to prepare an amendment.

Commissioner Price said that once a resolution is put before this Commission it has the ability to totally rewrite the resolution.

The Mayor called the vote. The Commission was all in favor 5-0; motion carried.

The Town Attorney asked if the Commission would like to include this resolution on the March 3, 2010 agenda or the March 17, 2010 agenda.

The Mayor suggested putting it on the March 17, 2010 agenda.

Town Attorney Gougelman said he would have it ready then.

6. Discussion and possible action regarding the pay status (exempt vs. non-exempt) for the Interim Town Clerk.

The Mayor stated that at the January 18, 2010 meeting the Commission appointed Deputy Town Clerk Danielle as the Interim Town Clerk and in the January 20, 2010 meeting the Commission discussed the pay rate. The Commission made this action retroactive to January 18, 2010 but didn't discuss pay status. She said that during this period of time she had authorized overtime so the Interim Town Clerk could prepare the minutes listed on the agenda in a 48 hour turnaround. The issue really has to do with the overtime and the definition of an exempt position.

Commissioner Price recollected that the Commission did establish pay. The Commission made it effective on that date that the Interim Town Clerk would receive the same pay as the previous Town Clerk. He said that the Commission dealt with the overtime because basically there's a \$15,000 increase in the annual salary which should have incorporated the additional workload that the Interim Town Clerk would inherit. The position is an exempt position and is not a position that pays overtime.

The Mayor stated that the overtime occurred between January 18 and February 3, 2010 and the Interim Town Clerk put in 35 hours.

Commissioner Price said that the time should be recorded as compensatory time and not overtime. The Interim Town Clerk salary has been adjusted up and that should compensate her. He asked the Town Manager if that was correct.

Town Manager Bursick said there was a pay period between January 18 and February 3 which she received overtime based on her old Deputy Town Clerk rate.

Commissioner Price said that the Commission voted this to be retroactive back to January 18th.

Town Manager Bursick replied that was true but until January 18th but in that case she would actually have to pay the Town back part of that pay because based on time and a half at the old rate was greater than what she would have received as a salaried employee at the rate of \$42,024. He suggested considering making the salary effective starting tomorrow and paying her based on her old hourly rate and the overtime based on that rate to take care of those hours and then we can start fresh based on the \$42,024.

Commissioner Price said that the Commission took a vote and made her the Interim Town Clerk and that you can't start paying her overtime all of a sudden.

The Mayor asked the Town Attorney for his opinion on whether it can be done or not.

Commissioner Price said that the Commission should do what Town Manager Bursick suggested and rescind the appointment date and make it another date where the Interim Town Clerk would still be in that non-exempt position during that overtime period.

The Town Attorney asked as of what date Ms. Danielle became the Acting Town Clerk.

The Mayor replied it was the evening of January 18, 2010 and then on February 3, 2010 the Commission voted to make her retroactive back until January 18th.

The Town Attorney asked if the Town intended to pay Ms. Danielle the Town Clerk rate as of January 18th.

Commissioner Price answered yes.

The Town Attorney said that ultimately there's going to have to be an official vote by the Commission determining that she is actually the Town Clerk but for the time being she has the title. He stated that he felt Commissioner Price and the Mayor are both right. He suggested that a way out of this might be to pay the Interim Town Clerk a one time bonus in recognition of what she's done beyond the call of duty.

Commissioner Marshall stated that in order to give the Interim Town Clerk the bonus the Commission would have to have an amount.

Commissioner Price stated that he was sure Jane, the finance director, could work those numbers up.

The Town Attorney suggested putting it on the March 3, 2010 agenda.

Mayor Karpie stated that the amount of the bonus without removing taxes would be \$722.15 for 35.75 hours of overtime.

Commissioner Price made a motion that the Commission approves paying a bonus to the Interim Town Clerk for the period of extraordinary service from January 18 to February 3, 2010 in the amount of \$722.15.

Commissioner Evans seconded the motion.

Vice Mayor Tennant stated that he felt the motion was right on and that the bigger issue was what the whole thing is costing the Town to replace the old Town Clerk. He said that the Town is paying roughly \$10,000 in severance for three months for the old Town Clerk and we also authorized 500 hours of training for the Interim Town Clerk at \$40.00 an hour. We are also paying a temporary

employee. He said that we have an Interim Town Clerk that was a hard worker and who is smart but she is not a trained and certified Town Clerk.

Commissioner Marshall asked where they were in the process of putting out an ad for the Town Clerk position.

The Mayor stated that the Commission brought this up at the previous meeting and decided to wait until after we looked over the job description and evaluation forms and make sure they were relevant to the job as it currently exists. She stated that she would also like to point out that the Commission agreed to pay up to 500 calendar hours but they will not reach that amount of hours. She said that our new Interim Town Clerk has the same qualifications as our previous Town Clerk when she was hired and that part of the description of the Town Clerk is to train the Deputy Town Clerk and that was not done and now the Town is paying for it. A certification can be accomplished by attending a training session and at that point we will have a Town Clerk who has the same qualifications. In the mean time we have a consultant that has worked for two days as needed to assist the Town Clerk.

Commissioner Evans asked if the Commissioners could please just deal with the motion on the floor.

The Mayor asked if there was any public comment.

Eddie Struttman, 802 Pine Street, stated that he believes the Commission should take the Town Manager's advice on how to pay the Interim Town Clerk. He said that he didn't believe that it's legal. He said that Ms. Danielle worked overtime under the premise that she was working overtime and the fact that the Commission did something retroactive really doesn't matter. The Interim Town Clerk deserves it and the Town Manager's resolution is the best way to deal with it. He said that by paying a bonus it dirties the water.

Commissioner Price said that a bonus is handled exactly the same way that overtime is handled.

Mr. Struttman replied that it wasn't.

Commissioner Price said that it becomes remuneration and it's taxable and it will pay her the difference.

George Walters, 323 Second Avenue, stated that unless things have changed since he owned a personnel company in Atlanta that there used to be federal wage and hour laws. He thinks they should get a ruling from someone who knows the law on what Ms. Danielle is owed.

Steve Walters, 416 Sixth Avenue, stated that there were a couple of problems. One is that the Interim Town Clerk worked the overtime before the Commission made it retroactive so he thinks that under the law the Town would have to pay her the overtime and perhaps the Town Manager has the better solution to rescind the appointment and make it to reflect now so that she can get her overtime. He stated that he read an Attorney General's ruling some time ago that unless you have a bonus program in place for a municipal employee you can't arbitrarily raise their salary and give them a bonus.

The Town Attorney stated that he was in error and that he forgot about the Attorney General ruling and the second problem is that this money has already been paid to the Interim Town Clerk.

Commissioner Price withdrew his motion and made a new motion that the Commission rescind the decision to appoint the Interim Town Clerk in it's entirety and that we appoint her effective February 3, 2010 and not retroactive.

Commissioner Evans seconded for discussion.

Town Manager Bursick said that February 18, 2010 should be the effective date and all hours before that would be paid at the Deputy Town Clerk salary and overtime would be paid at one and a half times the Deputy Town Clerk rate.

Commissioner Price stated that he would change his motion to reflect the date of February 18, 2010. Town Manager Bursick clarified that the Commission established that it was an exempt position but wanted to know how to compensate overtime from tomorrows date and on.

Commissioner Evans asked when the pay period ended.

Town Manager Bursick replied February 13, 2010.

Commissioner Evans stated that if the Commission wasn't going to the Ms. Danielle retroactive because it will cost her money then why don't they change the effective date to the first day of the new pay period.

Town Manager Bursick replied that February 14, 2010 would be the first day of the new pay period.

The Mayor stated that basically the Commission was going back to the suggested action that Town Manager Bursick made with the exception of the February 18th date and were changing the wording to the beginning of the current pay period.

Commissioner Price said that was not the motion he made.

Commissioner Marshall made a motion that the Commission put Ms. Danielle as Interim Town Clerk as of the current pay period.

Vice Mayor Tennant seconded the motion.

Commissioner Evans stated that she believed that everyone is trying to do the right thing and acknowledge that for a two week time period Ms. Danielle went above and beyond doing both positions.

The Town Attorney stated that his concern was that Ms. Danielle was acting as the Town Clerk during that time period.

Town Manager Bursick asked if the Commission would allow the Town Attorney, the finance director, Ms. Danielle and himself to sit down together and put together what the Town has paid her and what the Town would be proposing to go forward with.

Mayor Karpie asked that the Town Manager come back with a suggestion at the March 3, 2010 meeting.

Commissioner Marshall withdrew her motion.

Vice Mayor Tennant withdrew his second to the motion.

The Mayor stated that this matter has been deferred until March 3, 2010.

XIII. REPORTS

1. Town Manager

Town Manager Bursick gave an overview of the budget report. He stated that the Town also received notice from the Florida Municipal Achievement Committee and they are asking for nominations in three different categories, which include:

- City Spirit Award
- Florida Citizenship Award
- Environmental Stewardship Report

Town Manager Bursick then asked if there was any interest in making a nomination for the Town of Melbourne Beach. He said that most likely it would be under the environmental Award. He stated that the Town would fit under environmental because of the storm water initiative and it was adopted by the residents which speaks very highly of Melbourne Beach and that's worthy of a nomination. He stated that he would transmit a copy to the Commissioners for their review and it is due May 17, 2010.

There was a consensus among the Commissioners for the Town Manager to go forward with this project.

2. Town Attorney

The Town Attorney stated that he wanted to report about the Solid Waste bid award. The Commission has already taken action to award the bid to Waste Pro and Waste Management has filed a timely protest to that award. He said that means at a point in the near future there is going to have to be a formal bid protest hearing. He said that it will have to be conducted by the Commission at a time yet to be determined but he suspects that it will be in the middle to late March. This is a more formal proceeding than the Commission has had before and Waste Management will be represented by Cliff McClellan. He said that Waste Pro will probably want to respond to the arguments in Waste Management's bid protest. Town Attorney Gougelman felt that the Commission would probably want to hear technical input from the Town Manager and the consultant who will need legal representation and it will be his job to guide the Town Commission through the protest hearing and help them to formulate a final order. He said that the aggrieved party has a right to go to court if they so choose. He said that the Town was unable to come up with a recommendation on who to represent Town Manager Bursick and consultant Bill Redman therefore he would like to propose that this matter be set on the March 3, 2010 agenda for discussion. He also offered a word of caution to the Commission by saying that the cone of silence that was over them during the bid award should still be in effect so if Waste Management or Waste Pro tries to contact them they should tell them that they need to come to the public hearing.

Vice Mayor Tennant asked if the Commission has to allow this protest.

The Town Attorney replied that they did for a couple of reasons to include:

- It's consistent with the Town Code.
- It's abnormal for bid protests to surface this way but when they do this is an appropriate way to handle it.

Town Attorney Gougelman stated that the code does allow for a bid protest or the other alternative would be to go to court.

Vice Mayor Tennant asked about the time frame.

Town Attorney Gougelman replied that it is unlikely that it will be tied up for years but as an aggrieved party they can do one of two things. They can go to court and seek an injunction or appeal to the court on an expedited basis.

Commissioner Marshall asked what the cost would be to the Town.

Mr. Gougelman answered that it depends on whether or not the aggrieved party at the end of the bid protest wants to go to court. If the aggrieved party doesn't want to go to court the Town is looking at legal fees for the protest hearing of about 10-15 hours for the attorney who represents the Town Manager and consultant and his time which would be less.

The Mayor asked if any Commissioners would like to give a report.

Commissioner Price stated that the Town is in a period where litigation is going to cost us legal fees and we have relied on expert information and opinions. He stated that anyone can challenge those rules. He went on to say that he attended the League of Cities meeting that was in Rockledge and there was a speaker who filled the members in on the legislative agenda for the coming period. He also stated that on a positive note that the Fire Department had their annual meeting and at that meeting they made him an honorary member of the Fire Department.

Vice Mayor Tennant wanted to thank Interim Town Clerk Danielle for her efforts.

Mayor Karpie stated that there is a golf tournament that will be held as a benefit for the Melbourne Beach Library and that further information can be found at the library.

Commissioner Price also wanted to add that the League of Cities was involved in a project with United Way. He said that they are asking every municipality in Brevard County to partner with United Way and to put on our website a connection for raising money to help Haiti.

The Mayor agreed that sounded like something the Town should investigate.

XIV. ADJOURNMENT

There was a motion to adjourn made by Commissioner Evans, seconded by Commissioner Price. Question called; motion carried, 5-0.

Mayor Rita A. Karpie

Rhonda Danielle
Interim Town Clerk