



# Town of Melbourne Beach

## REGULAR TOWN COMMISSION MEETING

WEDNESDAY, JANUARY 17, 2018

6:30 p.m.

COMMUNITY CENTER – 509 OCEAN AVENUE

## MINUTES

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

Town Manager Bob Daniels  
Town Clerk Nancy Wilson  
Town Attorney Clifford Repperger

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## PUBLIC NOTICE

The Town Commission held a Regular Meeting  
on Wednesday, January 17, 2018 to address the item 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 led the roll call.

Commissioners Present:

Mayor Jim Simmons

Commissioner Steve Walters

Commissioner Wyatt Hoover

Staff Present:

Town Manager Bob Daniels

Town Clerk Nancy Wilson

Town Attorney Cliff Repperger

Commissioners Absent:

Vice Mayor Tom Davis

Commissioner Sherri Quarrie

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

Led by Mayor Simmons

**IV. Public Comments**

*Bud Deffebach*

*1101 River Road*

Mr. Deffebach said during Hurricane Irma there was a fugitive that Melbourne Beach police officers were chasing at about 1:00 am. While talking to the officers afterwards, he found out that they were staying in the Town Hall complex without power and without a generator so there wasn't any a/c for our first responders. He felt awful for them working under such conditions and being away from their families. He thought that the Town was going to address this but he just found out that the generator is entirely shot. This issue has gone from being wrong to being dangerous. First responders should be treated better. It's been 4-5 months and he feels that this issue should be a priority. We have a lot of elderly residents and when the causeway is closed, if Town Hall had the ability to take in people during an outage, they could survive during such a situation.

Town Manager Daniels said that FEMA is doing an onsite inspection of the generator along with looking at other issues that occurred as a result of Irma; we will hopefully hear back from them in February. We are researching our insurance channels to see if we have any coverage for a new generator. Also, we must ensure that we get a generator that is 20% over the maximum capacity of Town Hall.

Mayor Simmons said the generator failed after the hurricane. We were working with getting the a/c running and that's when it failed. He said that a new generator

is a priority. Town Manager Daniels added that it will cost somewhere between \$50,000 and \$80,000.

## V. Approval of the Agenda

**Commissioner Walters made a motion to approve the agenda as presented.**

Mayor Simmons requested that items B and C from the *Consent Agenda* be moved to *New Business* A and B respectively.

**Commissioner Walter amended his motion to move items B and C from the *Consent Agenda* to items A and B under *New Business*; Commissioner Hoover seconded. Motion carried 3-0.**

## VI. Consent Agenda (00:07:45)

- A. Site Plan Review for 305 Second Avenue
- B. (moved to New Business A.) ~~Site Plan Review for 311 Avenue A, Melbourne Beach, FL~~
- C. (moved to New Business B.) ~~Site Plan Review for 514 Avenue A, Melbourne Beach, FL~~
- D. Appointment of Aaron Simonton to the Historic Preservation and Awareness Board
- E. Reappointment of Robert Martin to the Police Pension Board for a term of four years ending January 17, 2022
- F. Reappointment of Bruce Morgan to the History Center Board for a term of two years, ending January 17, 2020
- G. Resignation of Jill Addison from the Historic Preservation and Awareness Board

**Commissioner Walters made a motion to approve the Consent Agenda minus items B and C. Commissioner Hoover seconded. Motion carried 3-0.**

## VII. Public Hearings

No Public Hearings

## VIII. Old Business

- A. Consideration of contract with Marcus Fertig for grounds maintenance services – Town Manager Daniels (00:08:08)



Town Manager Daniels said that last month the Commission voted to accept Mr. Fertig's bid for grounds maintenance services. The contract for those services was drafted and then reviewed by the Town Attorney. Commissioner Hoover asked if we are aware of all the insurance requirements to which the Town Manager answered in the affirmative adding that all that information has to be submitted to us before the contract goes into effect. Commissioner Hoover also asked if Mr. Fertig is aware of the *Keep Brevard Beautiful* program to which the Town Manager responded that Mr. Fertig is aware of it and is going through training but he is not currently certified. Commissioner Hoover added that there's a lot more to it than just not blowing grass onto the streets and he wants Mr. Fertig and his employees to be aware of the standards and to follow them. Town Manager Daniels also confirmed that we will perform background checks on Mr. Fertigs' employees.

Mayor Simmons said there were a couple items that were included on exhibit C that were not in the previous contract such as weed control/removal in all the beds, palm and tall tree trimming. Previously, those tasks were not included in the contract but we were charged on a per occurrence basis. So, can we now expect him to trim palm trees, etc. at no additional cost? Town Manager Daniels answered in the affirmative. Commissioner Walters said for fertilizing and weed & feed, he'd like the Public Works' employees to supervise those activities to ensure that fertilizer is not placed near the river.

**Commissioner Walters made a motion to approve the amended landscaping contract with Marcus Fertig as presented at this meeting; Commissioner Hoover seconded.**

Town Attorney Repperger wanted to make sure that the Commission was aware that the initial term was for 24 months with 1 year renewals thereafter.

Mayor Simmons asked if anybody was uncomfortable with Mr. Fertig not being associated with a company. Town Manager Daniels said Mr. Fertig's company is inactive but he is taking out a \$1 million insurance policy, naming the Town as an additional insured, which if he doesn't do, the contract won't be executed. Additionally, we are supposed to be notified if his insurance is cancelled.

**Motion carried 3-0.**

- B. Consideration of bid by Computer Experts to provide IT & Computer Support Services for the Town – Town Manager Daniels (00:16:06)

Town Manager Daniels said that Computer Experts was the only bid we received in response to our RFP. Commissioner Hoover inquired as to why we only received 1 bid to which the Town Manager responded that other firms that are

out of the area may have felt that Computer Experts, being local, may have had an advantage. Also, we require FDLE certification which could have eliminated some potential bidders. Commissioner Walters asked if they justified their 20% increase; the Town Manager answered that they did not. Commissioner Walters then asked if the duration of the contract could be for 1 year. Town Manager Daniels said that the contract is for 2 years at the same rate but we can cancel the contract at any time with 30 days' notice. Commissioner Walters asked where the servers are located and the response was that they are located on the second floor of Town Hall.

**Commissioner Walters made a motion to approve Computer Experts' 2 year contract in the amount of \$1599/month as presented; Commissioner Hoover seconded. Motion carried 3-0.**

- C. Consideration to engage B.S.E Consulting to provide engineering services to address the 3 critical stormwater issues in town - Town Manager Daniels (00:21:18)

Town Manager Daniels said we have stormwater issues that were made more evident after Hurricane Irma. We've contacted FEMA for possible reimbursement but the bottom line now is that we need to make sure that our roads don't collapse and there are 3 areas where the situation is critical:

- Rosewood/Dogwood
- Oak/Cherry
- Andrews

The Commission held a Workshop with our Engineering Consultant on January 10<sup>th</sup> where he said he needed to evaluate those 3 areas before giving us an estimate for remediation. Though there was some misunderstanding about whether the Commission needed to approve time for evaluation or time for engineering it was determined that for this night's meeting, the Commission needed to specify the maximum number of hours they would approve for B.S.E. to evaluate the 3 areas after which B.S.E. will give us an estimate to provide a solution.

Commissioner Walters requested that Greg Schaefer from Public Works accompany Scott Glaubitz from B.S.E. during the evaluations.

*Kate Wilborn*  
*502 2<sup>nd</sup> Avenue*

Ms. Wilborn had pictures of how the neighbor's driveway is draining into her yard. She's spent \$5,000 protecting her property from the next heavy rainfall and thinks her situation should be a priority. Mayor Simmons assured Ms. Wilborn that she is not being ignored adding that the problem affecting her will



require a comprehensive solution. The critical issues being discussed have to do with collapsed drains which will cause roads to collapse.

Commissioner Walters said we had a workshop in January where the problem at 2<sup>nd</sup> and Pine was discussed. The Commission was in agreement that something had to be done; everybody knows Ms. Wilborn's area floods. However, he continued, when there are holes in the ground, they need to be addressed first. Mayor Simmons said again that the solution must be a comprehensive one so we don't end up just sending the water where it impacts somebody else.

*Gina Quigley*  
*503 Second Avenue*

Ms. Quigley said that the 50 acres of high pollutants drain to the Indian River Lagoon. The Mayor said this is off topic and added that we have to fix the 3 collapsed drains first. Ms. Quigley said that FEMA designated her area as critical. Commissioner Walters said several hundred thousand dollars has been spent in her area and he doesn't know why the problem hasn't been fixed. Ms. Quigley asked about the baffles and the Mayor responded that the St. John's Water Management District said under no circumstances can the baffle filters be removed. Ms. Quigley said they should then be cleaned monthly to which the Mayor responded that we don't have money in the budget for that activity.

**Commissioner Walters made a motion to approve and authorize B.S.E. Consulting to spend up to 10 hours evaluating the 3 most critical stormwater areas: Rosewood/Dogwood, Oak/Cherry and Andrews; Commissioner Hoover seconded. Motion carried 3-0.**

## **IX. New Business**

### **A. (moved from Consent Agenda) Site Plan Review for 311 Avenue A (00:42:40)**

Mayor Simmons said that a garage on the site plan is referred to as a shed. The wording should be changed to "proposed garage" because it exceeds the dimensions for a shed. The Homeowner's mother-in-law was present and said that she wanted to confirm that the proposed structure is a garage and the plans are being corrected and resubmitted to reflect that.

**Commissioner Walters made a motion to approve the site plan for 311 Avenue A's proposed accessory structure with the stipulation that the drawing reflects the structure as a garage and not a shed; Commissioner Hoover seconded. Motion carried 3-0**

### **B. (moved from Consent Agenda.) Site Plan Review for 514 Avenue A (00:45:40)**

Mayor Simmons said the orientations on the site plan are off by 90 degrees.

**Commissioner Walters made a motion to approve the site plan for 514 Avenue A subject to directional changes being made as noted by Mayor Simmons; Commissioner Hoover seconded. Motion carried 3-0.**

- C. Consideration of December 20, 2017 Regular Town Commission draft minutes as amended – Town Clerk Wilson (00:49:08)
- D. Consideration of January 10, 2018 Town Commission Workshop draft minutes as amended – Town Clerk Wilson (00:49:25)

**Commissioner Walters made a motion to approve the draft minutes from the December 20, 2017 regular meeting and the January 10, 2018 as amended; Commissioner Hoover seconded. Motion carried 3-0.**

- E. Consideration of request by the Planning & Zoning Board to approve drafting an ordinance to address lot coverage – Town Clerk Wilson (00:50:02)

Mayor Simmons said that the Planning & Zoning Board is trying to define how much pervious ground should be required for new residential construction. Their concern is that more and more ground is being covered by concrete in the form of circular driveways, decks, patios, pools, etc. They believe the amount of pervious ground should be 30% minimum. They want an ordinance drafted for the Commission to review. The Mayor suggested that the pervious area be defined and allow the balance of the property to be covered. Dave Campbell, Planning & Zoning Chairman, told the Mayor that what's happening is that people are building their houses, which, per the current LDC, can only cover 30% of the property, but a detached garage is not considered in that 30%. So, if a house is built with a 2 car attached garage, the homeowner is limited to 30% coverage but with a detached garage that gives the homeowner an "out" because the homeowner is allowed lot coverage over 30%. Planning & Zoning is not sure that 30% is the correct number but it's a good starting point. The problem the Mayor had was including sheds in the 30%. We have standards for sheds and minimum lot coverage which really gives the homeowner 40% of the lot that can be built on including a pool, driveway, etc. To include the shed as part of the house, when a new owner purchases the property, a shed could not be built so he wants the shed taken out of the equation. Therefore, whatever the lot coverage is, it would include the house and the attached or detached garage and 30% of the property would have to be maintained as pervious; a shed would be separate. All the Commission is doing is allowing the Planning & Zoning Board to work with the Town Planner and Town Attorney to develop an ordinance with numbers in it and the Commission can tweak those figures as they find appropriate.



Commissioner Hoover said this issue is related to stormwater and added that we could allow flexibility for residents if there's a mechanism in place for remediation such as "x" amount of water captured per square footage of non-pervious structures.

Commissioner Walters didn't like that we are going to tell homeowners what they can and can't build on their property and said that the Town is going to pay thousands of dollars for an ordinance we may not want. He doesn't have a problem with the Planning & Zoning Board suggesting what they'd like the Commission to approve.

Mayor Simmons pointed out that P&Z had provided a recommendation based on the Planner's report (both included in the agenda) and suggested that the Commission authorize the Planning Board to engage the Town Planner to develop standards and authorize the Town Attorney to develop an ordinance.

**Commissioner Walters made a motion to direct the Town Planner and the Town Attorney to develop an ordinance restricting lot coverage to 30% including garages but minus sheds and ensuring that 30% of the lot is permeable; Commissioner Hoover seconded. Motion carried 3-0.**

F. Consideration of Town Attorney's contract renewal – Town Attorney Repperger (00:59:19)

Commissioner Walters said he has for many months stated that he thinks the Town Attorney's budget line item of \$77,575 is outrageous. He said that Indialantic - which has 10's of thousands of people visiting their beaches (more people usually yield more trouble), more business area and more commercial development - only paid attorney fees of \$36,500 this year. Commissioner Walters also felt that the full Commission should be present before deciding this issue. He added that he doesn't understand why staff is constantly in contact with the Town Attorney and feels something needs to be done about the increase in fees. Commissioner Walters said he will be voting "no" on the contract renewal.

Mayor Simmons pointed out that over the 3 years for which Commissioner Walters cited high legal costs, we spent a lot on legal services for the Osceola Building, Sand on the Beach and more recently, the Baccus "planter" issue, not to mention the many times we've had people threatening to sue the Town. Those 3 issues alone may have cost the Town \$40,000 or more, much of which will be recouped from the applicants for these zoning changes.



Commissioner Hoover said there isn't a problem with the attorney's contract, there's an issue with how the Town is using his services so he didn't think that Commissioner Walter's issue should be with the amount that has been spent on legal services. The previous Town Manager was asked to review the processes and protocols to determine under what circumstances staff can engage our attorney. Commissioner Hoover doesn't know where Commissioner Walters expects to find waste and doesn't know why the vote has to be delayed. Further, Mr. Repperger has offered to waive the \$5/hour increase provided for in his contract.

Commissioner Walters said nobody on the current Commission except Mayor Simmons interviewed the current Town Attorney. He's been paid a quarter of a million dollars over 3 years and Commissioner Walters would like to see if there is anybody else out there who would like the position. Mayor Simmons said his philosophy is different from Commissioner Walters'. The Mayor said continuity is key as is having people who are doing a good job at a reasonable hourly fee. He agrees with Commissioner Hoover that it gets down to how we utilize the attorney not the attorneys' fees or his contract. We had an opportunity to sign up our previous groundskeeper for \$25,000/year. We put him in a position where he had to go out and find other business for fear of losing it and now we are paying \$29,800/year for the same services because we tried to hold somebody's feet to the fire.

Commissioner Walters said he's had problems with communications regarding the Town Attorney and other problems that he doesn't want to talk about in a public meeting but the bottom line is that he thinks our legal expenses are too high. Commissioner Walters also said that the Mayor has spent thousands of dollars talking to the Town Attorney and then doesn't share the information gleaned from the conversation with the rest of the Commission. Mayor Simmons said that Commissioner Walters should deal with facts. They discussed their differences further until Commissioner Hoover said he's been happy with the Town Attorney and his service to the Town. He is familiar with Gray Robinson and said they are an exemplary organization.

**Commissioner Hoover made a motion to approve renewal of the Agreement for legal services with Town Attorney Repperger and Gray Robinson.**

**Mayor Simmons passed the gavel to Commissioner Walters and seconded Commissioner Hoover's motion.**

The Mayor asked Commissioner Hoover to amend his motion because he doesn't think it's going to pass.



**Commissioner Hoover amended his motion to table consideration of the Town Attorney's contract renewal to the next regular Town Commission meeting; Mayor Simmons seconded. Vote was 2-1 with Commissioner Walters casting the dissenting vote.**

Town Attorney Repperger said upon his initial interview with the Town of Melbourne Beach, the budget for legal fees was discussed. At that time, he informed the Commission that he has no control over the fee schedule. He added that if his invoices are reviewed, they will not find a lot of fluff. The time that is billed is the time that is necessary to accomplish what has been asked of him. Sometimes, you need professional services and you need to pay for them. The Town has had to deal with some extraordinary circumstances in the last few years that have required legal counsel such as Osceola, a couple appeals, numerous proceedings regarding BOA variances/special exceptions, a big revision of the LDC, et al. Mr. Repperger said that he tries to give the necessary services that are needed for the Town at a reasonable rate and added that we will do ourselves a disservice if we compare ourselves to other jurisdictions; a budgeted figure for legal services doesn't mean that was the amount that was actually spent. He said he appreciates the opportunity to serve the Town and will continue to do so until the Commission tells him he is no longer wanted. He said that when he was interviewed, he assured the Commission that he would be the only person occupying the seat. He is personally named in the contract with Gray Robinson so you do not see other attorneys appearing in his place. If he had a conflict in his schedule and felt that legal representation would be beneficial, he would send an associate. Generally, however, a substitute wouldn't benefit the Town because they don't have the institutional knowledge. Further, to correct the record, he did reach out to all the Commissioners at the time to address Osceola; the case wouldn't have become what it became had the other Commission members responded to his calls. He did the job he was supposed to do to protect the Town. He understands concerns about cost sensitivity, he knows his bills will be scrutinized but he feels the Town is getting good value. In conclusion, the Town Attorney said he doesn't desire to debate his billings though he welcomes questions about them.

**X. Staff Reports (01:23:32)**

- A. Town Attorney Report – Town Attorney Repperger said the marijuana ordinance should go to Planning & Zoning in February.
- B. Town Manager / Public Works Report  
Town Manager Daniels said that the tree in Christmas Tree Circle has been replaced. The old tree lasted between 15-20 years but the hurricane finished it off. The Rotary Club was generous enough to pay for the new cedar tree that was just planted.



The Town Manager also talked about the abandoned vessel that's outside our jurisdiction. Numerous officials had wanted to use our beach access to remove the boat but the owner of the boat is in jail and he has exercised rights to his property. For now, the boat will remain where it is but all potentially dangerous or toxic material (batteries, fuel, oil, etc.) has been removed.

Commissioner Walters complimented Public Works for the good job they did cleaning up Ryckman Park. He mentioned that Waste Pro has increased our rates to which the Town Manager said that they have filed notice per their contract; they have to file notice 90 days prior to an adjustment at which point we look at the CPI rating in February and the rate could go lower or higher but an increase is limited to 5%. Commissioner Walters asked the Town Manager to find out about something in the contract that refers to the 3<sup>rd</sup> tote at a cost of \$4.53<sup>[11]</sup>/month. Mayor Simmons said there is a barcode on the Waste Pro cans which leads him to believe that at some point how much trash is at the curb will be tracked and customers will be charged accordingly.

The Town Manager said that a lot of communities are prohibiting styrofoam and other non-biodegradable containers within their parks and public buildings. Mayor Simmons said this issue will be discussed at a joint workshop being held in February with the Environmental Advisory Board adding that we can only prohibit those undesirable materials in our Town facilities and on our property.

Commissioner Walters asked about the docks saying he had some complaints from residents about what an eyesore the remaining pilings from damaged docks are - some of them have been in the same condition for 20 years. The Mayor said those pilings are in State water, on State ground and were granted by State permits so he's not sure if we can do anything about them. Town Manager Daniels said he would do some research on the subject.

Commissioner Hoover commented on the new tree and said that Rotary is happy to contribute to Town projects. He also said he has talked to Hoover Middle School's Principal Merrill about potential projects for his students in Melbourne Beach, namely, a recycling project.

Commissioner Walters asked if our engineers talked to the Town Manager about their contractual costs asking if they are 10% of the contract? He said in the past, the Town has paid up to 19% and he thinks that's too high.

C. Town Clerk Report – no report

D. Departmental Reports:

1. Building Department - no questions
2. Code Enforcement – Mayor Simmons said 2204 Redwood has been in violation for a long time. The Town Manager said we have a lien on the

property. Commissioner Hoover asked if Sean Hasner, Code Enforcement Officer, has clothing identifying him as such. The answer was that he does have separate clothing identifying him that he wears while performing code enforcement activities.

3. Police Department – no questions
4. Fire Department – about 40-50 people were present for the Movie in the Park in December.
5. Finance Department – no questions

## **XI. Town Commission Comments (01:37:10)**

### **A. General Comments**

Mayor Simmons mentioned that areas on the east side of the Community Center roof are rusted. Town Manager Daniels said there is a chemical available that neutralizes rust and Public Works is going to test its efficacy.

Mayor Simmons said he would like to have an interview process established for applicants for the Board of Adjustment, Planning & Zoning Board, the Code Enforcement Board and the Police Pension Board. He feels the Town Commission should vet applicants who want to sit on those key Boards. This process could take place at a Workshop with a follow-up vote at a subsequent regular meeting. Commissioners Walters and Hoover concurred.

### **B. Review of Commission Action List**

1 item was closed

- Newly planted cedar “Christmas Tree”

2 items were added

- Marijuana ordinance
- Abandoned docks

## **XII. Adjournment**

**Commissioner Hoover made a motion to adjourn; Commissioner Walters seconded. Motion carried 3-0.**

Meeting adjourned at 8:22 p.m.

ATTEST:

  
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James D. Simmons, Mayor

  
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Nancy Wilson, Town Clerk