

Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING WEDNESDAY JUNE 26, 2019 at 6:30 p.m. (rescheduled from June 19, 2019) COMMUNITY CENTER – 509 OCEAN AVENUE

MINUTES

**The Town Commission conducted a Regular Town Commission Meeting
on Wednesday June 26, 2019 in the Community Center
to address the items below.**

Commission Members:

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

Staff Members:

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

I. Call to Order – Led by Mayor Simmons

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

II. Roll Call

Town Clerk Wilson conducted the roll call.

Commissioners Present:

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

Staff Present:

Interim Town Manager Elizabeth Mascaro
Town Clerk Nancy Wilson
Police Chief Melanie Griswold
Town Attorney Clifford Repperger

III. Pledge of Allegiance and Moment of Silence

Led by Mayor Simmons

IV. Presentations

No presentations

V. Boards and Committees

No Board or Committee member reports

VI. Public Comments

Frank Thomas
606 Atlantic

Mr. Thomas reminded the Commission that the Town History book needs to be published again. Mayor Simmons said the Town agreed to pay for half the cost of publishing and Old Town Hall members agreed to pay the other half; the proceeds would go to the History Center Board. The Mayor suggested to Mr. Thomas that he get in touch with the Chairman of the History Board.

VII. Approval of the Agenda

Commissioner Runte made a motion to approve the agenda as presented; Vice Mayor Hoover seconded. Motion carried 5-0.

VIII. Consent Agenda

- A. Site Plan Review for 306 Third
- B. June 5, 2019 STCM Minutes

Commissioner Runte made a motion to approve the Consent Agenda;
Commissioner Quarrie seconded. Motion carried 5-0.

IX. Public Hearings

A. First Reading of Sea Turtle Ordinance 2019-01 – Town Attorney Repperger

Town Attorney Repperger read Ordinance 2019-01 by title:

AN ORDINANCE OF THE TOWN OF MELBOURNE
BEACH, BREVARD COUNTY, FLORIDA RELATING TO
SEA TURTLE PROTECTION; MAKING FINDINGS;
AMENDING ARTICLE II OF CHAPTER 40, TOWN CODE;
AMENDING SECTION 40-20, DEFINITIONS; AMENDING
SECTION 40-22, BUILDING AND ELECTRICAL PLANS
FOR NEW STRUCTURES; AMENDING SECTION 40-23,
EXEMPTIONS FOR NEW DEVELOPMENT, AMENDING
SECTION 40-24, LIGHTING OF EXISTING STRUCTURES;
PROVIDING FOR SEVERABILITY/INTERPRETATION;
PROVIDING FOR REPEAL OF CONFLICTING
ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND
PROVIDING AN ADOPTION SCHEDULE.

Commissioner Quarrie pointed out a typographical error and questioned, on page 36 of the agenda package, section 6, if Ocean Park will be in compliance of the ordinance given the following: *parking areas and roadways including any paved or unpaved areas upon which motor vehicles will park or operate shall be designed and located to prevent vehicular headlights from directly or indirectly illuminating the beach.* She wants to make sure our handicapped citizens can sit in their cars and see the beach at night. Town Attorney Repperger said the section to which Commissioner Quarrie is referring only applies to new development. Mayor Simmons suggested installing a short fence at Ocean Park that would block headlights. Interim Town Manager Mascaro said she thinks that the dune is already high enough to block headlights from illuminating the beach. Mayor Simmons said this should be looked into further. Town Attorney Repperger said that on page 40, paragraph F, of the agenda package, one reference to “any reflective surface” needs to be removed.

Commissioner Quarrie also asked when the changes apply to properties; will they apply to a percentage remodel or a dollar amount? Town Attorney Repperger responded that as it relates to existing structures, we want to give people time to come into compliance but that isn’t covered in the ordinance. He added that the Town already has an existing set of standards relating to existing structures. Those standards are being altered so a period of time to become compliant could be established. The Mayor said the Code regarding turtle lighting is hard to enforce and it’s being superseded by this ordinance so it’s easier for the Code Enforcement Officer to enforce the Code; we aren’t providing any grandfathering. The Town Attorney said that provisions relating to existing structures could be added to give them time to come into compliance. Commissioner

Quarrie said it reads as if everybody has to change their fixtures; she doesn't want to put a financial burden on anybody. The Mayor said that fixtures don't need to be changed, blinds can be pulled down or lights can be turned off. Our Code Enforcement Officer Jennifer Kerr is good with how the ordinance has been drafted.

Dave Micka, Fire Chief

Fire Department

Chief Micka wanted to be sure that the operation of emergency vehicles exception still exists in the new ordinance. Attorney Repperger said he will address that in the 2nd read.

Commissioner Walters made a motion to approve the first reading of Sea Turtle Ordinance 2019-01, as amended; Commissioner Quarrie seconded. Motion carried 5-0.

- B. First Reading of Qualifying Dates Ordinance 2019-02 - Town Attorney Repperger (00:19:28)

Town Attorney Repperger read Ordinance 2019-02 by title:

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA RELATING TO THE QUALIFYING DATE TO RUN FOR TOWN COMMISSION; MAKING FINDINGS; AMENDING CHAPTER 13 SECTION 13-6 OF THE TOWN CODE OF ORDINANCES; CHANGING THE DATES PRIOR TO THE TOWN ELECTION TO QUALIFY TO RUN FOR TOWN COMMISSION; PROVIDING FOR SEVERABILITY /INTERPRETATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

Commissioner Walters made a motion to approve the first reading of Qualifying Dates Ordinance 2019-02, as presented. Vice Mayor Hoover seconded. Motion carried 5-0.

- C. First Reading of Referendum Election and Ballot Language for Clerk reporting Ordinance 2019-03 – Town Attorney Repperger (00:21:23)

Town Attorney Repperger read Ordinance 2019-03 by title:

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FL; PROVIDING FOR A REFERENDUM ELECTION AND BALLOT LANGUAGE;

AMENDING SECTION 3.03, TOWN CHARTER, TO CLARIFY THAT THE TOWN MANAGER SHALL SUPERVISE AND CONTROL THE TOWN CLERK; PROVIDING FOR COORDINATION WITH THE SUPERVISOR OF ELECTIONS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Simmons asked that gender neutral changes be made.

Vice Mayor Hoover made a motion to approve the first reading of Referendum Election and Ballot Language for Clerk Reporting, Ordinance 2019-03, as amended; Commissioner Quarrie seconded. Motion carried 5-0.

X. Old Business

- A. Consideration of Memorandum of Understanding for the School Resource Officer as discussed at the June 5, 2019 Workshop – Town Manager Mascaro (00:24:46)

At the June 5th Workshop, several Gemini Elementary parents attended to encourage the Commission to continue supporting the SRO program. The Commission said it wasn't fair for Melbourne Beach taxpayers to pay for county students to attend Gemini and they'd like all parents to have some "skin in the game." The parents at the meeting agreed to start a fundraising campaign to at least pay for half of the shortfall totaling approximately \$24,000. The first payment is due on August 1, 2019 and the Town has been paid for all of last years' services.

The MOU in the packet was an updated version of the one from 2018; there were no term or qualification changes. The only changes made were to the dates. Commissioner Walters asked that the words "not to exceed" \$52,000 be removed. He suggested that those words be replaced by "a minimum of" \$52,000. He doesn't want the Town to limit itself to a certain amount of money if the State makes more available. The Interim Town Manager said she would contact the Brevard School Board to inquire if that change could be made.

Commissioner Runte made a motion to approve the Memorandum of Understanding for the School Resource Officer as presented; Vice Mayor Hoover seconded. Motion carried 5-0.

- B. Discussion regarding Bob Daniels separation proposal – Town Attorney Repperger (00:29:55)

Mr. Daniels sent a proposal to the Town Attorney about a severance agreement. Town Attorney Repperger outlined the sequence of events:

On March 12, 2019, the Town of Melbourne Beach terminated former Town Manager Daniels without cause. On March 19, 2019, Town Attorney Repperger forwarded a proposed Release and Separation Agreement to Mr. Daniels in accordance with Paragraph 7(c) of the Employment Agreement which is required prior to a 3 month severance payment. As of June 19, Mr. Daniels had yet to execute the draft Release and Separation Agreement, and as such, no severance amount has been paid. On June 19, 2019, Mr. Daniels sent the email to Attorney Repperger proposing the Town's payment of a 6 month severance along with other concessions in exchange for a waiver and release of stated claims. Mr. Daniels demanded a response by Thursday, June 27, 2019 at 9 a.m. and a check issued on Friday, June 28, 2019.

The Town Attorney said the Commission can do one of three things: they can stay with their original agreement which complies with the terms of the contract, they can accept Mr. Daniels' proposal or they can draft an alternate proposal. Mayor Simmons said the Commission should stand by the terms of the contract; the Commission and Mr. Daniels had negotiated up to 3 months' severance and he didn't hear any reason why the Commission should waiver from that agreement that all parties signed.

Commissioner Quarrie made a motion to reject Mr. Daniels' proposal; Vice Mayor Hoover seconded. Motion carried 5-0.

- C. Discussion regarding fire tax referendum as discussed at the June 5, 2019 Workshop – Town Manager Mascaro (00:34:09)

At the June 5th Workshop, Commissioner Walters suggested the Commission approve a ballot referendum (to go before the voters this November) to remove the entire Fire Department budget of \$468,849 from the General Fund and that it be funded by a special fire tax. The Commission consented to paying the requested stipend amount of \$100,000 for FY19-20 but not to fund the requested new employees. It also agreed to discuss (and possibly approve) the writing of the proposed referendum at the June RTCM..

Interim Town Manager Mascaro reached out to other local municipalities who have fire assessments and the County Appraisers Office to get an explanation of the difference between ad valorem assessments and special assessments. Brevard County levies assessments based on square footage. There is also the issue of how long the assessment would last.

Mayor Simmons explained that the Town is struggling to pay for the Fire Department. Fewer and fewer residents are volunteering and it's becoming harder to recruit volunteers who aren't residents. The question is, how do we keep the Fire Department affordable for residents? Commissioner Walters suggested that instead of having Fire Department expenses paid out of the General Fund, we assess a special tax. The residents would have to be sold on this idea by determining how much value the Fire Department brings to the Town. Property taxes are substantially reduced by having a

FD close by; we're charged substantially less than other communities. This would be a "new" tax with all proceeds going into their own discreet budget and in order to do that, a referendum would be required.

Town Attorney Repperger said the Town doesn't necessarily need to have a referendum; that it can levy a special assessment. There are a couple municipal jurisdictions that opt into County services by levying a special assessment and paying for that. That may be an option if the Commission wants to consider it.

Commissioner Runte asked if the Town has a referendum and the citizens voted against the new tax, would that prohibit the Town from then imposing a special assessment? The Town Attorney said that would depend on how the referendum was formulated. He suggested that community sentiment regarding a fire tax be gauged; however, if a referendum is decided upon, there is a time crunch. The discussion ranged from holding a referendum election, to having public meetings to get feedback, to taking an incremental approach, to simply levying a special assessment. Commissioner Runte wanted to know what each household would have to pay in additional taxes for fire services and what the savings are from having our Fire Department vs. relying on County services. Interim Town Manager Mascaro gave a ballpark figure of under \$300 in additional taxes per household for houses under 2,000 square feet.

The Town Attorney said there are more questions that need to be answered before determining what path to take adding that given the time frame, there's not adequate time to craft a referendum to handle all parameters by the August deadline. Vice Mayor Hoover said we need to hear from the taxpayers.

Dave Micka, Fire Chief

Fire Department

Chief Micka said he talked to the Chief of Malabar who just went from volunteers to paid employees. He got quotes from Palm Bay and the County to provide the support of 1 engine to Malabar and the fees per year were 1.1 million and 1.3 million respectively.

Mayor Simmons said if the Commission agrees, they need to think through this issue, come up with a good plan and sell it to the residents. Interim Town Manager Mascaro said the Commission needs to decide if they want the tax to be based on square footage or be a set fee and decide on a term or have it be indefinite; parameters need to be determined. The Town Attorney said the Commission must come up with a methodology for apportionment. In order for the assessment to withstand challenges, it has to be based proportionally on something which would be determined by a methodology.

Vice Mayor Hoover asked the Interim Town Manager to send to the Commission in the next couple of weeks, a bullet style list outlining key considerations and options for each one so they can begin their analysis.

By consensus, the Commission decided to discuss this matter further at the August 7th Workshop utilizing input gathered by the Interim Town Manager.

XI. New Business (00:59:00)

- A. Consideration of March 12, 2019 Special Town Commission Meeting minutes – Town Clerk Wilson
- B. Consideration of May 1, 2019 Special Town Commission Meeting minutes – Town Clerk Wilson
- C. Consideration of May 1, 2019 Town Commission Workshop minutes – Town Clerk Wilson
- D. Consideration of May 15, 2019 Regular Town Commission Meeting minutes – Town Clerk Wilson
- E. Consideration of June 5, 2019 Town Commission Workshop minutes – Town Clerk Wilson

Commissioner Quarrie made a motion to approve the minutes from March 12, 2019 STCM, May 1, 2019 STCM, May 1, 2019 TCW, May 15, 2019 RTCM and June 5, 2019 TCW; Commissioner Runte seconded. Motion carried 5-0.

- F. Discussion regarding lot coverage – Town Attorney Repperger (01:04:08)

Town Attorney Repperger provided an initial draft of the lot coverage ordinance. The Planning & Zoning Board members reviewed it at their June 2nd meeting and their recommendations were noted. The Commission's directive, initially, was to include accessory structures, including detached garages, pools, pool decks, etc (but not sheds), in the percentage of lot coverage that is provided for in the ordinance. In the residential zoning district, the percentage of lot coverage that's provided for is 30%. It was suggested by the Planning & Zoning Board members to increase the maximum lot coverage percentage since other structures would be included in that value. Ultimately, the Board decided to cap the maximum impervious area requirement at 70%, including the principal structure, accessory structures, swimming pools and all other paved areas; this would help prevent non-conformities. Town Planner O'Gorman was good with the 70% impervious suggestion.

Discussion ensued about what should be considered pervious with a focus on pavers. Mayor Simmons said that pavers may start out pervious but over time, they become less so; his suggestion was to define paver-like systems as impervious. Commissioner Walters expressed concern over what this new requirement would cost residents. Commissioner Quarrie responded that when someone decides to add something that creates an impervious area, it impacts people who don't have houses above the crown of the road who are more affected by runoff – that is what they are trying to prevent by requiring a minimum pervious area. Vice Mayor Hoover said they're trying to promote

stormwater responsibility so if somebody wants to expand their house, a few hundred dollars will be added to their cost to ensure they meet the minimum pervious area on their property. Commissioner Runte said the more they can do to minimize runoff, the more they can reduce long term costs associated with it.

Since the goal is to maintain a minimum recharge area, the Commission consented to requiring that 30% of the lot must be maintained in a pervious condition and to also define “pervious” as a recharge area that does not impede, in any way, the downward flow of water.

G. Discussion regarding residential lighting – Town Attorney Repperger (01:25:06)

Mayor Simmons said he was the one who initially brought up this subject. Neighbors are weaponizing their house lights against neighbors with whom they are having perceived issues so the Town must now adopt a residential lighting ordinance. Town Attorney Repperger said there are many ways to deal with residential lighting. After discussing the matter with Planning & Zoning Board members and the Code Enforcement Officer, it was decided to use more general verbiage in the Code with the goal being to prohibit lighting that is a nuisance.

The Commission consented to directing the Town Attorney to move forward with the ordinance and presenting it to the Commission in July.

XII. Staff Reports

A. Town Attorney Report – no report

B. Town Manager Report

Interim Town Manager Mascaro reported that she submitted a grant application to the Florida League of Mayors that would fund the purchase of mangroves for planting near the pier. The maximum proceeds available are \$1,500. EAB is also looking at another grant that would fund the placement of more oyster mats. She completed the audit response for the MS-4 (municipal separate storm sewer systems) which had been submitted previously and was rejected because of many violations; a lot of work went into correcting those violations and updating the report. The updated response was accepted by MS-4 so the Town is in compliance with their requirements. She met with Jim Fleischman who has been working on our Comp Plan. The Town was given a list of about 35 actions that should be taken for sustainability. Some of the actions would never be considered by the Town which necessitated changes to the Comp Plan. The oak and mahogany trees were planted on Oak Street. The Commission approved the request to place lifesaving rings at the beach but they won't be placed there until turtle season is over. Ms. Mascaro also met with the Town Attorney and the Code Enforcement Officer about compliance issues at *Sand on the Beach*; they are making sure that what they are citing him for are actual violations. The owner is now in compliance with his turtle lighting. The Mayor commented that the 1st Avenue

crossover looks a lot better of late. Interim Town Manager Mascaro discussed with Commissioner Runte the possibility of getting a grant to tear up the parking lot at Ocean Park and replacing it with some sort of pervious material.

Commissioner Walters asked if we'd heard from the PBA about negotiations. Ms. Mascaro answered that she recently heard from them and that she's in the process of scheduling a meeting for a meet and greet. He also asked who authorized the purchase of the drone; Ms. Mascaro answered that previous Town Manager Daniels authorized the purchase. It's not considered a capital item because it has a shelf life of less than 5 years. Commissioner Walters also mentioned an electric bike program for the police officers.

C. Town Clerk Report – no report

D. Departmental Reports:

1. Building Department – no comments
2. Public Works Department – Public Works Supervisor Davis reported that the Avenue B crossover steps were replaced and they are starting on the crossover at 6th Avenue; they now have a signed maintenance agreement with Merritt Air; Automated Logic is on track to complete their portion of the a/c controls project; Public Works is patching manhole covers utilizing the welding capabilities of their new employee, Joe Matthews. In response to a question asked by Commissioner Walters, the Public Works Supervisor said B.S.E. was paid \$800 to review the Andrews Avenue final as-built drawings to make sure they were in compliance with the work that had actually been performed.
3. Code Enforcement – no comments
4. Police Department – Commissioner Runte thanked Chief Griswold for her quick response to the recent vehicle break-ins on his street. The Chief said the perpetrator has pleaded guilty to all charges.
5. Fire Department – Commissioner Quarrie asked about something that was mentioned at a previous meeting: Was Dr. McPherson ever contacted about utilizing his license for BLS medical direction. She was told that the matter is still being pursued.
6. Finance Department – no comments

Commissioner Quarrie made a motion to approve the finance report; Vice Mayor Hoover seconded. Motion carried 4-1 with Commission Walters casting the dissenting vote.

XIII. Town Commission Comments

A. General Comments

Commissioner Walters said that an argument started earlier in the meeting because the Mayor violated Town policy by calling him a liar. He doesn't like having his integrity questioned; you don't call a fellow commissioner a liar.

Mayor Simmons has had extensive emails regarding turtle lighting violations. The ordinance is hard to enforce so we really rely on notifications from the public. The Mayor suggested that the Sea Turtle Preservation Society be contacted to see if they have volunteers to patrol the beach. Perhaps we could provide educational materials to the public.

B. Review of Commission Action List

2 items were added:

- Sea turtle patrol to be addressed at the July 18, 2019 RTCM
- Fire tax briefing to be addressed at the August 7, 2019 TCW

6 items were closed

XIV. Adjournment


Commissioner Walters made a motion to adjourn; Commissioner Quarrie seconded. Motion carried 5-0.

The meeting adjourned at 9:08 pm

ATTEST:



James D. Simmons, Mayor



Nancy Wilson, Town Clerk