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Town of Ponce Inlet

Town Council Regular Meeting Minutes

August 22, 2019

1. **CALL TO ORDER:** Pursuant to proper notice, Mayor Smith called the meeting to order at 6:00 p.m. in the Council Chambers at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

2. **PLEDGE OF ALLEGIANCE:** Mayor Smith led the Pledge of Allegiance.

3. **ROLL CALL:**

Town Council present:

Mayor Smith, Seat #1

Councilmember Milano, Seat #2

Vice-Mayor Hoss, Seat #3

Councilmember Perrone, Seat #4

Councilmember Paritsky, Seat #5

Staff Members Present:

Mr. Jake Baker, Senior Planner

Ms. Cherbano, Human Resources Director/Deputy Clerk

Mr. Disher, Assistant Director of Planning & Development

Chief Fabrizio, Police Chief

Mr. Gunter, Public Works Manager

Ms. Hunt, Administrative Assistant

Mr. Joulani, Director, Planning & Development

Ms. McColl, Finance Manager

Chief Scales, Fire Chief

Atty. Shepard, Town Attorney

Ms. Witt, Town Manager

Ms. Zengotita, Cultural Services Manager

4. **ADDITIONS, CORRECTIONS OR DELETIONS TO THE AGENDA:** Ms. Witt requested to add item 5-A, Announcement from the Ponce deLeon Lighthouse Preservation Association; add new item 13-B, Discussion of Ponce deLeon Circle Sewer Survey; and to re-letter the remaining agenda items under 13-B as appropriate. There were no other changes.

Councilmember Paritsky moved to adopt the agenda as amended; seconded by Vice-Mayor Hoss. The motion PASSED 5-0, consensus.

5. **PROCLAMATIONS, PRESENTATIONS, AND AWARDS:**

A. **Announcement by the Ponce deLeon Lighthouse Preservation Association -** Tara Lamb, Association President, announced that the Lighthouse Preservation Association is currently under contract with Greenacres to purchase the Pacetti Boarding House property. She noted that the Pacetti Boarding House is an endangered historic property and the Lighthouse

46 Association plans to restore the property and possibly open a museum there. She stated that the
47 Association will continue to keep the Town informed of the progress of the purchase. Council
48 applauded them for this purchase.

49
50 **6. CONSENT AGENDA:** There were no requested changes; Mayor Smith asked for public
51 comments – hearing none, he closed public comments.

- 52
53 A. Approval of the Town Council special meeting minutes – July 18, 2019.
54
55 B. Approval of the Town Council regular meeting minutes - July 18, 2019.
56
57 C. Ratification of the Florida Communities Trust Management Plan Update.
58
59 D. Approval of the request for co-sponsorship of the Lighthouse Loop ½ Marathon
60 and 5K; co-sponsorship is limited to use of the Town’s means of available
61 advertising and waiver of the special event permit fee.
62
63 E. Approval of a Professional Services Contract with Witt O’Brien for Emergency
64 Debris Monitoring, should one be needed following a storm event for the purposes
65 of meeting FEMA requirements for validation of the amount of debris collected.
66

67 Councilmember Paritsky moved to approve the consent agenda as presented; seconded by Vice-
68 Mayor Hoss. The motion PASSED 5-0, consensus.

69
70 **7. OLD/NEW BUSINESS ITEMS PREFERRED AT THE BEGINNING OF THE**
71 **MEETING:**

72
73 **A. Authorization of proposed solid waste, recycling, and bulk waste collection**
74 **contract with Waste Pro, Inc.** Ms. Witt reviewed the history. She stated that Council selected
75 Waste Pro as its first-choice provider based on the two bids received. Ms. Witt noted one change
76 to the contract: page 14 of the contract, the deadline dates of July 15th will be revised to July 1st
77 for annual rate adjustments. She noted that Ken DeForest of Waste Pro was present to address any
78 concerns. Mayor Smith asked Mr. DeForest how cubic yard size is measured; is it before or after
79 compaction. Mr. DeForest stated it is measure before compaction. He explained that crews will
80 photograph piles that appear to be in excess of the 12-cy limit; customers will only be billed
81 additionally for those amounts in excess of the 12-cy limit. Ms. Witt stated the pick-up dates will
82 be mostly the same with the recycling day being the only change. This schedule is effective
83 October 1st: Mondays and Thursdays - household trash; Tuesdays - recycling; and Wednesdays -
84 yard waste. Councilmember Perrone asked how the residents will be notified. Ms. Witt stated that
85 notification will be made through all available means to the Town. There were no other questions.
86 Mayor Smith asked for public comments – hearing none, he closed public comments.
87

88 Councilmember Paritsky moved to authorize the Town enter into the proposed contract with Waste
89 Pro for the collection of solid waste, recycling and bulk waste collection as amended on page 14;
90 seconded by Vice-Mayor Hoss. The motion PASSED 5-0, consensus.
91

92 **8. PUBLIC HEARINGS / QUASI-JUDICIAL MATTERS:**

93
94 **A. Appeal of Planning Board’s denial of variance requested for 4958 South**
95 **Peninsula Drive regarding front yard setback regulations. Applicant: Matthew Dvorak, on**
96 **behalf of Matthew and Philip Dvorak, owners.** Mr. Disher reviewed the request and the decision
97 rendered by the Planning Board. Councilmember Milano asked when the structure was
98 constructed. Mr. Disher stated that it could be as early as the 1940s. Councilmember Perrone asked
99 if permits were obtained to build the structure in that location. Mr. Disher stated he did not have
100 that information available. Attorney Shepard stated that no new evidence could be introduced;
101 Council is limited to the evidence presented to the Planning Board. Councilmember Milano
102 expressed concerns that commercial properties were not included in the post-disaster buildback
103 program. Mayor Smith stated that staff are the experts and indicated he did not see sufficient
104 findings to justify not supporting their recommendation. Councilmember Paritsky asked several
105 questions of Mr. Disher:

106 1. What is unique, if anything, about the property which is creating a hardship in this
107 instance? Mr. Disher stated that although the property is about an acre in size, there are existing
108 structures surrounding it that are close to the water and reconstruction would require a complete
109 redevelopment plan.

110 2. The property is approximately one acre in size; and the building is 70 x 40
111 (encompassing approximately 7% of the entire property); is there another location on the property
112 where the building could be rebuilt? Mr. Disher stated “Yes”.

113 3. Is the Town in any way prohibiting the use of the B-2 zoned land if a variance for a
114 single, relatively small non-conforming structure is denied in this instance? Mr. Disher stated,
115 “No”.

116 4. Regarding the third criteria, that first, the literal interpretation of this code would deprive
117 the applicant of rights commonly enjoyed by others within the same zoning classifications. We
118 already established that we are not depriving this applicant of rights commonly enjoyed by other
119 properties in B-2. The second part of the criteria, that denial of the variance would create an undue
120 hardship on the applicant, would you agree that the structure could be re-built elsewhere on this
121 property and the applicant would be able to run his business if it were destroyed? Mr. Disher stated,
122 “Yes”.

123 5. Is there room on the lot to re-build a building or buildings of that size or larger on his
124 lot?? Mr. Disher stated, “Yes”.

125 6. Does this property meet the minimum lot size required for a B-2 zoned property? Mr.
126 Disher stated, “Yes”.

127 7. Is the lot conforming? Mr. Disher stated, “Yes”.

128 8. And are there no hardships or issues with the lot size? Mr. Disher stated there is no issue
129 with the lot size.

130 9. Is it fair to state that the hardship exists because redevelopment is necessary to meet
131 setbacks? Mr. Disher stated, “Yes”, that is the issue.

132 10. A denial of the variance would require a development plan that places the building of
133 similar size or larger somewhere else on the property; with a 25-foot setback and includes
134 landscaping and other current Code requirements, correct? Mr. Disher stated, “Yes”,

135 11. A redevelopment plan would work but it means money? Mr. Disher stated, “Yes”.

136 12. Would you agree that economic disadvantage or the owner's preference of what the
137 owner wants to do with the property is not sufficient to constitute a hardship entitling the owner to
138 a variance? Mr. Disher stated, "Correct, it cannot be the sole reason."

139 13. When reviewing criteria listed in 5-A, the variance does not conflict with Town policies
140 such as preservation of dunes, water conservation or preservation of natural vegetation, Staff
141 limited its inquiry of Town policies to environmental, but would you agree that there are other
142 Town policies beyond the three listed? Mr. Disher stated, "Yes, there are multiple policies."

143 14. Even if these policies are not listed, the criteria states: "such as", which leads one to
144 reasonably believe that there may be others. I believe the Town would not want to a variance that
145 conflicts with **any** of the Town's Codes or policies. Mr. Disher stated, "Correct, it must be
146 consistent with the Comprehensive Plan".

147 15. The Comp Plan sets out a blueprint for what we want our community to look like. When
148 you look at the Comp Plan and Chapter 2, Future Land Use Element (FLUE), these incorporate
149 our policies; specifically, 1.3.2 under Objective 1.3, specifically states that a non-conforming
150 structure may not be reconstructed if the cost exceeds 65%. So, we have existing policies other
151 than Environmental, so we want conformity with our land and structures, right? Mr. Disher agreed.

152 16. If we look at the policies regarding criteria, it appears the Town is trying to eliminate
153 non-conforming commercial structures.

154 17. Regarding the last criteria, please explain "applicant's desire"; how is this criteria being
155 met? Mr. Disher stated that the variance requested is the minimum required to allow the existing
156 structure to be rebuilt.

157 18. Regarding the final criteria, that the variance is in harmony with the general intent and
158 purpose of the LUDC and if granted: this variance could be dormant for quite some time and allows
159 a zero setback on someone else land; it sits on the triangle parcel and gives the appearance of a
160 setback when in fact, it is on the property line; believes it is not the general intent of the Code to
161 allow zero setbacks and appears to be in conflict with the Comprehensive Plan. Two of the
162 purposes in the LUCD section 1.2(a) and (b) are to implement the comprehensive plan and ensure
163 that no use or development of land occur unless it is consistent with the comprehensive plan.
164 Within the comprehensive plan we have policies that address nonconforming structures. We want
165 them in conformity if there is damage over 65%.

166
167 Vice-Mayor Hoss stated that variances are granted to seek relief for something that was not the
168 applicant's fault. She further stated that staff weighed every aspect, and there is no need to pull the
169 various criteria apart, as they either apply or they do not. In this instance, staff found the criteria
170 had been met. She encouraged Council to look at staff's recommendation, as they are the
171 professionals; if the criteria are met, the variance should be granted.

172
173 Councilmember Milano commented that it would be helpful to know how many non-residential
174 (commercial) structures exist and stated his concerns of singling-out a specific group of property
175 owners. Mr. Disher stated that he would have to research the number of commercial properties and
176 report back.

177
178 Mayor Smith moved to approve the variance as presented; seconded by Vice-Mayor Hoss. The
179 motion PASSED 4-1, with the following vote: Mayor Smith - yes; Vice-Mayor Hoss - yes;
180 Councilmember Perrone - yes; Councilmember Milano - yes; Councilmember Paritsky - no.

182 **9. PUBLIC HEARINGS / NON-QUASI-JUDICIAL MATTERS:** None.

183
184 **10. CITIZENS' PARTICIPATION:** Mayor Smith opened public participation. Jim Utter,
185 4715 Montrose Avenue expressed concerns that the ECHO Grant Program is slated to “sunset” in
186 2020. He stated that many of the Town’s park projects would not have been possible without these
187 funds and suggested the Town let the County know that the residents want to keep the ECHO
188 Grant program funded. He then read a statement regarding “moral obligation”, reminding everyone
189 to treat each other with respect. Mayor Smith closed public participation. Councilmember Milano
190 stated he has the same concerns about the ECHO Grant Program.

191
192 Council consensus was to request the Town Manager prepare a resolution in support of keeping
193 the current ECHO Grant Program funded and to present at the next meeting for consideration.
194 (Editor’s note: Following this meeting, Volusia County announced support for keeping the current
195 ECHO grant program in place for the remainder of its current term. Therefore, instead of a
196 resolution supporting that at the September 2019 meeting, a discussion item on the ECHO program
197 as a whole has been added).

198
199 **11. ORDINANCES (FIRST READING) AND RESOLUTIONS:**

200
201 **A. Resolution 2019-08, authorizing a rate increase for solid waste, recycling, and**
202 **bulk waste collection in accordance with the new contract for collection services.** Attorney
203 Shepard read the Resolution by title only. A RESOLUTION OF THE TOWN COUNCIL OF THE
204 TOWN OF PONCE INLET, FLORIDA AMENDING RATES IN APPENDIX A OF THE TOWN
205 CODE OF ORDINANCES, PART XIII (GARBAGE COLLECTION); PROVIDING FOR
206 CODIFICATION; PROVIDING FOR CONFLICTING RESOLUTIONS; PROVIDING FOR
207 SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. Ms. Witt explained the
208 purpose of this resolution is to set the new rates for collection services in accordance with the new
209 provider and contract. She noted that it comes with a 100% increase for the same level of service
210 that residents receive currently. Mayor Smith noted that this was instead of the other bid which
211 would have been a 200% rate increase. Mayor Smith asked for public comments – hearing none –
212 he closed public comments.

213
214 Councilmember Paritsky moved to approve Resolution 2019-08 authorizing a rate increase for
215 solid waste, recycling, and bulk waste collection; seconded by Vice-Mayor Hoss. The motion
216 PASSED 5-0, with the following vote: Councilmember Paritsky - yes; Vice-Mayor Hoss - yes;
217 Councilmember Milano - yes; Councilmember Perrone - yes; Mayor Smith - yes.

218
219 **12. OLD BUSINESS:**

220
221 **A. Discussion of draft ordinance for referendum to propose a Heritage Lands**
222 **provision in the Town’s Charter.** Attorney Shepard read the draft ordinance by title only. AN
223 ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PONCE INLET, VOLUSIA
224 COUNTY, FLORIDA, SUBMITTING TO THE ELECTORS OF PONCE INLET A PROPOSED
225 AMENDMENT TO SECTION 3.04 OF THE CHARTER OF THE TOWN OF PONCE INLET
226 REGARDING THE COUNCIL’S POWER TO CONVEY OR LEASE REAL PROPERTY
227 OWNED BY THE TOWN; PROVIDING BALLOT TITLE, BALLOT SUMMARY AND

228 QUESTION, AND TEXT FOR THE PROPOSED AMENDMENT; PROVIDING DIRECTIONS
229 TO THE TOWN CLERK; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN
230 EFFECTIVE DATE FOR THE APPROVED AMENDMENT; PROVIDING FOR AN
231 EFFECTIVE DATE FOR THIS ORDINANCE. Councilmember Paritsky stated that after the
232 residents voiced concerns during a Council meeting wherein it was proposed to sell the “triangle”
233 parcel, she did research and discovered that the current elements require one Council meeting and
234 a vote by simple majority. She requested consideration of stricter regulations and additional means
235 of public notice. Councilmember Paritsky reviewed her proposed six elements: two Council
236 meetings, a vote by super-majority, public notice posted on the subject property; notice posted on
237 water bills, with possible additional notice to condominium properties; and if more than one
238 proposal is presented, a finding that the selected proposal is in the best interest of the Town.
239 Councilmember Milano stated that he did not agree with the proposed ordinance as written, nor
240 does it make sense to have to wait one year before the decision goes before the voters; he suggested
241 a re-write. Mayor Smith stated that the elected body is usually the most-informed; and asked why
242 we (Council) would abrogate an item that the residents put us here to do. He provided examples
243 of properties sold, swapped, and conveyed over the years. Attorney Shepard stated that the
244 proposed ordinance came from another entity and there are reasons why you would not want this
245 in your Charter, noting that this particular example is onerous; he deferred to Councilmember
246 Paritsky’s comments during the June meeting. Councilmember Perrone concurred, noting that with
247 the current election cycle, it is possible that three new members could be elected in one year.
248 Councilmember Milano expressed a desire for protection for the properties currently owned by the
249 Town. Attorney Shepard stated that three votes can change an ordinance unless specific language
250 is in the ordinance that requires a super-majority vote. Councilmember Perrone asked about
251 “public noticing”. Ms. Witt explained that it is done through all of the Town’s available means of
252 advertising. Mayor Smith asked for public comments – hearing none – he closed public comments.

253
254 Council consensus was to request the Town Attorney create a new proposed ordinance (not a
255 Charter amendment) increasing notice requirements and providing for a super-majority vote for
256 the sale of Town-owned properties and only a super-majority vote could change the ordinance in
257 the future.

258
259 **13. NEW BUSINESS:**

260
261 **A. Discussion of conceptual design for Davies Lighthouse Park Improvements.**

262 Ms. Zengotita explained that this is a conceptual design for Davies Park improvements to include
263 expanding the sidewalk and sewer upgrades. She noted that only one 16” oak tree will have to be
264 removed. She stated that the design plan is 60% complete and is seeking Council’s feedback. Ms.
265 Witt noted that staff is seeking to enhance the park and complement the Lighthouse. Mayor Smith
266 requested that the proposed light near the Veterans Memorial be moved back towards the gazebo
267 because that is a prime spot for setting up photography and video equipment at the ceremonies;
268 Councilmember Paritsky noted that JoAnne Hamilton brought concerns to her attention (lighting,
269 ADA accessibility, tramway marker) and it appears that they have all been addressed; she asked if
270 the picnic tables and benches will be set in concrete. Ms. Zengotita stated yes and they will be
271 ADA accessible. Councilmember Paritsky asked if repairs/repainting of the restroom building
272 could be part of the project. Ms. Zengotita explained that “maintenance items” are not covered
273 under an ECHO grant, but if the Cultural Services Board or Town Council asks staff to research

274 the matter, funds can be proposed in a future budget as a separate project. Mayor Smith opened
275 public comments - JoAnne Hamilton, 86 Oceanway stated she is in the park every day and it is
276 heavily used. She stated that the park needs ADA-accessible areas, suggested that benches be
277 installed in the gazebo, and a concrete pad installed where the “break” in the fence is to cross the
278 street. Mayor Smith closed public comment. Ms. Witt stated that regarding the gazebo seating, that
279 has been something they have revisited since installing it. Staff welcomes both citizen and the
280 Cultural Services Board’s input on whether there should be any fixed seating added to the gazebo.
281 The problem has been that it is used for a variety of events with different setups and fixed seating
282 may not accommodate that as well. Any ideas on how to manage both improved daily use and
283 continue to allow space for event setups are most welcome, as we have struggled with that balance.
284

285 Council consensus was to move forward with the project.
286

287 **B. Discussion of Ponce deLeon Circle Sewer Survey** - Ms. Witt reminded Council
288 of the grant application that Council had authorized for submittal to St Johns River Water
289 Management District about a year and a half ago for a large sewer project in the Town, which
290 would have included Ponce deLeon Circle. The Town’s grant application was denied because our
291 project was not considered “shovel ready”. Since that time, the Town has been working with the
292 City of Port Orange, as directed by Council in the 2018 Goals Session, on how to proceed with
293 sewer expansion. Port Orange has had success in obtaining grants when seeking them for smaller
294 projects and in looking at our Sewer Master Plan it seems that the location of Ponce deLeon Circle
295 makes it particularly ripe for grant funding. Port Orange is taking the lead on writing this grant
296 and they have contracted with Mead & Hunt to perform sanitary sewer surveying services, which
297 will be needed for the submittal of the grant application. If the grant is awarded, the costs could be
298 limited to the connection fee and the plumber for those residents. She noted that affected residents
299 will be notified and invited to a meeting by the Town for information on this potential project. Mr.
300 Giannini, PE of Mead & Hunt (Town Engineers) explained that the project must be shovel-ready
301 in four or five months to meet the grant application deadline and this surveying is part of that.
302 Mayor Smith asked if the project includes a new road. Mr. Giannini stated that a completely new
303 road would be installed upon completion of the project. Councilmember Perrone asked if this area,
304 being canal properties, was chosen because they are in a flood zone and would it prevent other
305 properties from qualifying. Mr. Giannini stated this area was given a higher priority because there
306 is water on both sides of the road. Ms. Witt elaborated that the entire Town is surrounded by water
307 and is therefore eligible under the same high priority criteria for water quality grant funding.
308

309 No action taken by Council; for informational purposes only.
310

311 **B. Revision to the Wilbur Bay Wetlands Management Plan to eliminate the**
312 **required covered picnic area and replace that requirement with one for a bench.** Ms.
313 Zengotita explained that the current management plan requires a covered picnic area be installed,
314 however the area does not have parking and staff recommends that a bench would be more suitable
315 for the area. This item is brought forth in accordance with the Council Goals set forth in 2018.
316 Councilmember Perrone suggested the bench face west to view the river instead of facing the road
317 like our other benches; all agreed. Mayor Smith opened public comment - hearing none, he closed
318 public comment.

319 Councilmember Paritsky moved to approve the revision to the Wilbur Bay Wetlands Management
320 Plan as presented; seconded by Vice-Mayor Hoss. The motion PASSED 5-0, consensus.
321

322 **C. Discussion of current board member attendance policy, as adopted via**
323 **Resolution 2013-02.** Vice-Mayor Hoss stressed the importance of the work produced by the
324 volunteer boards and board member’s attendance. She proposed the following modifications to the
325 existing attendance policies: 1) to include “special” meetings along with regular meetings when
326 counting absences; 2) change “five” absences to “four” in a rolling year; 3) add “critical” before
327 the word illness; and 4) consideration of a leave of absence “one month at a time, to be determined
328 on a case-by-case basis”. Councilmember Paritsky expressed concerns with requiring volunteers
329 to be held to stricter attendance standards than Council, as outlined in the Charter. She further
330 stated that a one month leave of absence fails to take into account the Council’s compassion in
331 situations requiring more time for an individual’s leave of absence. Councilmember Paritsky
332 further stated that to her knowledge there is no attendance problem with our boards and that our
333 volunteers take their responsibilities seriously; she did not believe that this Resolution should be
334 changed. Attorney Shepard noted that as elected officials, the Council attendance requirement is
335 bound by State law and the Town Charter. Councilmember Perrone suggested Council ask each
336 board to discuss the policies and determine if there were any changes needed; Councilmember
337 Milano agreed, adding that Council needs to be compassionate.
338

339 Council consensus was that this item be brought to each board for discussion and input; and to
340 provide comments to Council.
341

342 **14. FROM THE TOWN COUNCIL:**
343

344 A. Councilmember Paritsky, Seat #5 – Suggested that the Town Manager and Police
345 Chief begin working on New Year’s Eve fireworks concerns.
346

347 B. Councilmember Perrone, Seat #4 – Wished everyone a safe Labor Day; stated there
348 is an opening on the River 2 Sea TPO; noted that Sunrail may be coming to DeLand; and
349 questioned the thought process behind the proposed renovations to Beach Street in Daytona Beach
350 that include removing the parallel parking spaces and reducing traffic lanes.
351

352 C. Vice-Mayor Hoss, Seat #3 – Encouraged anyone who is interested in serving on
353 one of our boards to look into some of the opportunities available.
354

355 D. Councilmember Milano, Seat #2 – Reported that he has attended several meetings
356 for the First Step Shelter; noted that Daytona Beach and Volusia County have each contributed \$5
357 million and committed \$400,000 per year for the next five years - then Flagler County asked for
358 ten beds at a cost of \$200,000 per year; and believes that with the right resources - anyone can be
359 successful.
360

361 E. Mayor Smith, Seat #1 – Nothing to report.
362

363 **15. FROM THE TOWN MANAGER** – Referenced the Council Calendar, noting the two
364 budget hearing dates of September 12th at 6:00 pm and September 19th at 6:00 pm and that she will

365 have the budget completed and ready for Council by September 5th; noted that the detour for South
366 Peninsula Drive due to the Pollard Park project has been delayed to September 3rd to accommodate
367 Labor Day; and confirmed that notices have been hand-delivered to affected residents.

368

369 **16. FROM THE TOWN ATTORNEY** – Nothing to report.

370

371 **17. ADJOURNMENT** - Mayor Smith adjourned the meeting at 8:17 p.m.

372

373 Respectfully submitted by:

374

375

376

Jeaneen Witt, CMC, Town Manager/Town Clerk

377 Peg Hunt, Board Secretary