

Town of Melbourne Beach

REGULAR TOWN COMMISSION MEETING January 17, 2024 at 6:00 p.m. COMMUNITY CENTER - 509 OCEAN AVENUE

MINUTES

Commission Members:

Mayor Alison Dennington
Vice Mayor Sherri Quarrie
Commissioner Corey Runte
Commissioner Marivi Walker
Commissioner Adam Meyer

Staff Members:

Town Manager Elizabeth Mascaro
Town Clerk Amber Brown

1. Call to Order

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

2. Roll Call

Town Clerk Amber Brown conducted a roll call

Commission Members Present

Mayor Alison Dennington
Vice Mayor Sherri Quarrie
Commissioner Corey Runte
Commissioner Marivi Walker
Commissioner Adam Meyer

Staff Members Present

Town Manager Elizabeth Mascaro
Finance Manager Jennifer Kerr
Building Official Robert Bitgood
Fire Chief Gavin Brown
Public Works Director Tom Davis
Town Clerk Amber Brown

3. Pledge of Allegiance and Moment of Silence

Mayor Alison Dennington led the Pledge of Allegiance.

4. Meeting Agenda – Additions/Deletions/Changes

Commissioner Corey Runte made a motion to approve the proposed meeting agenda; Commissioner Marivi Walker seconded; Motion carried 5-0.

5. Consent Agenda

- A. Appointment of Jason Judge as an Alternate to the Planning and Zoning Board

Vice Mayor Sherri Quarrie made a motion to approve the consent agenda; Commissioner Corey Runte seconded; Motion carried 5-0.

6. Proclamations/Presentations/Awards

- A. Presentation on Brevard County Ocean Drownings by Dr. Travis Hunsucker

Dr. Travis Hunsucker who is an assistant professor of Ocean Engineering at Florida Tech delivered a presentation on Brevard County Ocean Drownings. He spoke about things to consider include updating and streamlining signage, create a lifesaving club, and add year-round lifeguards at Ocean Ave.

Vice Mayor Sherri Quarrie asked Fire Chief Gavin Brown for any input.

Fire Chief Gavin Brown spoke about previously doing water safety presentations at Gemini, the people who are drowning are not typically from this area, and the fire department has free classes such as CPR, beach safety, basic first aid, etc. One change related to lifeguards is now there is a year-round lifeguard patrol doing education that is covering our Town.

Commissioner Marivi Walker asked for more details regarding signage.

Dr. Travis Hunsucker spoke about how the signs at each crossover are like a data dump of information. Reduce the amount of signs and include signs directing the public to guarded beaches.

Commissioner Corey Runte spoke about the funding needing to come from the County because they get all of the bed night tax which includes short-term rentals, bed and breakfasts, hotels, etc. and the Town does not get a fair share back. Contact Brevard County to fund a full-time lifeguard at Ocean Park, and if you notice someone is a tourist remind them of beach safety/dangers.

Vice Mayor Sherri Quarrie asked if there is any data comparing fatalities to the beach renourishment.

Dr. Travis Hunsucker spoke about not seeing any significant correlation in this data.

Commissioner Adam Meyer asked if Dr. Travis Hunsucker has considered presenting it to Brevard County.

Dr. Travis Hunsucker spoke about the United States Lifesaving Association sent a memo with this information. He would present it to them if they were interested.

7. Finance/Budget Report

Finance Manager Jennifer Kerr spoke about an IRS issue where they applied the Town's 941 tax payment from 2020 to 2019, so it showed an overpayment for 2019 which the IRS sent back, and a shortage for 2020. The issue was resolved with the IRS refunding the Town with interest.

Commissioner Corey Runte made a motion to approve the finance/budget report as presented; Commissioner Marivi Walker seconded; Motion carried 5-0.

8. Department and Board/Committee Reports

A. Public Works Department

Public Works Director Tom Davis spoke about the base on the west side of the library being washed out; he met with the County and they have agreed to fix it. He spoke about the cost of the damage from a vehicle that drove onto the pier is given to the police to recoup the cost of the damages. He spoke about engineering being done for the Poinsettia project.

B. Building Department

Building Official Robert Bitgood spoke about how December is typically not as busy due to the holidays.

C. Code Enforcement

Building Official Robert Bitgood spoke about ramping up code enforcement. Two properties went to the Special Magistrate this month and there is more going next month.

Mayor Alison Dennington asked for a little more detail on the violations that say multiple violations, attractive nuisance, or vacation rental to describe what the violation is.

D. Fire Department

Fire Chief Gavin Brown spoke about maintaining an ISO rating of class 3.

E. Police Department

Commissioner Adam Meyer asked if the Police Chief position had been posted.

Town Manager Elizabeth Mascaro spoke about how it should be posted by Friday.

F. Town Clerk

No additions

9. Public Comment (Non-Agenda Items)

After being acknowledged by the Mayor, members of the public should state their name and address for the record. The Commission encourages citizens to prepare their comments in advance. Each individual will have three (3) minutes to address the Commission on any topic(s) related to Town business, not on the Agenda.

Mark McBride – 310 Second Ave

Mark McBride spoke about multiple issues related to vacation rentals in Town. Asked what has been done and what will be done.

Mayor Alison Dennington spoke about wanting to work on a handbook for the public but also for the police to know what can be done. She would like to start working on tightening up the code by meeting with the public starting in February.

Commissioner Corey Runte spoke about appreciating the list that was provided, but the Town has not had a Town attorney to make changes to the code. If you see a vacation rental that is not registered with the Town turn the information into the Town.

Mayor Alison Dennington asked to add a Task List item to create a vacation rental handbook for the public and the police.

Vice Mayor Sherri Quarrie spoke about a new bill in legislature related to vacation rentals that the Florida League of Cities is against because it takes away some home rule by making vacation rentals more responsible to the State rather than the local municipalities.

Susan Martin – 2202 Rosewood Drive

Susan Martin asked if the Commission voted to place the stop signs, if a study was done, and what was the justification. Nobody wants those two stop signs there. If there is no documentation or justification then take them down.

Vice Mayor Sherri Quarrie spoke about not voting on it, and the Police Chief and Town Manager discussed the issues with reckless driving on the road and they decided the stop signs were the solution. She spoke about some residents do like the stop signs, people getting passed on a double yellow, and an employee was almost hit.

Mayor Alison Dennington spoke about being against the stop signs and wanting to come up with procedures for when new stop signs are being considered. We should not spend money to do a study now that the stop signs are already in. One resident provided a compromise of pulling one stop sign and leaving the other one in place. Would like to bring this item back on the agenda to discuss removing them.

Commissioner Corey Runte spoke about never voting on those stop signs, some residents like the stop signs, and he would not decide on removing them and changing the traffic pattern again without more data. Wants to do a survey of residents between Ocean Ave and Andrews from Riverside to A1A.

Mayor Alison Dennington spoke about if a survey is done it should go to all of the residents.

Vice Mayor Sherri Quarrie spoke about doing a formal survey to collect the data, but when your Police Chief says the conditions are unsafe then you should do something.

Mayor Alison Dennington spoke about having a workshop just for the stop signs.

Commissioner Corey Runte spoke about how the survey can go out to the whole Town, but there should be a way to separate the data just for the immediate area.

Mayor Alison Dennington spoke about posting an informal survey online for residents to fill out and return to Town Hall to get a rough idea of resident input.

Commissioner Corey Runte moved to recommend proceeding with a survey of all of the residents of the Town about the stop signs; Vice Mayor Sherri Quarrie seconded, Motion carried 5-0.

Ken Lebrato – 213 Cherry Dr

Ken Lebrato spoke about Commissioner Corey Runte owes Sue Martin an apology. Who decided to close the Town for a week?

Mayor Alison Dennington apologized.

Commissioner Runte apologized for using the word ignorant, but spoke about the statement being untrue and broad.

Town Manager Elizabeth Mascaro spoke about the previous Town Commission approved it. The Building Department was going to be closed, so the other employees were given the option to use vacation time to take those three days off as well. Some employees did work part of the time.

Pia Mann - 2205 Redwood Ave

Pia Mann asked about the cement barrier along A1A by the gas station that was moved into the bike lane who is responsible for that and why has it not been removed?

Building Official Robert Bitgood spoke about that being the State's responsibility and they are the only ones that can remove it. It is not easy to remove because there are underground pipes, but the Town has been in contact with FDOT to have it removed.

Kathleen Hart - 407 Surf

Kathleen Hart asked if there are any plans to fix the Fifth Ave beach access.

Building Official Robert Bitgood spoke about working with the public works department on the plan to first make all of the crossovers safe and then go back and rebuild all of them.

Town Manager Elizabeth Mascaro spoke about first shoring up any crossovers that need it and then start rebuilding them, however, the work can only be done outside of sea turtle season.

Paula Panton – 809 Riverside Dr

Paula Panton spoke about how the stop signs were installed without there being any written documentation from the Town, and according to FDOT studies, they were installed for the wrong reasons. Traffic patterns have not changed since the stop signs were installed and asked what happened to doing a traffic study.

Commissioner Corey Runte spoke about doing a traffic study right now with the stop signs in place would not provide accurate data.

Kate Wilborn – 502 Second Ave

Kate Wilborn spoke out against the stop signs. Instead, maybe put a stop sign at the corner where a vehicle drove off the road instead.

10. Public Hearings/Special Orders

11. Unfinished Business

- A. Consideration of volunteer board member applications for the Board of Adjustment – Town Clerk Amber Brown

Town Clerk Amber Brown spoke about the Board of Adjustment has had two alternate positions open for years. We originally received four applications, however, two people have removed their applications from consideration. It is up to the Town Commission how they would like to proceed. The options are to open it back up to the public to receive more applications, fill one position, fill both positions or fill neither position.

Mayor Alison Dennington spoke about the two applications for consideration are qualified.

Mayor Alison Dennington passed the gavel to Vice Mayor Sherri Quarrie.

Mayor Alison Dennington made a motion to approve the two applications for both positions; Commissioner Adam Meyer seconded for discussion, Motion was withdrawn by Mayor Alison Dennington and Commissioner Adam Meyer.

Commissioner Corey Runte spoke about only voting for one candidate due to the second one not being qualified.

Commissioner Marivi Walker agreed with Commissioner Corey Runte and spoke about how important those positions are.

Commissioner Adam Meyer spoke about not wanting to vote on Travis Hunsucker's application until they have had time to interview him.

Commissioner Corey Runte spoke about only voting for Travis Hunsucker and not Katherine Wilborn. He will not vote for someone just because they applied. The Board is a quasi-judicial board and requires a lot of information and experience to qualify for that position.

Mayor Alison Dennington spoke about the position is for an alternate that has been open for years. We have someone who has been going to many meetings. She is qualified in the sense that she has lived her for 40 years, comes to meetings routinely, has a doctorate, and is an intelligent woman.

Commissioner Marivi Walker spoke about there being a lot to it, board members need to understand architectural details, read plans, and have a different level of education. Doctor Wilborn is good and competent in what she knows but does not have the background for this. She is very confident in Travis Hunsucker and his knowledge. The Commission does not need to fill the position just because it is open and she does not feel Doctor Wilborn has the necessary background needed for this position, so she would not be in favor of approving that application but would approve Doctor Hunsucker's application.

Vice Mayor Sherri Quarrie spoke about Doctor Wilborn having an excellent resume, however, she does not have the background for what the Board of Adjustment requires. Maybe she could start with the Planning and Zoning Board first.

Mayor Alison Dennington spoke about how it would not hurt to fill the position instead of leaving the position open.

Dawn Barlow – 1710 Pine St

Dawn Barlow asked if anyone has asked the Planning and Zoning Board members if they are interested in joining the Board of Adjustment.

Town Manager Elizabeth Mascaro spoke about the Planning and Zoning Board members had not been asked.

Gail Gowdy – 215 Ash Ave

Gail Gowdy spoke about being a member of both Planning and Zoning and Board of Adjustment and there are no qualifications for joining the Boards. The positions are for learning especially the alternate positions.

Commissioner Corey Runte spoke not agreeing because a quasi-judicial board has legal implications and can make legal changes to the Town Code. When a Board member is absent at a meeting the alternate would be a voting member. It is not in the best interest of the residents to put someone in a position just because they applied. He would love to see Ms. Wilborn on another board for the Town other than the Board of Adjustment.

Mayor Alison Dennington spoke about doing a disservice to ourselves by not filling the position. Doctor Wilborn would attend the meetings and learn.

Kate Wilborn – 502 Second Ave

Kate Wilborn spoke about how this is personal. She has been researching the Board of Adjustment, County Code, and State Statutes and believes she is qualified.

Crystal Cain – 309 Surf Rd

Crystal Cain spoke about how it was recently noticed that alternate positions on some Boards have been left vacant, why are current board members not asked about new applicants?

Vice Mayor Sherri Quarrie spoke about the code stating the board shall be composed of, when reasonably possible, one architect, one engineer, one member at large from the building industry, one building contractor, and one member at large from the public.

Steve Walters – 416 Sixth Ave

Steve Walters spoke about there being two realtors and a developer that don't want

There was too much commotion to discern the remainder of the public comment from Steve Walters.

Mayor Alison Dennington spoke about withdrawing her motion to get the gavel back.

Commissioner Adam Meyer agreed to withdraw his second on the motion.

Commissioner Corey Runte made a motion to approve only one candidate Doctor Hunsucker for one alternate position; Commissioner Marivi Walker seconded, Motion carried 3-2 with Mayor Alison Dennington and Commissioner Adam Meyer dissenting.

Mayor Alison Dennington spoke about finding it disturbing that the Commission is so willing to accept Doctor Hunsucker without questioning him. He is not an engineer.

Commissioner Corey Runte spoke about Travis Hunsucker is an engineer who has very strong qualifications and he has known him for several years and has a personal testament.

Tina Coppock – 505 Avenue B

Tina Coppock spoke about this just wasting time, there is a motion on the floor stop discussing it and vote. You are not going to change anyone's mind by arguing. We just hired an attorney who is going to sit through the same thing over and over again wasting the taxpayer's money.

Mark McBride – 310 Second Ave

Mark McBride spoke about the list of qualifications including one member of the public is on the Board. Is that position filled? He does not believe all engineers would understand

easements and structures. There is a trust issue with the Commission. It seems the Commission has been asleep at the wheel. He has been a resident for a long time, and Doctor Wilborn has a like-minded interest and is highly educated.

Frank LaGrassa 412 First Ave

Frank LaGrassa spoke about when Mrs. Wilborn talked about there being too many variances, favoritism, and following the rules. A position with fundamental values counts for that Board.

Steve Walters – 416 Sixth Ave

Steve Walters spoke about being run off during his last public comment. Why allow Commissioner Corey Runte to interrupt and speak out of turn? The Mayor does not need to pass the gavel to make a motion.

Mayor Alison Dennington spoke about voting against the motion because she would like to vote for both candidates not just one.

B. Consideration of the 2024-2025 Seasonal Lifeguard Contract with Brevard County – Town Manager Elizabeth Mascaro

Town Manager Elizabeth Mascaro spoke about this contract being for the same schedule the Town currently has with the County. The cost would be \$127,934.17 for a part-time guard for the fiscal year 2024-2025. The Town's portion would be 50% of the cost. If the Town had a full-time lifeguard it would cost over \$330,000.00. The County did mention the possibility of a reduced fee based on the bed-night tax if the County Commission approves it. She asked the Commission if they want a seasonal guard, a full-time guard, or no guard. There is now a roaming guard between Indialantic and Spessard Holland.

Commissioner Adam Meyer asked if we no longer had paid parking would the County pay 100% of the cost.

Town Manager Elizabeth Mascaro did not believe the County would pay 100% at all.

Mayor Alison Dennington asked if the Town's portion was 50% or 50% minus the 20%. We currently pay around \$40,000 and the new contract would cost around \$60,000. What is the difference for the \$20,000? Why does the Town have to pay for the operating expenses and infrastructure and capital expenses?

Town Manager Elizabeth Mascaro spoke about the Town's portion being 50% of the cost. The difference in cost is for the increase in costs and to cover operating expenses.

Fire Chief Gavin Brown spoke about how the County came up with the amount by totaling all of the costs associated with the lifeguard program such as electricity, the building, the secretary, etc. for the lifeguard program then divided it among the total guarded locations. The Town would not be able to provide the same service for the same price. His

understanding about the tourist tax dollars was if the Town decided to create its own program then the County would look into providing some of the tourist tax dollars to the Town but it might only be around \$10,000. The \$63,000 price is still a good deal, however, if the Commission wants to be completely fair then the Town should pay 50% and the County should pay 50% and then share the tourist tax dollars. Instead of the tourist tax dollars which was 20% coming off the County's portion not off the top, so the County would pay 30%, tourist tax dollars would pay 20%, and the Town would pay 50%.

Mayor Alison Dennington spoke about wanting to dig into the numbers more and the cost listed for Comp & Benefits seems more reasonable.

Commissioner Corey Runte spoke about the County Commission deflecting a request to use some tourist tax dollars to put towards lifeguards, instead, they took the tourist tax dollars and put it towards the County's contribution of the contract. Then they take their entire operating budget and divide it by the number of towers. He does not agree with it, but they have the leverage because of the cost if the Town did its own program.

Mayor Alison Dennington asked what the roaming lifeguard is.

Fire Chief Gavin Brown spoke about how when there were several drownings last year there was no one down here on this part of the beach. Now they have added a full-time year-round supervisor that patrols from Indialantic to Ponce De Leon. As of that meeting, they said the patrol and mutual aid would not be affected if Melbourne Beach chose not to have lifeguards.

Mayor Alison Dennington spoke about how the \$111,000 number is more reasonable.

Vice Mayor Sherri Quarrie spoke about the fourth whereas mentions parking data, so maybe we should use that to show that the Town does not make enough in parking revenue to afford it.

Commissioner Corey Runte spoke about authorizing the Town Manager to proceed with negotiations with the County.

Mayor Alison Dennington spoke about adding a provision that if they close it for a period of time then they would pro-rate the cost, include a map of where the tower will be, and the section about delegating to a third party stipulate if that would be the Town Manager or the Town Commission.

Fire Chief Gavin Brown spoke about if the Commission wants to negotiate the cost that is up to them, but from the service side he is not concerned about what is in the contract. They do what is best for the community, so they will move the chair if there is a rip current.

Outside Appointed Council Clifford Repperger spoke about not needing to get into that much detail because that would be handled internally.

Commissioner Adam Meyer spoke about asking the County if Ocean Park was not paid parking would the County pay 100% of the cost because if the cost continues to go up it will cost the Town more than what is made in parking fees.

Commissioner Adam Meyer made a motion to table this until we get more information from the Town Manager speaking with them; Motion failed for a lack of a second.

Town Manager Elizabeth Mascaro spoke about Brevard County bringing it to their Commission in February.

Commissioner Corey Runte spoke about leaving the contract alone but working on getting the cost down.

Town Manager Elizabeth Mascaro spoke about this contract is for next fiscal year. Asked Outside Appointed Council Clifford Repperger if the Town could approve it and then exercise the 60-day termination provision if we cannot negotiate the cost.

Outside Appointed Council Clifford Repperger spoke about how you can do that. He suggested approving the agreement with the proposed changes.

Commissioner Corey Runte made a motion to approve the proposed agreement at a cost of \$111,254.11 with a provision to pro-rate the cost if closed for more than a day; Commissioner Marivi Walker seconded, Motion carried 5-0.

Paula Panton - 809 Riverside Dr

Paula Panton spoke about how educating the public about pool and ocean drownings is very important. It is the Town's responsibility to protect the people at the beach. Lifeguards save lives.

- C. Selection of a law firm to represent the Town of Melbourne Beach as the Town Attorney – Town Manager Elizabeth Mascaro

Town Manager Elizabeth Mascaro spoke about the Commission met with Ryan Knight and Drew Smith from the law firm Shephard, Smith, Kohlmyer & Hand.

Vice Mayor Sherri Quarrie spoke about being impressed with them.

Commissioner Adam Meyer spoke about his only concern was if they had a different attorney attend each meeting, so add something to the contract that Mr. Knight would be the one attending the meetings. The firm is very impressive with its experience and knowledge of small towns and small beach towns. About fifteen minutes of the meeting was about vacation rentals and their experience working with that issue.

Town Manager Elizabeth Mascaro spoke about discussing that concern with Mr. Knight and he assured her that it would be consistent and he would be the one, but we can add that to the contract.

Commissioner Corey Runte agreed and advised they were overqualified. They have over 18 municipal clients of various sizes and have probably gone through anything that we will go through.

Mayor Alison Dennington spoke about going out for an RFP for a town attorney, three law firms provided proposals, and one firm pulled their proposal, yesterday the Commission scheduled to interview the two remaining firms, but one did not show up. The second law firm is very qualified, but one issue is our main attorney does not have town government experience. Recommended shortening the contract to six months then review it.

Outside Appointed Council Clifford Repperger spoke about how there is always a termination clause, and having a longer contract locks in the current rate.

Commissioner Corey Runte spoke about keeping the duration the same because there is a termination clause, and if the contract is shortened they would wonder why.

Commissioner Corey Runte made a motion to approve the selection of Shepard, Smith, Kohlmyer & Hand, P.A. from Maitland, Florida as our next law firm; Commissioner Marivi Walker seconded, Motion carried 5-0.

12. New Business

- A. Consideration of Settlement Agreement Multiple Cases, Dennington and Funoe, LLC v. Town of Melbourne Beach - Attorney Clifford Repperger and Town Manager Elizabeth Mascaro

Outside Appointed Counsel Clifford Repperger spoke about the Town being involved in 3 separate litigation cases and an appellate case. One election contest suit from 2022, two public records suits from 2023, and a 2022 appeal of a code enforcement order related to a shed. The Town is the defendant in the three litigation cases and the appellee in the appeal. The Mayor Ms. Dennington is the plaintiff in the three litigation matters and the manager of the LLC that is the appellant in the appeal matter. Both parties have made their positions clear in the pleadings which are all public records from the Clerk of Courts. Due to the unique situations where the governing body and the head of the governing body are adverse litigants has created a contentious aura or mood related to the function of the Mayor, Town Commission, and Town Staff. That situation is not optimal and has prevented the Commission from functioning as constructively as it should have since the Mayor was elected. Recognizing all of this he, the Town Manager, Mayor Dennington, and her counsel came together collaboratively to examine the cases and the positions of the parties in an attempt to formulate the framework of a resolution that would be mutually beneficial for both parties. What the Commission is considering is the product of hard work from both parties. The nuts and bolts of the tentative settlement are as follows:

1. Ms. Dennington will voluntarily dismiss the election lawsuit and the two public records lawsuits.
2. The appeal case will be stayed for six months while the Town Commission agrees to consider a code amendment that would or could if approved either grandfather the existing shed or legalize it depending on what code changes are made or what the

Commission decides to do. That would or could depending on the Commission's actions moute the appeal and result in a dismissal of the appeal. The Mayor's argument regarding the code change that is at issue that the Commission must consider is not an admission. It is an issue that the Town is aware of and can address it or not. It has been raised in the appeal and is being addressed. It would be addressed in the administrative hearing as well. If the Town does not approve the code change then the appeal case would continue. So the stay is for 6 months while the Commission considers the change if they do not approve it then the appeal continues. The Mayor will provide information regarding the product code and tie-downs to allow the Town to ensure the safety of the accessory shed and administratively process any permits the Building Official deems necessary.

3. All parties bear their own fees and costs related to all litigation and appeals.
 4. The Town will withdraw its motion for sanctions against Mayor Dennington in the election suit.
 5. Both parties and all parties represented under the Town's representation umbrella including himself and his law firm will sign mutual releases and waivers in covenants not to sue Ms. Dennington. Ms. Dennington has already executed the settlement agreement which provides for the release of the Town and all of those named defendants.
 6. Mayor Dennington agrees to withdraw any of the outstanding public records requests filed with the Town for the past two years and to waive any claims related to the same.
- As this settlement agreement is considered it is very important for everyone to understand that neither party is admitting to any liability or being deemed the prevailing party. Both parties are acknowledging that the full scope of the allegations and defenses raised in the cases will not be litigated or judicially decided on. This exercise is not intended to be a vehicle for finger-pointing. Both parties are respecting each other's rights to bring the claims and assert the defenses that the Town has asserted. If the Commission desires to discuss strategy or the specifics of the cases he would request an executive meeting so the specifics can be discussed in greater detail. That is not what tonight's discussion is about. Tonight is an opportunity to work together positively and productively and to do what this Commission has been stating that it wants to do since Ms. Dennington was sworn in. Which is to work together in the spirit of cooperation for the betterment of this Town. Nothing more and nothing less. He and the Town Manager believe that the proposed terms of the settlement allow for just that. The parties can move forward without the burden of these issues and without the continued dedication of resources to a definitive end in sight. We believe that the entry into this agreement is prudent, responsible, and in the best interest of the Town and the Mayor. He and The Town Manager are recommending that the Town Commission approve this settlement agreement.

Town Manager Elizabeth Mascaro spoke about this being brought forward by Mayor Dennington. This is not something that the Town pursued. This was something the Mayor brought to the Town in the spirit of moving forward. She believes this is a sincere attempt by the Mayor to come forward and put these issues to bed so that we can all move forward.

Mayor Alison Dennington spoke about abstaining from the vote related to her involvement in the litigation and passed the gavel to Vice Mayor Sherri Quarrie.

Commissioner Marivi Walker asked if there was any opportunity for the Town to recoup any fees. This settlement does not change the Town's position in anything.

Outside Appointed Counsel Clifford Repperger spoke about the only typical ways to get legal fees are by statute or by contract, and it would be different in each case. In the election lawsuit, there is no provision to recoup, however, the Town filed a motion for sanctions if granted it is possible that the Town could recoup. The Town would first have to prevail and two the courts would have to find that the suit was so frivolous or irresponsible pleading that it warranted sanctions. There was a motion for sanctions filed back in October and the courts have yet to make a ruling on that. As part of the settlement agreement, the case will be dismissed and the Town will not pursue its motion for sanctions in that case. For the public records suites, either party could seek fees depending on who prevails. Sitting here today neither party has the right to recover fees. To get to that point you would have to litigate each case much further. Both parties are agreeing to walk away from the issues, there will be no judicial decision, and no change in position by either party. As to the appeal that one is a little more complicated because the Commission has to consider if it wants to amend the code, while that case is stayed for six months. Neither party prevails or admits defeat.

Commissioner Corey Runte appreciates all parties spending the time to come to an agreement. He asked if there are any public records requests outstanding that have been worked on, but not paid. A non-negotiable item for him is a mutual non-disparagement agreement, so no parties can maliciously discuss the cases. If we want to move forward then this shouldn't be an issue.

Town Clerk Amber Brown spoke about public records requests are not completed until the estimate is paid, so no.

Outside Appointed Counsel Clifford Repperger spoke about that not currently being part of the settlement.

Nathan Meloon is Mayor Alison Dennington's attorney in the public records lawsuits.

Mayor Dennington spoke about wanting to move forward and feels both sides gave up a lot. She is willing to look into it, but holding up the agreement for the non-disparagement agreement would take a long time.

Brief recess at 9:25 pm to allow Mayor Dennington to speak with her attorney in private.

Town Clerk Amber Brown conducted a roll call

Commission Members Present

Mayor Alison Dennington
Vice Mayor Sherri Quarrie
Commissioner Corey Runte
Commissioner Marivi Walker
Commissioner Adam Meyer

Staff Members Present

Town Manager Elizabeth Mascaro
Outside Appointed Counsel Clifford Repperger
Building Official Robert Bitgood
Fire Chief Gavin Brown
Town Clerk Amber Brown

Nathan Meloon, Mayor Alison Dennington's attorney, spoke about this being an unusual situation. With both parties being on a public board there are enforceability and privilege issues as far as what is said on the dais. Not opposed to having a scripted response related to the cases, but not in favor of the non-disparagement agreement due to enforcement issues.

Commissioner Corey Runte spoke about not agreeing because the only time there would be financial and enforcement issues is if someone sued for disparage. A disparage agreement is a very basic thing that is added to legal agreements all of the time.

Nathan Meloon, Mayor Alison Dennington's attorney, spoke about how what is said on the dais is privileged, so it would create enforcement issues for a non-disparagement agreement.

Mayor Alison Dennington spoke about not not being in favor of it, but there is a timing issue because there is a trial in two weeks. She does want to move forward and does not plan on disparaging anyone.

Commissioner Corey Runte spoke about there not being a timing issue because the agreement can be approved with the addition of a non-disparagement agreement which is a very common template that would not need to be customized but would make it legally binding.

Commissioner Adam Meyer asked if there were any other concerns to add to the agreement.

Commissioner Corey Runte asked if the Commissioners agreed with a non-disparaging clause.

Commissioner Marivi Walker spoke about being fine with the clause.

Vice Mayor Sherri Quarrie spoke about not hanging her hat on the non-disparagement agreement but agrees that the Commission needs to stop talking about it.

Outside Appointed Counsel Clifford Repperger spoke about how he does not think you can put a generalized non-disparagement clause in this agreement because this is a governing body and things can get heated at times, so this agreement would be waved at each other all the time unless you narrow down the scope. If that is what the Commission wants they can make a motion with the addition of adding that narrowed clause for the other party to decide to accept it or not.

Mayor Alison Dennington spoke about having a stock statement that all parties could only say if anyone brings up the cases.

Commissioner Adam Meyer asked a question about a hypothetical scenario. If in a future meeting, there is a discussion on public records requests and someone on the dais says to another person on the dais you are an idiot for that thought would that fall under the non-disparagement agreement because the statement was about public records requests?

Outside Appointed Counsel Clifford Repperger spoke about that is an example of his concern of a broad non-disparagement clause that someone might say you violated it. This is why maybe doing what the Mayor suggested with a scripted statement would be better.

Vice Mayor Sherri Quarrie asked how the non-disparaging agreement would interact with the code change discussion about sheds.

Outside Appointed Counsel Clifford Repperger spoke about the discussion would be specific to the code change not to the case.

Brief recess at 9:53 pm to allow Mayor Dennington to speak with her attorney in private.

Town Clerk Amber Brown conducted a roll call

Commission Members Present

Mayor Alison Dennington
Vice Mayor Sherri Quarrie
Commissioner Corey Runte
Commissioner Marivi Walker
Commissioner Adam Meyer

Staff Members Present

Town Manager Elizabeth Mascaro
Outside Appointed Counsel Clifford Repperger
Building Official Robert Bitgood
Fire Chief Gavin Brown
Town Clerk Amber Brown

Nathan Meloon, Mayor Alison Dennington's Attorney, spoke about having the same position as before that the best way to address everyone's concerns is to have a prepared statement in response to any questions. Should the Town not approve that, he looks forward to working with Mr. Repperger and going to the hearing on the 30th.

Commissioner Corey Runte spoke about how his position has not changed.

Commissioner Adam Meyer made a motion to move forward as is; Motion failed for a lack of a second.

Commissioner Corey Runte made a motion to approve the settlement agreement with a condition of a mutually agreeable non-disparagement agreement as discussed; Motion failed for a lack of a second.

Outside Appointed Counsel Clifford Repperger spoke about recommending the Commission approve the agreement as is, and thinks the Town would be making a mistake by not approving the agreement.

Commissioner Adam Meyer made a motion to approve the agreement as is; Commissioner Marivi Walker seconded, Motion carried 4-0 with Mayor Alison Dennington abstaining

Tina Coppock – 505 Avenue B

Tina Coppock spoke about being so happy as a taxpayer that we are trying to move forward. Do all of the thirty or so parties that are listed have to agree? The terms of this agreement are not online. In the shed case that is being stayed for six months, the Mayor would not be getting preferential treatment and would have to follow what everyone else has to do. So the long and short is that this settlement agreement is separate from what the rest of the Town has to do.

Outside Appointed Counsel Clifford Repperger spoke about there being a Release and Waiver of Liability and Covenant Not to Sue of the named parties that are in the agreement. Those parties are being represented under the Town's umbrella, so the expectation is that those parties will fulfill it. If anyone does not agree they would be on their own if this agreement is approved. This has no precedential value beyond the agreement.

Frank LaGrassa – 412 First Ave

Frank LaGrassa spoke about understanding why Mayor Dennington's attorney is concerned with a non-disparage agreement. Someone could claim she disparaged them, and now there is a lawsuit that she has to pay for herself whereas the taxpayers would be paying for the Town.

13. Administrative Reports

A. Town Manager

No additions

14. Commission Reports


15. Task List

16. Public Comment

17. Adjournment

Commissioner Corey Runte moved to adjourn; Commissioner Marivi Walker seconded, Motion carried 5-0.

Meeting adjourned at 10:09 p.m.



Alison Dennington, Mayor

ATTEST:



Amber Brown, Town Clerk

