## SUMMARY MINUTES OF THE ISLAMORADA, VILLAGE OF ISLANDS REGULAR VILLAGE COUNCIL MEETING

Founders Park Community Center
87000 Overseas Highway
Islamorada, FL 33036
Thursday, July 1, 2021
5:30 PM

The Regular Village Council Meeting was open to in-person attendance and also utilized the Zoom video conferencing application for public participation.

### CALL TO ORDER / ROLL CALL

Mayor Pinder called the meeting to order at 5:32 p.m. Village Clerk Kelly Toth called the roll with the following Councilmembers being present on roll call: Mayor Buddy Pinder, Vice Mayor Pete Bacheler, Councilman Mark Gregg, Councilman David Webb and Councilman Henry Rosenthal. Also, present were Village Manager Greg Oravec, Village Clerk Kelly Toth, Village Attorney Roget Bryan and other pertinent staff.

### PLEDGE OF ALLEGIANCE AND INVOCATION

Peter Frezza led the Pledge of Allegiance. Mayor Buddy Pinder provided the invocation.

### REPORTS, PRESENTATIONS AND ANNOUNCEMENTS

**Oath of Office Ceremony for Gregory J. Oravec**

Village Clerk Kelly Toth administered the oath of office to incoming Village Manager Gregory J. Oravec.

Mayor Pinder asked the Village Attorney to comment regarding the availability of the Zoom. Village Attorney Roget Bryan stated the Village Council meetings had resumed their regular meeting format however the Zoom option was available to the public and provided the Zoom meeting identification number and phone number. Mr. Bryan noted that there would be a follow-up discussion regarding virtual meeting participation.

**Acknowledgement of Committee Member’s Service**

Mayor Buddy Pinder acknowledged Cheryl Culberson, who served on the Local Planning Agency from November 2006 to May 2021; and Joe Robinson, who served on the Near Shore Water Regulation Citizens’ Advisory Committee from November 2016 to May 2021. He expressed his gratitude for their service.

Councilman David Webb acknowledged Jack Niedbalski’s service on the Achievable Housing Citizens’ Advisory Committee from May 2016 to May 2021 and expressed gratitude for his service.

Councilman Mark Gregg acknowledged Van Cadenhead’s service on the Local Planning Agency from August 2017 to May 2021 and expressed gratitude for his service.

**Acknowledgement of Service & Presentation of Plaque:**

John Timura, Near Shore Water Regulation Citizens' Advisory Committee
Mayor Buddy Pinder recognized John Timura's service on the Near Shore Water Regulation Citizens' Advisory Committee from May 2008 to May 2021. Mayor Pinder thanked him for his service and presented Mr. Timura with a plaque.

**Acknowledgement:**

Mayor Pinder expressed his gratitude to the Key West International Airport, Monroe County Administrator Roman Gastesi, and Monroe County Commissioner David Rice for the $15,000 contribution to the Village's Fourth of July event. He thanked Fire Chief Terry Abel for his efforts in the event preparation.

## PUBLIC COMMENT

Mayor Buddy Pinder opened general public comment.

Van Cadenhead commented about the resignation of Senior Planner Craig Southern, Mr. Southern's contributions and the lack of affordable housing; and noted the 2023 buildout, future redevelopment and the need for more affordable housing.

Angel Borden opined about not being able to comment during the consent agenda because the items were approved in bulk. She commented regarding tab 2 and the need to extend the wastewater amnesty program.

Councilman David Webb objected to the use of General Public Comment to comment pertaining to tabbed agenda items.

Mayor Pinder closed public comment.

## AGENDA: Requests for Deletion / Emergency Additions

Councilman Mark Gregg added two discussion items to the Mayor/Council section of the agenda: (1) discussion regarding a holiday schedule for boat ramps and parks; (2) discussion regarding illegal vacation rentals. Councilman David Webb added a discussion regarding the days and hours of operation for landscape maintenance services and contractors.

## CONSENT AGENDA

**TAB 1:** Minutes of the May 20, 2021 Regular Village Council Meeting and the June 2, 2021 Special Call Village Council Meeting

**TAB 2:** Resolution Authorizing Extension of the Code Compliance Lien Amnesty Program

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AUTHORIZING AN EXTENSION OF THE CODE COMPLIANCE LIEN AMNESTY PROGRAM FOR COMPLIANCE WITH CENTRAL WASTEWATER CONNECTION AND THE VILLAGE CODE OF ORDINANCES; AUTHORIZING THE VILLAGE MANAGER TO TAKE ALL NECESSARY AND EXPEDIENT ACTION; AND PROVIDING AN EFFECTIVE DATE**

**TAB 3:** Resolution Approving Municipal Advisor Agreement between the Village and RBC Capital Markets, Inc.

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING AN AGREEMENT WITH RBC CAPITAL MARKETS, INC., TO PROVIDE MUNICIPAL FINANCIAL ADVISOR SERVICES; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE ANY AGREEMENTS; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

**TAB 4:** Resolution Approving Interlocal Agreement between Monroe County, Florida and Islamorada, Village of Islands for Fiscal Year 2021-2022 Boating Improvement Funds Not to Exceed $10,000 for the Islamorada Buoy Maintenance Program

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY, FLORIDA AND ISLAMORADA, VILLAGE OF ISLANDS TO PROVIDE REIMBURSEMENT FUNDING FROM BOATING IMPROVEMENT FUNDS DURING FISCAL YEAR 2021-2022; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

**TAB 5:** Resolution Approving an Extension to Agreement with Attention Media, LLC for a Social Media Outreach Program and Other Related Services

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING AN EXTENSION TO THE AGREEMENT WITH ATTENTION MEDIA, LLC, TO PROVIDE A SOCIAL MEDIA OUTREACH PROGRAM; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE ANY AGREEMENTS; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE**

Mayor Buddy Pinder opened public comment on the consent agenda.

Mike Murphy commented about being able to speak with the Council and staff when needed and opined that this was not a problem in the past and that he did not understand why it was now an issue.

John Kocol commented on tab 2 noting the Council had already granted six extensions for the wastewater amnesty program; suggested the Village Manager could address the legitimate hardship situations on a case-by-case basis; noted the other property owners in Islamorada had complied with the connection requirements; and suggested a compounded penalty for those that did not comply after the latest extension.

Mayor Pinder closed public comment.

Councilman David Webb made a motion to approve. Vice Mayor Pete Bacheler seconded the motion. Council voted and the motion passed 5-0.

## ORDINANCES

**TAB 6:** First Reading: Ordinance Amending Chapter 30, Article IV, Division 3 "Quasi-Judicial procedures" Section 30-254 of the Village Code related to Ex Parte Communications

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS", ARTICLE IV "ADMINISTRATIVE PROCEDURES", DIVISION 3 "QUASIJUDICIAL PROCEDURES" OF THE VILLAGE CODE OF ORDINANCES RELATED TO QUASIJUDICIAL PROCEDURES; SPECIFICALLY AMENDING SECTIONS 30-254 TO AMEND THE SCOPE OF PERMITTED EX PARTE COUMMUNICATIONS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY**

This item was heard at 5:50 p.m. Village Attorney Roget Bryan read the title of the ordinance, stated it was first reading. Mr. Bryan provided the staff report noting the amended portion prohibits oral ex parte communications by Councilmembers regarding quasi-judicial matters. He commented that there was a presumption of prejudice regarding communications that occurred outside of a quasi-judicial hearing. He explained that with regard to quasi-judicial matters, written communications would be permissible and would have to be submitted at least two days in advance of the hearing.

Councilman David Webb stated that some individuals were under the impression that this amendment pertained to all communications with Councilmembers and asked the Village Attorney to explain the types of quasi-judicial matters the amendment would apply to. Village Attorney Roget Bryan explained what a quasi-judicial hearing was and provided the following examples of quasi-judicial hearing items: applications for administrative relief, beneficial use, conditional use permits, plat approvals, site specific rezoning, site plan approvals, variances, vested rights determinations, land use map amendments and noted there were a few others.

Councilman Webb asked if the Jennings Rule or Florida Statute was directed toward the applicant that was involved with the quasi-judicial matter or did it apply to anyone that wanted to speak with a council member. Mr. Bryan explained the Jennings Rule (Jennings v. Dade County) held that if there were verbal communications outside of a quasi-judicial hearing regarding the matter that was the substance of the hearing, the Jennings case held that it was inherently prejudicial and noted that communications were intended to influence the decision one way or another.

Mr. Bryan explained that the Florida Statute was amended to provide a mechanism by which a councilmember could disclose communications, which was "curative" and recognized the presumption that comes with prejudice. Councilman David Webb stated that if the ordinance amendment were adopted, anyone could submit a written comment; that the written comment would relieve a councilmember from having to reduce the conversation to writing which would be submitted to the Village Attorney at least two days before the hearing. The Village Attorney confirmed and stated that the written communication would become part of the record; and that individuals could still appear at the hearing and provide testimony to Council. Vice Mayor Pete Bacheler asked if was acceptable if a councilmember reduced the conversation to writing and submitted it to the Village Clerk. The Village Attorney stated a councilmember could, but that it would behoove them not to receive the information directly outside of a quasi-judicial hearing but for the confines of the exemption being discussed. The Village Attorney provided an analogy in which a person was not permitted to speak with a judge regarding a matter that the judge would be ruling on in court; noted the same principles would apply; and that it would not be appropriate for the judge to reduce the conversation to a memorandum that he would use to make his ruling.

Councilman Mark Gregg stated that he brought the item forward for consideration; his objective was to avoid a legal or ethical issue; summarized the event that led to the Jennings Rule; and explained that in the Jennings Rule, the plaintiff alleged that both their state and federal rights to due process were violated because they did not have access to the conversations, did not know the details of the conversation, and did not have an opportunity to refute the conversations that would have an effect on influencing the decision maker. He stated the court agreed with the plaintiff and read the following from the Third District Court of Appeal: "Ex parte communications are inherently improper and are anathema to quasi-judicial proceedings. Quasi-judicial officers should avoid all such contacts where they are identifiable. We hold that the allegation of prejudice resulting from ex parte contacts with the decision makers in a quasi-judicial proceeding states a cause of action." Councilman Gregg stated the principal concerns of the court were integrity of the process and fairness of the result.

Councilman Mark Gregg stated Florida Statute provided a curative mechanism which was currently followed by Council when they disclosed their conversation during quasi-judicial proceedings; that the statute removed the presumption of prejudice, but that it did not remove the Constitutional rights of someone who claims their rights were violated because they did not participate in the conversation that they had no knowledge of, nor opportunity to listen to or participate in. Councilman Gregg stated that while the statute's claim was cured, the Constitutional claim remained open. He stated his intent was to protect the Council from a claim; and that written communications could still occur which could be shared with anyone before the hearing. He acknowledged the Village Attorney's analogy regarding communications with a judge and commented that while the Council did not function as a judge, they still were required to treat everyone fairly and to refrain from making a decision until they had heard all the evidence and testimony.

Councilman Henry Rosenthal stated the Council had operated for twenty years without an issue, abiding by State statutes; that he was not completely satisfied with the summary; and stated he was strongly opposed to the amendment. He stated he could not concede to have someone speak with him with the idea that he may write the conversation down, with their approval, and that conversation may become public knowledge. He stated, "what you say cannot be used against you" and that what was being proposed was that it could be used against you. He noted the privacy in an attorney / client relationship; and stated that he disagreed with the amendment.

Mayor Buddy Pinder asked if the quasi-judicial matters were advertised. The Village Attorney confirmed the matter was publicly advertised. Mayor Pinder commented that the opposition had a right to speak with a councilmember. The Village Attorney explained that the case was speaking to conversations outside of the quasi-judicial hearing; that it was not about notice and opportunity to be heard; and that the amendment had been proffered to change oral conversations outside of a quasi-judicial hearing. Mayor Pinder expressed his concern regarding transparency; that people would not be able to speak with Councilmembers and would have to put their comments in writing; and expressed opposition to the proposed changes.

Councilman David Webb asked if the statutory requirements and the court case were optional. The Village Attorney stated the presumption of prejudice is not ambiguous and that the Florida Statutes were curative in that they attempted to cure a prejudice or violation. Councilman Webb stated that he perceived that Councilman Gregg was trying to make it easier for the Council to be transparent and accurate; and that if a prejudice was not cured, then there could be a legal challenge. He commented regarding the minimal nature of the disclosures he had heard at Council meetings in the past and opined that that was an issue because it was not curative. He explained that the substance of the Jennings Rule and State Statute was that everyone should know what the conversations are that the decision makers are having; that individuals opposed needed to actually do something to manifest their protest, but that was designed so that everyone was engaged with all aspects of the decision making and that private conversations on the side did not allow for that. Councilman Webb stated he was not happy with the way ex parte communications were handled over the last twenty years; and stated that whenever you fix a problem, there would be unintended consequences noting that it would make it harder for residents to voice their opinion.

Councilman Mark Gregg stated that it was not expressly prohibited, but that a problem was being created; stated it was about fairness; that it was not a blanket prohibition noting there was nothing on the current agenda that would preclude the public from speaking with a councilmember about; opined that when a councilmember speaks with someone outside of a quasi-hearing they were giving the perception that they were being swayed; noted that just because it was done a certain way for twenty years did not make it right; and that there were no limitations on how the Council could do better which was the purpose of the amendment.

Mayor Pinder asked how many times the Village had been sued over the matter. The Village Attorney stated the Village had been challenged in the past but that he did not know how many had to do with alleged ex parte communications. Councilman Mark Gregg stated he was looking ahead, not backwards. Mayor Pinder stated that each council member sees through a different eye lens; that Islamorada was a small community; that each councilmember had a level of integrity that they carried; that he wanted to do the best for the community; and that he did not see it the same way as Councilman Gregg. Councilman Henry Rosenthal expressed opposition to stifling communication; suggested that if you were playing cards and someone asked to see your cards, that would not fly and that was essentially what was being requested; that he could not find where the Village was not incompliance with State law; that the Council was in pretty good compliance with the Jennings Rule; and that he could not find where the Village had violated the Constitution. Mayor Buddy Pinder commented that he was going to hire a constitutional attorney himself to give him an opinion on the matter before the item had to be voted on again.

Mayor Buddy Pinder opened public comment.

The following individuals expressed opposition to the proposed amendment: Van Cadenhead, Ed Davidson speaking on behalf of the Islamorada Community Alliance, John Kocol, Susan Rafanello, Angel Borden, Sue Miller, John Timura and Cheryl Meads.

Comments made pertained to an opinion that the proposed changes pushed people away from their elected representatives; a suggestion to table or deny the amendment; an opinion that developers cultivated relationships with elected municipal officials and conducted negotiations with Village staff while taxpayers were restricted to three minutes of public comment; that the content and substance of the conversations remained concealed from the public; a suggestion to post a development application on the Village website once it was deemed complete; an opinion that residents did not get the same consideration as applicants; a suggestion for an email blast that announced development and zoning related items, posting the items online and mailing notifications to everyone within a 600 square foot radius; providing the residents with the same opportunities to meet with the planning department regarding the item; a suggestion to document the concerns of the residents in the staff report and make the staff report available to the public several weeks before the hearing date; the proposed change would further restrict non-applicant citizen input; the proposed amendment ignored FS 286.0115(2) which allowed for broader input and increased protection from litigation on land use matters; a reading of FS 286.0115(2)(c) regarding persons not being precluded from communicating directly with the decision making body; an opinion that the proposal did not protect the Council or staff, but further stifled community input; impinging upon an individual's right to speak in confidence; that issues are often worked out ahead of time through communication; that the public trusts the Council to look at the evidence when making a decision and consider whether that decision is in the best interest of the community; that the Jennings Rule was unfair to elected officials that were trying to represent the people that elected them; that the Village's current regulations complied with the provisions of Florida Statute 286.0115; concern expressed regarding changes to public records requests, suggested Council member term extensions and limiting the public's access to council members; former Councilwoman Cheryl Meads was never asked to disclose the content of a conversation; concern that the Village Council was not receiving all the advice that they needed to hear; a suggestion to investigate the number of lawsuits filed against the Village pertaining to public disclosure and an opinion that there were none; and a request to not limit residents access to their public officials.

John Kocol requested the Village Council disclose, for transparency reasons, all of the real estate deals they were involved with in Islamorada for the past three years; any BPAS applications they currently had; and to include their relatives, business associates and acquaintances in the disclosures. He referenced the Jennings Rule and asked how a council person would document conversations with their relatives. Councilman Mark Gregg stated that Mr. Kocol had an excellent idea, but that the particular agenda item was not the time to provide the disclosure and noted that his were all a matter of public record.

Councilman Mark Gregg stated that the public would not be cut off from communicating with an elected official on a quasi-judicial matter, but instead would be asked to communicate in writing so everyone could see what happened. He stated the Florida Statute did not cure the Constitutional problem; and suggested that he was proposing a fairer, cleaner process where backroom deals were not done, and everyone could participate on a level playing field. Mayor Buddy Pinder disclosed that his nephew, Hank Pinder, in 2018 applied for a permit and that he had disclosed that when he voted on the item.

Councilman David Webb stated he did not think it was the appropriate time to make disclosures and that if the Council wanted to discuss the suggestion and everyone prepare written disclosures that was fine. He requested more decorum in the meeting; expressed his understanding that some of the items were emotional and if there was a better way to do it that was fine; and that he wished they could be more productive in the conversations and not have them directed as a personal attack or a threat.

Mayor Pinder invited Ed Davidson to speak. Mr. Davidson stated the current law did not require disclosure of the substance of the content of the conversation which was what the public needed to know; and suggested a formal mechanism that would require the disclosure of the substance and content of the conversation which would provide transparency.

Councilman David Webb stated to Councilman Mark Gregg that it was his interpretation that the amendment was requesting a written document that was the totality of the conversation from a resident, developer or whoever, noting that there would now be a record, and that there would be no interpretation or trying to recollect a conversation. He stated that he was stunned that conclusions were being drawn that the amendment was in some way trying to prohibit residents from communicating; that the communications were about the quasi-judicial issues and making them a level playing field; and noted the developer would have to communicate to councilembers in writing as well as anyone else. Councilman Mark Gregg stated that there may be a middle ground such as a memorandum about a conversation but that he was concerned it would not satisfy the Constitutional requirement. Mayor Buddy Pinder suggested the item be tabled or investigated further and if that were agreeable fine, if not he would make a motion to leave it the way it was and would make a motion right now. Councilman David Webb commented that there were interesting nuances referenced during public comment regarding FS 286.0115 and the requirement to be in sync with the Florida Statues.  Councilman Webb made a motion to table the item to allow for further review. Councilman Gregg asked what the next step would be if it were tabled. Councilman Webb stated he wanted to have the best product if there was going to be a change. Councilman Mark Gregg stated he would agree to tabling the item in the interest of making it a better product; noted there was not a sense of urgency; noted the minimal requirements within the current regulations; and that he would be happy with an amendment that leveled the playing field.

Councilman David Webb restated his motion to table. Councilman Mark Gregg seconded the motion. Mayor Pinder stated he wanted to hear the opinions of Vice Mayor Bacheler and Councilman Rosenthal. Councilman Webb stated there was a motion and a second. Mayor Buddy Pinder stated that he had made a motion to leave the amendment as it was; that he was trying to get clarity; and asked Councilman David Webb to give him a minute. Vice Mayor Pete Bacheler stated he wanted to table the item.

Councilman Henry Rosenthal stated he wanted to get the item over with tonight; and that the sentiment of the public was over weighting for what the Council was considering. He stated these were people that were going to call him, sit down in his house and that they would have a discussion. He stated that he was going to say to these people he may have to disclose what they were talking about, that they might have to write it down or he might have to write it down and that it was ridiculous. Councilman Rosenthal stated that he was not given one example in the last twenty years where it would have been a necessary cure of what the problem was; and that he could not see any Constitutional problem that the Council was faced with that required curing.

Mayor Buddy Pinder asked the Village Attorney about a procedural question. He said that he had stated earlier that the Council could either talk about it or he was going to make a motion to leave the item as it was. Mayor Pinder stated that he had made the motion first. Councilman Henry Rosenthal seconded the mayor's motion. The Village Attorney stated he heard the mayor say he would make a motion but that he was not sure the mayor actually made the motion; and notwithstanding, he did hear a motion to table with a second which was presently pending. The mayor explained that he was trying to allow for each councilmember to comment. Councilman David Webb stated the mayor had stated the item could be tabled or that he was willing to make a motion to kill it tonight. Councilman Mark Gregg suggested to Councilman Webb to allow the mayor to do what he wanted to do and that he would withdraw his second. Councilman Webb nodded to Councilman Gregg. Mayor Buddy Pinder made a motion to deny. Councilman Henry Rosenthal seconded the motion. The motion passed 3-2 with Councilman Mark Gregg and Councilman David Webb voting in opposition.

At 7:08 p.m. the mayor called for a short recess; the meeting resumed at 7:19 p.m.

## RESOLUTIONS

**TAB 7:** Resolution Approving Work Authorization No. 1 between Islamorada, Village of Islands and CSA Central, Inc. for Conceptual Site Plan Development for Plantation Tropical Preserve

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING WORK AUTHORIZATION NO. 1 WITH CSA CENTRAL INC. FOR THE DEVELOPMENT OF A CONCEPTUAL SITE PLAN FOR PLANTATION TROPICAL PRESERVE; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE PROJECT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

This item was heard at 7:20 p.m. Village Attorney Roget Bryan read the title of the resolution. Environmental Resources Manager Peter Frezza presented the staff report noting that CSA Central, Inc. provided the lowest cost proposal for the development of a conceptual site plan for Plantation Tropical Preserve at a cost not to exceed $4,500 and that the Parks & Recreation impact fees were the source of funding for the project.

Mayor Buddy Pinder opened public comment.

Ed Davidson commented that there was a development plan from previous Councils for many of the Village properties and suggested the Council review the plan.

Mayor Pinder closed public comment.

Vice Mayor Pete Bacheler made a motion to approve. Councilman Mark Gregg seconded the motion. Council voted and the motion passed 5-0.

**TAB 8:** Resolution Approving Work Authorization No. 2 with Page Excavating, Inc. to Provide Parts and Labor to Replace up to 100 Poly Check Valves throughout the Village's Wastewater Low Pressure Force Main (LPFM)

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING WORK AUTHORIZATION NO. 2 BETWEEN PAGE EXCAVATING, INC. AND ISLAMORADA, VILLAGE OF ISLANDS, TO PROVIDE PARTS AND LABOR FOR REPLACEMENT OF UP TO 100 POLY CHECK VALVES FOR THE VILLAGE'S WASTEWATER LOW PRESSURE FORCE MAIN (LPFM); AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF WORK AUTHORIZATION NO. 2; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE WORK AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE**

This item was heard at 7:26 p.m. Village Attorney Roget Bryan read the title of the resolution. Public Works Director A.J. Engelmeyer presented the staff report recommending approval. He reported the work authorization had a not-to-exceed of $135,000 which would pay for replacement of 100 malfunctioning poly check valves; the expense would be recorded in the Wastewater Enterprise Fund's Capital Outlay- Infrastructure account; the wastewater rates would be the funding source for the project; and staff would evaluate funding through the Stewardship Act and the Florida Keys Water Quality Improvement Program.

Discussion ensued between Council and staff regarding the malfunctioning valves; preventative maintenance; that there were about 600 valves that were installed; that the expense was budgeted for; and that Key Largo, Marathon and Big Pine were also having to replace their poly check valves.

Mayor Pinder opened public comment.

Sue Miller expressed concern about the malfunctioning telemetry system and potential sewer backups and requested fixing the telemetry system.

Van Cadenhead provided historical information about sewer backups and suggested the engineers made a mistake by recommending a plastic valve.

Cheryl Meads noted that the Council inherited the problem and suggested it would be great if the Village could get out of the sewer business.

Angel Borden noted that it would be $810,000 if the 600 check valves were replaced and suggested a study that would identify failures.

Mayor Pinder closed public comment.

Mayor Pinder noted that regarding the telemetry system, technology becomes outdated and noted that the Florida Keys Aqueduct Authority was currently replacing many of their check valves. Public Works Director A.J. Engelmeyer explained that the Village had a tremendous number of spare grinder pumps, that they had spare parts for everything and that the wastewater crews responded quickly when there were grinder pump issues. Mayor Pinder noted that A.J. was "thrown to the wolves" when he was tasked with managing the wastewater maintenance department when it was brought in-house, noting that the responsibility was previously contracted to Layne. Mr. Engelmeyer explained that the previous contractor held off on non-essential repairs until they became a bigger issue which required the Village pay for the repair; that staff was making repairs that should have been made by the contractor; and that emergency callouts had decreased significantly.

Mayor Buddy Pinder made a motion to approve. Vice Mayor Pete Bacheler seconded the motion. Council voted and the motion passed 5-0.

**TAB 9:** Resolution to Adopt Fiscal Year 2020-2021 Budget Amendment

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING THE VILLAGE'S ADOPTED BUDGET FOR FISCAL YEAR 2020-2021; AND PROVIDING AN EFFECTIVE DATE**

This item was heard at 7:43 p.m. Village Attorney Roget Bryan read the title of the resolution. Finance Director Maria Bassett presented the staff report explaining when a budget amendment was needed; that per the resolution adopting the budget, budget amendments were to go to Council within 30 days when a General Ledger account line-item deviated from budget; that this requirement was not practical and that this was her first opportunity to present a budget amendment; another budget amendment would occur at the end of the year; and that per Florida Statutes, a budget amendment was allowed 60-days after year end. She explained various budget line items; overtime related to staffing at the Fills; and CARES Act funding that was received related to the COVID19 virus and the federal regulations that required an additional 80 hours of sick time for employees.

Councilman David Webb asked if the 30-day budget amendment requirement was an accounting requirement or Florida Statute. Ms. Bassett explained that it was not, that it was language included in the budget resolution. Councilman Webb asked if the 30-day requirement was too quick. She explained that the requirement was not practical. Councilman Webb requested a more practical time frame. Village Manager Greg Oravec stated in his experience, the requirement was overly burdensome and unnecessary; that a high performing agency usually did four budget amendments a year with a final amendment at the end of the fiscal year to close out the budget. Councilman David Webb commented about the $800,000 in CARES Act funding that was received through Monroe County and approved by the Village through a resolution. Ms. Bassett recommended reserving the CARES Act funding until the audit was completed. Councilman Henry Rosenthal commented about overtime at the Fills; suggested looking at a security company; and asked if the cable barrier system was going to be installed. Ms. Bassett explained that Council approved engaging CPH, Inc. to work on the management plan which would identify where delineated parking and a cable barrier/fences would be located. Councilman Rosenthal confirmed that the Council could change the type of barrier or fence that would be installed.

Councilman Henry Rosenthal expressed his gratitude to Ms. Bassett for serving as the Acting Village Manager and Finance Director for the last year.

Mayor Buddy Pinder opened public comment.

Sue Miller thanked Ms. Basset noting she did two of the most difficult jobs; expressed concern regarding the overtime for the Fills and her observations of the area; suggested no parking signs at the Fills with a $200 penalty; and suggested experimenting to see if staff patrolling was necessary.

Angel Borden stated the Fills were an eye sore; that it needed to be treated like a National Park; and made recommendations for the Fills that included installing solar powered security cameras, selling garbage bags, adding more trash receptacles and adding bathrooms.

Van Cadenhead expressed agreement with installing video cameras at the Fills and increased parking fines; making parking available of both sides of the highways in hardened areas; and suggested stronger enforcement of laws related to litter and parking.

Mayor Pinder closed public comment.

Vice Mayor Pete Bacheler made a motion to approve. Councilman Mark Gregg seconded the motion. Council voted and the motion passed 5-0.

**TAB 10:** Resolution- Approval of the Residential Building Permit Allocation System Ranking and Awards for Quarter 2 of 2021

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING RESIDENTIAL BUILDING PERMIT ALLOCATION SYSTEM RANKINGS AND AWARDING RESIDENTIAL BUILDING PERMIT ALLOCATIONS FOR QUARTER 2 OF 2021; AND PROVIDING AN EFFECTIVE DATE**

This item was heard at 8:07 p.m. Village Attorney Roget Bryan read the title of the resolution. Development Services Director Ty Harris presented the staff report and provided the remaining number of BPAS allocations thru 2023.

Discussion ensued between the Planning Director and Vice Mayor Bacheler regarding the need for affordable housing; the remaining affordable BPAS allocations; and the status of the lawsuit pertaining to the 300 affordable units offered by the State.

Councilman Mark Gregg abstained from voting on the item because he and family members were on the list of BPAS applicants and noted he filed his disclosure form with the Village Clerk. He pointed out the applications ranked 20 and 52 were his, and the application ranked 18 belonged to a family member. Councilman David Webb requested the Council direct the Village Manager, Village Attorney and Development Services Director to seek out a land-use attorney and consultant to prepare for future potential litigation involving the State of Florida related to the 2023 buildout. He commented that the Village was not prepared; and suggested the Council was not moving aggressively enough to obtain the needed expertise.

Mayor Buddy Pinder asked how many Transfer of Development Rights (TDRs) existed in the Village. Mr. Harris explained that they were viewed as building right allocations until they moved; staff estimated that there were upwards of 50 maybe more; that post Hurricane Irma, some of the larger developments rebuilt with less density which increased the number of TDRs; staff was researching zoning solutions related to TDRs; and noted some people in BPAS were looking to procure a TDR to avoid waiting in BPAS for an allocation.

Vice Mayor Pete Bacheler asked the Village Attorney if the Village lobbyists could assist with the comments made by Councilman Webb. Village Attorney Roget Bryan stated that at a staff level, all of the affected local governments in the Florida Keys had been working on the issue for a number of years. He commented that they had discussed a joint, Keys-wide defense strategy on takings claims which included the use of outside counsel; and focused on a legislative strategy educating legislators on the gravity of the issue which they had a stake in. Mr. Bryan assured the Council things were being done and agreed with Councilman Webb regarding broader input, noting it was a question of timing. Councilman Webb expressed support for the joint effort but wanted to make sure Islamorada was in the best position to protect its interests if they were in conflict with other entities.

Mayor Buddy Pinder opened public comment.

Cheryl Meads requested public workshops, especially on topics as important as buildout, to allow the public the opportunity to be heard. She noted that Monroe County was awarding fewer ROGO allocations per year and suggested Islamorada do the same. Vice Mayor Pete Bacheler noted Monroe County moved their deadline to 2026.

Ed Davidson provided historical information about the environmental carrying capacity and how the 2023 date was determined; that the Florida Keys Carrying Capacity Study was peer reviewed twice, at his request, by the National Academy of Sciences; and noted there were various angles that could be pursued for a shared settlement.

Van Cadenhead commented about the carrying capacity study and that the limits of the carrying capacity were long past; suggested not extending the deadline past 2023; and expressed support for redevelopment and opposition to tree removal.

Mayor Pinder closed public comment.

Vice Mayor Pete Bacheler made a motion to approve. Mayor Buddy Pinder seconded the motion. Council voted 4-0 with Councilman Mark Gregg abstaining.

## MAYOR / COUNCIL COMMUNICATIONS

**Follow-up Discussion Regarding Property Located at 81981 Overseas / Walgreens Property**

This item was heard at 8:31 p.m. Mayor Buddy Pinder asked if the Council wished to discuss purchasing the Walgreens property to use as a parking lot. Village Manager Greg Oravec reported he had communicated with the listing agent who informed him the property was available at a suggested price of $2.15 million; that offers had been made and it was expected to be competitive; if the Council was interested in making an offer, it would need to submit by July 7, 2021; it would be submitted in the first round and would go to Walgreen's real estate committee; and that if there were multiple competitive offers there would be a second round in which they would select the best offer in the committees estimation. Mr. Oravec commented that the Council had two questions before them: (1) could they purchase the property and (2) should they purchase the property. He explained there was money available in the General Fund, but in the absence of a strategic plan and a vision and priorities of the current Council, it became difficult to evaluate whether this was the greatest priority. He noted the funding would purchase the property, but not carry out the project on the property. Mr. Oravec noted it was his first day as manager, and based on his information, asked if parking was the most important priority and was it as important as affordable housing. He suggested that affordable housing was a much greater priority than parking and suggested combining two ideas such as a parking garage with affordable housing on top. Mr. Oravec reported one of the offers on the property was from a local businessman who said he would be willing to explore assigning the contract to the Village if he got the property under contract; and would make the property available to the Village at his cost and he would take the commercial development rights associated with the property as part of the conveyance.

Vice Mayor Pete Bacheler commented about the Council's recent land purchases; the lack of a strategic plan or direction for the property; suggested the Council exercise caution; noted it was not useful to have lots of property if you did not have the necessary project funding; and to do something that was worthwhile for the community.

Councilman Mark Gregg expressed agreement with the Vice Mayor and Village Manager; expressed concern regarding the funding source for the purchase; noted the policy of the Council from the very beginning was to have a strong reserve fund for hurricanes; and that he could not support the purchase if it were going to be funded from the reserve fund.

Mayor Buddy Pinder agreed with the Village Manager regarding the need to have a strategic plan that would provide direction; commented about parking issues on Upper Matecumbe; suggested a public/private partnership in which the property would be used for parking; that he liked the idea of including affordable housing in the project; and suggested the parking lot project could also be used as a park-n-ride. Mayor Pinder asked Finance Director Maria Bassett if there were grants to fund the purchase. She explained that the Monroe County Land Authority (MCLA) awarded money for conservation property and affordable housing development; noted that the MCLA was not favorable to granting funds for the recent acquisition of the four parcels on US-1 due to the level of hammock; expressed that she did not think the MCLA would provide funds for the subject property; staff could research to determine if the FDOT provided grants for projects that alleviated traffic, but noted the FDOT might require a feasibility study or other type of justification; and suggested the Village could obtain a loan for the acquisition. Ms. Bassett reported that a realtor representing a developer contacted Senior Planner Hank Flores and inquired about the possibility of developing a store on the property and setting aside parking for the Village. Village Manager Greg Oravec suggested the Council consider the idea in two phases (1) acquisition and (2) the project; that the Council should count on having to pay for acquiring the property; that the Council could be successful in mitigating some of the expenses related to the project; that if the Council had more time, and the property was not being listed, he would advise against it, but the property was a key piece of property; and asked if it was a good investment of the Council's time, money and political good will and would it provide a return on their investment.

Councilman David Webb stated his concept would be a parking garage noting the relaxed parking requirements that once existed; suggested the property might sell somewhere between $2.1 and $3 million and expressed concern regarding the additional costs associated with a significant project that could cost an additional $3 to $8 million dollars in today's economy. He expressed concern that the Council did not have enough information to make a good decision.

Vice Mayor Pete Bacheler asked Fire Chief Terry Abel if he had done an inspection on the property. Chief Abel reported that he had not, but his crews had conducted training drills in the building; that the property had a demo permit for portions of the building; and noted that code enforcement had been to the property a few times. Vice Mayor Bacheler stated the current structure was a blight in the Village.

Councilman Mark Gregg questioned whether turning the property into a parking lot would encourage more development; noted the parking lot would make room for a lot more people; that the commercial property had about 14,000 square feet of commercial use which could be banked; opposed using General Fund reserves to purchase the property especially during hurricane season; expressed that he was uncomfortable going forward without a clear plan for the use of the property; and noted that if the another entity bought the property and sold it to the Village it would provide the Village more time.

Development Services Director Ty Harris explained that there were currently over 13,000 trips assigned to the site however there were currently no trips going to the site which meant that from a traffic standpoint it would generate a serious amount of traffic if it were redeveloped as a retail store. Vice Mayor Pete Bacheler stated that there was essentially a credit of 13,000 trips on the property, which Mr. Harris confirmed. Discussion ensued regarding different types of development; the traffic issues in Islamorada; a parking garage would disallow parking on the easements; and acquiring the property would provide the Village more control regarding development. Councilman Henry Rosenthal stated he was not comfortable with a parking garage for aesthetic reasons; that there was not a shopping area to walk to; and that having control of the property was the primary concern and that the property could be sold if the Village chose to do so.

Vice Mayor Pete Bacheler asked if the property were purchased by another entity who retained the nonresidential square footage development rights and then sold the property to the Village, would the Village be able to develop the property. Village Attorney Roget Bryan explained that there were some development options dependent upon the intended use. Discussion ensued regarding whether affordable housing could be built on the site; concern about where the nonresidential square footage would go; and maintaining the development rights. Development Services Director Ty Harris stated he would research whether affordable housing could be built on the property if the nonresidential square footage was transferred off. Mayor Pinder stated he wanted to discuss the item at the July 22, 2021 Council meeting after staff determined what could be built on the property if the development rights were transferred off. Village Manager Greg Oravec noted that the first-round offers were due by July 7, 2021; that Councilman Rosenthal's analysis was good in that if the Village wanted control of the property, they could make an offer and if it did not work out the Village could sell the property to a user that was acceptable to the Council. He noted the risk would be a downward trend in the market if the Village were to sell the property. Councilman Mark Gregg suggested a contingency offer as a possibility and noted cash offers had been made. Discussion ensued regarding second round offers and using the General Fund Unassigned Fund balance due to the limited amount of time to make the offer. Mayor Buddy Pinder, with Council support, requested discussion about the item at the July 22, 2021 meeting.

Mayor Buddy Pinder opened public comment.

Van Cadenhead commented about the businesses that were within walking distance; expressed support for having control of the property; and support for a hybrid project that incorporated affordable housing.

Cheryl Meads commented in favor of making the offer and noted the ability to back out during the inspection period.

Angel Borden suggested public bond offerings; and stated the Village did not need to be the high offer during the first round.

Ed Davidson commented that purchasing the property without a plan for its use would be difficult to explain to the community who had complained that there was not enough affordable housing; questioned why the Village would subsidize parking for businesses when there was not enough housing for the employees of those businesses; and opined that the prospect was risky and uncertain.

Mayor Pinder closed public comment.

Councilman David Webb asked if the only available funds were from the reserves. Village Manager Greg Oravec commented that the reserves were about 40% and the practice had been to maintain 25% and that the delta was enough to purchase the property. Finance Director Maria Bassett commented that there was about $500,000 in transportation impact fees that could possibly be used; there was discretionary sales surtax for infrastructure and capital projects, but that wastewater and existing capital projects were a consideration; and that there may be potential grant funding. Councilman Webb stated he would be reluctant to lower the reserves below 40% for the purchase noting the previous council went to 40% after Hurricane Irma. Ms. Bassett reported the Village spent a total of about $10 million in response to Hurricane Irma, of which $7 to $8 million was spent on debris removal management and that this the approximate amount the Village had in the unassigned fund balance; and stated banks were reluctant to lend after a hurricane due reliance upon FEMA and State reimbursement which was a slow process. Councilman Mark Gregg commented that if the Village experienced a direct hit from a hurricane, it would be “game over”.

**Agenda Addition: Discussion Regarding Holiday Schedule for Parks & Boat Ramps**

This item was heard at 9:26 p.m. Councilman Mark Gregg stated the previous year the Village closed certain public facilities during high demand periods such as Lobster Mini Season, Fourth of July and Labor Day; noted that the influx of boaters using the boat ramps in residential neighborhoods such as Blackwood Drive and East Ridge Road was very disruptive and the previous closures had worked well. He asked if the Council had an interest in repeating what was done last year. Mayor Buddy Pinder asked Public Works Director A.J. Engelmeyer how long the closures lasted. Mr. Engelmeyer reported the closures occurred due to COVID for the holiday weekend; that they would be closed on Friday and reopened on Tuesday and confirmed that the closure also occurred during Lobster Mini Season. Mr. Engelmeyer clarified that the ramps were closed to boat launching, but that kayaks were allowed. Council expressed agreement with closing the ramps on Blackwood Drive and East Ridge Road for the  Fourth of July weekend, Lobster Mini Season, and Labor Day weekend.

**Agenda Addition: Discussion Regarding Illegal Vacation Rentals**

This item was heard at 9:31. Councilman Mark Gregg requested Council direct staff to compile an agenda item for discussion regarding illegal vacation rentals; noted the number of vacation rentals allowed in the Village and that there had been an increase in licensed vacation rentals; that there were 616 vacation rentals online, though some may be duplicates; and commented that the issue of illegal vacation rentals needed to be addressed. Development Services Director Ty Harris commented about the efforts made by staff to identify illegal vacation rentals; noted the City of Key West used an outside agency to investigate illegal vacation rentals and had hefty fines; suggested using an outside agency would be more productive as the code officers had numerous other code violations they investigated; and commented about the level of proof needed for a code hearing. Councilman Gregg requested direction to staff to develop ideas to address the issue. Councilman David Webb commented that the issue was the “proof” as the owner or renters could state that they were family, or that they were not renting the unit; commented about the reprehensible behavior of renters of illegal vacation rental units and the associated impact on the residents; and noted the non-payment of taxes by owners of the units was defrauding the County and State.

**Agenda Addition: Discussion Regarding the Days/ Hours of Operation for Landscape Maintenance**

This item was heard at 9:39 p.m. Councilman David Webb stated he would like to know if the Council had an interest in having staff review the current rules related to the operation times for construction related services and professional landscape maintenance services; commented regarding the noise generated from some of the services in the evenings, early mornings and holidays; noted that he had personally experienced the noise generated from heavy equipment and jackhammers at inappropriate times; suggested a reasonable time frame, a list of days for operation, and holidays that would be prohibited; that the change would not restrict homeowners from doing what was needed on their homes; and noted the loud, gas-powered leaf blowers used at night and on weekend. Mayor Buddy Pinder asked the Village Attorney for the requirements in the Village’s noise ordinance. Village Attorney Roget Bryan stated the current noise ordinance applied to seven days a week; the restriction for construction activity was from 7:30 a.m. to sundown; and for lawn services the time frame began at 7:00 a.m. and ended at sundown and included holidays. Vice Mayor Pete Bacheler suggested shortening the hours of operation and prohibiting operations on Saturdays and Sundays. Councilman Mark Gregg suggested using electric powered tools which would be quieter. Councilman David Webb suggested the ordinance be more restrictive in residential neighborhoods; that it would apply to licensed recognized vendors and would not apply to the homeowners; and suggested a punitive fine. The Village Attorney stated he and the Village Manager would garner input from each councilmember and would develop recommendations for a future discussion item. Council expressed agreement.

Mayor Pinder opened public comment; no comment was offered.

## VILLAGE ATTORNEY / VILLAGE MANAGER COMMUNICATIONS

**TAB 11:** Discussion Regarding FY 2021-2022 Budget Calendar

This item was heard at 9:49 p.m. Finance Director Maria Bassett stated dates needed to be selected for the FY 2021-2022 budget workshops and hearings and explained the various items that affected the dates meetings could be held. She explained, due to limitations, the first hearing would occur on September 3, 2021 at 5:30 p.m. Council discussed the options for the budget workshops and the second hearing and decided on August 3, 2021 and August 4, 2021 for the first and second budget workshops which would begin at 3:00 p.m.; and selected September 14, 2021 for the second (final) budget hearing which would begin at 5:30 p.m.

Ms. Bassett stated at the July 22, 2021 Village Council Meeting Council would be asked to establish a millage rate that the Council could work down from.

At 9:55 p.m. Councilman David Webb made a motion to extend the meeting for 30 minutes. Councilman Henry Rosenthal seconded the motion.

**Agenda Addition: Discussion Regarding Communications Media Technology**

This topic was brought up at 9:55 p.m. Councilman Henry Rosenthal asked if there was anything needed procedurally to be able to continue using the Zoom platform for meetings. Village Attorney Roget Bryan stated yes that the Communications Media Technology (CMT) provisions were tied to the emergency declaration that had been in place; that it was good practice to frame how CMT would be used going forward; and that it was understood the Council was interested it making it available for public participation. Vice Mayor Pete Bacheler asked if there would be restrictions on councilmember use. Mr. Bryan stated he was hearing that Councilman Rosenthal's interest was directed toward public use; and suggested allowing CMT use by external groups to eliminate the need to travel to Islamorada. Village Manager Greg Oravec stated he and the Village Attorney would work together to develop some rules. Mayor Buddy Pinder commented that he would be out of town noting his daughter was seven months pregnant and had asked if it were possible for him to participate remotely; noted Monroe County had continued hybrid meetings as well as the Florida Keys Aqueduct Authority. Councilman David Webb stated he understood that there was a state requirement for a physical quorum. Village Attorney Roget Bryan stated that if Council wanted to allow for remote attendance from councilmembers, they needed to determine what circumstances would be permissible such as an emergency situation. Village Manager Greg Oravec noted that there were other municipalities in Florida that allowed for virtual attendance when there was a physical quorum present. He stated he and the Village Attorney would provide a report that would provide useful information pertaining to remote attendance by councilmembers and public participation.

Mayor Buddy Pinder opened public comment.

Ed Davidson stated the Monroe County School Board allowed for virtual participation; and commented about the COVID-19 virus.

Mayor Pinder closed public comment.

Councilman Henry Rosenthal stated he was thinking about getting consideration for meeting more frequently.

Councilman Henry Rosenthal stated he was removing Lesley Rhyne from the Local Planning Agency and was appointing Susan Rafanello and commented about her experience.

## ADJOURNMENT

Councilman David Webb made a motion to adjourn. Councilman Mark Gregg seconded the motion. The meeting adjourned at 10:08 p.m.

Approved by Council July 22, 2021.

Kelly S. Toth

Kelly S. Toth, CMC
Village Clerk