

**Summary Minutes of the:
ISLAMORADA, VILLAGE OF ISLANDS
(HYBRID) REGULAR VILLAGE COUNCIL MEETING**

Founders Park Community Center

Islamorada, FL

Thursday, January 14, 2021

5:30 PM

Hybrid Meeting to Occur Utilizing Communications Media Technology (CMT)

Pursuant to the Centers for Disease Control (CDC), social distancing guidelines established to contain the spread of the COVID-19 virus, the January 14, 2021 Regular Village Council Meeting was conducted utilizing Communication Media Technology (CMT) via a Zoom video conferencing application.

Coronavirus-related Precaution: Due to the size and configuration of the Founders Park Community Center, which serves as the Council Chambers, and in keeping with CDC and Florida Department of Health guidelines, capacity of the Community Center for Village Council meetings was limited indefinitely due to the coronavirus pandemic. Only Council Members and essential staff members required to conduct the meetings would be in physical attendance due to the limited room capacity. The general public was able to attend virtually and participate in the Council meeting utilizing the existing Zoom meeting infrastructure. The Village expanded its Internet bandwidth and Zoom meeting participant level to facilitate participation and comment by the public remotely. Additional information regarding options for viewing the meeting and participation through public comment were included on the last page of the agenda. If assistance was needed, the agenda directed the public to contact the Village Clerk's Office at 305-664-6413 no later than the day before the meeting.

CALL TO ORDER / ROLL CALL

Mayor Pinder called the meeting to order at 5:31 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. Village Clerk Kelly Toth and Deputy Clerk Stephanie Conde were present. Village Attorney Roget Bryan and Acting Village Manager Maria Bassett, along with other pertinent staff appeared virtually.

PLEDGE OF ALLEGIANCE

Mark Gregg led the Pledge of Allegiance.

Pastor Tony Hammon delivered a prayer and blessings over the meeting.

VIRTUAL MEETING PROCEDURES

Village Attorney Roget Bryan provided the virtual meeting procedures explaining how the public could view the meeting and participate through public comment.

REPORTS, PRESENTATIONS AND ANNOUNCEMENTS

Mayor Pinder announced that the live broadcast of the Village Council meeting was being closed captioned in real time noting that the new feature made the meeting more accessible to those with hearing impairments.

Acknowledgement of Service by Mayor Pinder

Mayor Pinder acknowledged the service of the following individuals that had served on Village Citizens' Advisory Committees:

Steve Friedman served on the Near Shore Water Regulation Citizens' Advisory Committee from May 2016 to December 2020.

David Webb served on the Water Quality Improvement Citizens' Advisory Committee from January 2018 to November 2020.

Pete Bacheler who served on the Local Planning Agency from June 2014 to November 2020.

Mark Gregg who served on the Local Planning Agency from August 2017 to November 2020 and served on the Achievable Housing Citizens' Advisory Committee from April 2017 to November 2020.

Acknowledgement of Staff Longevity

Acting Village Manager/Finance Director Maria Bassett acknowledged and expressed gratitude for the following Village employees noting their length of service:

Five Years: Hatti Jenkins, Kim Stevenson, Mark Thomasson, Paul Mc Connehey, Adrian Castellanos, Dustin Rivers, Mike Hampson, and Wesley Berry.

Ten Years: Anselmo Mendoza.

Fifteen Years: Anne Onsgard and Ronnie Jacobs.

Twenty Years: Eleuterio "Tello" Amaro, Juan Chavez and Maria Bagioti.

Presentation of the Oxitec Mosquito Project

At 5:39 p.m. Meredith Fensom, Head of Global Public Affairs, Oxitec and Florida Keys Mosquito Control District Public Information Officer Chad Huff introduced her colleagues, that would assist with the presentation, Kevin Gorman, Head of Field Operations for Oxitec and Chad Hoff, Public Education & Information Officer with the Florida Keys Mosquito Control District. Ms. Fensom provided background information about Oxitec. Mr. Huff explained that the Oxitec mosquito provided a tool to address the mosquitoes that spread Dengue, Zika, Chikungunya and other diseases; that nine agencies concluded Oxitec male mosquitos posed no risk to human or environmental health; one billion of the Oxitec mosquitoes had been released worldwide with no negative impacts; and that the Aedes Aegypti mosquito was an invasive species.

Mr. Gorman explained how the Oxitec male mosquitos are effective noting that they mate with female Aedes Aegypti mosquitos which will then only produce viable male mosquitos. He reported that they are able to track and identify the released Oxitec mosquitoes and their offspring through a florescent marker gene the mosquitoes carry; that no females were produced; in the Brazil release they achieved over 90 percent suppression in fourteen weeks; that the male Oxitec mosquitoes did not bite; that Oxitec has been releasing mosquitoes since 2010; 20 million male OX5034 mosquitoes were released in Brazil since 2018 and that one billion of the OX513A mosquitoes had been released

globally. Mr. Gorman provided the 2016 Monroe County referendum results which indicated that 31 of 33 precincts voted in favor of "the Florida Keys Mosquito Control District (FKMCD) conducting an effectiveness trial in Monroe County, FL, using genetically modified mosquitoes to suppress an invasive mosquito that carries mosquito-borne diseases." He stated they had received various regulatory approvals for open releases which was similar to the EPA's experimental use permit that they were having to do in the Florida Keys noting the various agencies involved in the experimental use permit approval process. He noted the CDC's technical involvement in the project with data evaluation; explained how the OX5034 mosquitoes were produced in the United Kingdom by using very small amounts of Tetracycline in larval water; that to produce all the eggs required for the project, Oxitec would use less Tetracycline than a 5-gram sugar packet; and explained how the mosquitoes were prepared for shipment to the US and delivered to the Florida Keys noting that there was no Tetracycline in the box or in Florida. He summarized stating the Oxitec male mosquitoes were harmless to humans as they could not bite or spread disease.

Ms. Fensom identified their community engagement efforts noting that additional resources could be found at www.keysmosquitoproject.com and that questions could be submitted to Florida@oxitec.com.

Councilman David Webb inquired about the one billion mosquitoes that were released. Mr. Gorman explained that the one billion released were a different type of mosquito technology in that it killed 97% of all male and female offspring. He explained that the second technology, which was the 20 million released, resulted in only the females dying and the males surviving. Councilman Webb confirmed his understanding regarding the purpose of the Tetracycline noting the probability that the antibiotic existed in the environment. He asked if there was a possibility that a female mosquito, having drank from water mixed with Tetracycline, would be able to overcome the reproductive inhibitor of the male Oxitec mosquito. Mr. Gorman said the risk was negligible according to the EPA; that the EPA had looked at this extensively and had directed them not to release mosquitoes too close to sewage plants or agricultural areas; that the antibiotics were short-lived and noted Oxitec was only releasing males. Councilman Webb asked if chemical spraying would continue to occur once the mosquitoes were released. Mr. Gorman explained that the spraying projects would continue to occur. Mr. Huff explained that the *Aedes Aegypti* mosquito was only one of at least 44 types of mosquitoes that the FKMCD was concerned about in the Florida Keys and that other control methods were used for the other types of mosquitoes.

Mayor Pinder opened public comment.

Barry Wray, Executive Director of the Florida Keys Environmental Coalition (FKEC), commented regarding the lack of information that was shared with the public by the EPA and Oxitec regarding the mosquito technology prior to the EPA's approval. He commented regarding the suppression rates publicized for the Brazil release and noted that Oxitec had not gone through the rigors of science noting that Florida Keys Environmental Coalition had requested Oxitec conduct an environmental impact statement level of review.

Ed Russo commented that the City of Key West adopted a resolution asking three questions of Oxitec that were not answered. He stated that the information shared with the public attempts to imply that the amount of chemical spraying would be reduced which was not true. He noted that the testing had occurred on mosquitoes, not on humans or endangered species.

Van Cadenhead opined that enough testing, specifically on humans, had not occurred and suggested more information be shared with the public before the mosquitoes were released.

Mayor Pinder closed public comment.

Councilman Webb suggested that the Council obtain perspectives from scientists or professors (not-for-profit perspectives) that have looked at risk assessment and develop a protocol to address the concerns of the community. He suggested a cooperative approach with the Florida Keys Mosquito Control District. Councilman Gregg stated he needed to do more research on the matter and spoke in support of further discussions.

PUBLIC COMMENT

Mayor Pinder opened general public comment.

Donna Kuhr asked questions pertaining to the Oxitec item. The Village Clerk informed her that that agenda item was closed and that the meeting was now addressing general public comment.

Van Cadenhead commented in favor of providing public comment in person. He stated that the Village Council meetings could not be watched by Direct TV subscribers and suggested the Village obtain government programming with Direct TV.

Susan Raffanello commented regarding not being able to see members of the public speak when using Zoom noting that it was problematic during quasi-judicial items.

Mayor Pinder closed public comment.

AGENDA: Requests for Deletion / Emergency Additions

Mayor Pinder added an update regarding the Village Manager search and a discussion regarding Attention Media to the Mayor/Council Communications section of the agenda. Village Attorney Roget Bryan added a discussion item regarding the 2021 legislative agenda to the Village Attorney / Village Manager section of the agenda.

UNFINISHED BUSINESS

TAB 1: Update Regarding the FDOT Pedestrian Bridge

This item was heard at 6:44 p.m. Acting Village Manager/ Finance Director introduced the item explaining that the current Council had requested staff provide information summarizing events and actions taken by the previous Council regarding the pedestrian bridge. The information provided in the agenda package did not include every record related to the pedestrian bridge. She explained that the previous Council adopted three resolutions. In February 2018 Council adopted Resolution 18-02-09 accepting FDOT's recommendation for the fixed pedestrian bridge with the understanding that the Village would be responsible for elevator maintenance and that an agreement would be forth coming; in December 2018, the Council adopted Resolution 18-12-128 approved the pedestrian bridge design; and in June of 2019 the Council adopted Resolution 19-06-44 which approved the maintenance agreement for the pedestrian bridge elevators. Ms. Bassett explained that she included Free Press news articles about the pedestrian bridge to show that the item was being reported on. She stated that currently no additional action was required of the Village Council by the FDOT and noted that project construction had commenced. She stated staff did not know what the FDOT's response would be if the Council chose to adopt a resolution rescinding the

Village's support for the pedestrian bridge project and rescinding the Village's agreement for elevator maintenance. Ms. Bassett reported that it was staff's belief that because contracts have been entered into for the design, engineering and construction of the pedestrian bridge the Village may be responsible to repay the FDOT for total project costs estimated at five million plus, and costs incurred by the Florida Keys Electric Cooperative for the movement of the electric lines. She reported that while the FDOT had a 2016 feasibility study that did not support a pedestrian bridge, the agency was still considering the bridge in March and April of 2017 as it was included in their list of transportation issues in Monroe County. She noted that it was possible that the 2016 study was not a final determination. She explained that in October 2017 the FDOT communicated to Mayor Jim Mooney their recommendation for a permanent steel truss pedestrian bridge at Founders Park. Ms. Bassett explained that from a staff level it was unknown how the FDOT arrived at their decision to approve the project and fund the project. She pointed out that the aspects of Council decision making and the adoption and passage of resolutions for the project occurred at publicly noticed meetings.

Mayor Pinder opened public comment.

The following individuals spoke in opposition to the pedestrian bridge: Jennifer Miller, Nicholas Mulick (spoke on behalf of Islamorada Community Character Association (ICCA)), Bob Lodge, Peter Koepfel, Barry Wray, Phyllis Mitchell, Ed Davidson spoke on behalf of the Florida Keys Citizens' Coalition (FKCC), Lisa Siegel, Joan Scholz, Tiki De Esposito, Colleen Malaney, Alina Davis, Peter Pavelic, Holly Koepfel, Don Horton, Don Davis, Julian Siegel who yielded his time to his wife Lisa, Robert Moser, Jonelle Kop, John Kocol, Joe Roth and Sandy Bisceglia.

Comments made in opposition pertained to: survey results sent out by the ICCA regarding the pedestrian bridge in which 70% of the over 800 respondents expressed opposition to the bridge via the three questions asked on the survey; only one study conducted by FDOT that said the bridge was not warranted; a suggestion to convert the flashing light at Fire Station 21 to an on-demand crosswalk; an opinion that people will not use the pedestrian bridge to cross the highway; researching a better way to solve the traffic issues; opinions pertaining to the importance of community character; an opinion that the Monroe County Sheriff's Office would continue to be needed for crossing related activity; the inflated costs of the project; the Sunshine Law; a suggestion to obtain FDOT project contracts and look for a termination clause; environmental impacts of the bridge lights; security concerns; concerns about parking on private property; an opinion that people should take personal responsibility when crossing a road and that cities cannot protect everyone crossing or biking on the highway; a suggestion for a tunnel instead of a bridge; maintenance costs associated with the pedestrian bridge elevators; an opinion that lobbying efforts to sway FDOT were not disclosed; a suggestion to speak with FDOT regarding how the project funds could be used in a more effective manner; and an opinion that the pedestrian bridge would not fix the traffic issues.

Van Cadenhead spoke in favor of the pedestrian bridge. Comments made in favor of the pedestrian bridge pertained to the ICCA should have represented their views at the many meetings that were held; children from the Treasure Village Montessori school would utilize the pedestrian bridge on a daily basis; the pedestrian bridge was a safer way to cross the highway; it would eliminate the need for MCSO deputies to provide crossing services; a suggestion that jay walking signs be erected; and an opinion that the money spent on the bridge was worth saving a life.

Councilman Henry Rosenthal asked the Council to authorize the Mayor to send a letter on behalf of the Village to Governor DeSantis requesting that he instruct the FDOT to abandon the construction of the pedestrian bridge project. He explained that he opposed the pedestrian bridge because of its impact on Islamorada's community character; that the bridge was not consistent with the Village's mission statement; the escalated costs of the bridge; that the bridge was not warranted; that almost no one would use the overpass; that the pedestrian bridge would be unappealing; and that the FDOT feasibility study stated the bridge was unwarranted.

Councilman Rosenthal moved that the Village Council authorize Mayor Pinder to send a letter to Governor DeSantis asking him to instruct the FDOT to cease any further construction on the pedestrian bridge at the entrance to Founders Park, and further authorize Mayor Pinder to travel to Tallahassee to meet with Governor DeSantis. Vice Mayor Pete Bacheler seconded the motion so discussion could occur.

Council discussion ensued. Their comments pertained to: FDOT's mission statement; the lack of reliable statistical data that illuminates the will of the community; fiduciary responsibilities; that the previous councilmembers received the feasibility study prior to their vote; that the technical memo did not provide justification for the pedestrian bridge; the idea to request a reevaluation of the project; that people would change their position on the bridge if the cost to the Village was significant; the individuals that provided public comment during the meeting, the 30 emails sent in opposition, eight sent in favor of which one was the Montessori school; that the previous Islamorada Chamber of Commerce board had opposed the pedestrian bridge; information that was not shared with the public by the previous Council; that Islamorada was the Fishing Capital of the World; a suggestion that a tunnel be used instead of a bridge; the possibility that there could be legal consequences for stopping the project; that individuals were not willing to pay more in property taxes to stop the bridge; that the Monroe County Sheriff's Office does a good job crossing children over the highway; a suggestion that FDOT conduct a study to alleviate the traffic congestion in Monroe County; and a suggestion that FDOT could include a safety feature in front of Founders Park with the future Snake Creek Bridge project.

Councilman Gregg suggested that the motion be amended to request the money designated for the bridge project be used to create an alternative safety feature.

Council discussed the possibility of litigation, past case law, and the probability of a successful outcome. Councilman Webb requested input from staff regarding crafting the letter. Village Attorney Roget Bryan asked if the Council wanted staff assistance in drafting the letter, two councilmembers responded yes. He asked if the Council wanted to request alternative safety options while FDOT reexamined the bridge. Councilman Gregg asked that FDOT reconsider the project with an alternative design focused on enhanced safety within the budget applied to the pedestrian bridge. The Village Attorney asked if there needed to be a reference in the letter to the future Snake Creek Bridge project. Councilman Webb, with support from Vice Mayor Bacheler, expressed opposition to this idea noting it would complicate the issue. Councilman Webb stated the Council could assume the responsibility that other safety measures are considered. Councilman Gregg withdrew the request to reference the Snake Creek Bridge project. Councilman Rosenthal stated that the bridge needed to be stopped now and noted the responsibility of the Village to say no. Vice Mayor Bacheler opined that the FDOT could choose to disregard the Village's request.

Councilman Webb suggested that the letter be drafted in a manner consistent with the Village's authority in the matter. Councilman Rosenthal agreed with Councilman Webb's statement.

Councilman Rosenthal restated his original motion that the Village Council authorize Mayor Pinder to send a letter to Governor DeSantis asking him to instruct the FDOT to cease any further construction on the pedestrian bridge at the entrance to Founders Park, and further authorize Mayor Pinder to travel to Tallahassee to meet with Governor DeSantis.

Councilman Webb asked if the feasibility study conclusion should be referenced. The Village Attorney Roget Bryan spoke in support of referencing the study and suggested refraining from mentioning project costs and explained his reasons. Mr. Bryan stated he understood that the Council wanted the letter to ask for the project to be halted pending other further discussion on safety alternatives.

Councilman Rosenthal amended his motion asking that the Village Council authorize Mayor Pinder to send a letter to Governor DeSantis asking him to instruct the FDOT to cease construction on the pedestrian bridge at the entrance to Founders Park pending further discussion and reevaluation of safety alternatives. Vice Mayor Bacheler seconded the amended motion. Council voted and the motion passed 5-0.

At 8:44 p.m. Councilman Webb requested a 10-minute recess. The meeting resumed at 8:58 p.m.

CITIZENS' ADVISORY COMMITTEE UPDATES

Appointment to Achievable Housing Committee- Vice Mayor Bacheler

Vice Mayor Pete Bacheler appointed Don Horton to the Achievable Housing Citizens' Advisory Committee.

CONSENT AGENDA

TAB 2: Resolution Approving the Piggyback Purchase of a 2021 Ford F250 Truck

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, PIGGYBACKING THE FLORIDA SHERIFF'S ASSOCIATION/FLORIDA ASSOCIATION OF COUNTIES & FLORIDA FIRE CHIEFS' ASSOCIATION AUTOMOTIVE CONTRACT NO. FSA20-VEL28.0 CHASSIS/FSA20-VEH18.0 AND APPROVING THE PURCHASE OF A 2021 FORD F250 TRUCK FROM DUVAL FORD FLEET SALES FOR THE VILLAGE FIRE RESCUE DEPARTMENT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE NECESSARY DOCUMENTS; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

TAB 3: Resolution Approving the Grant Award Agreement for TDC Grant Funding and Reimbursement of Beach and Beach Park Recreational Facilities Cleaning and Maintenance Services Costs

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A GRANT AWARD AGREEMENT BETWEEN THE VILLAGE AND MONROE COUNTY FOR TOURIST DEVELOPMENT COUNCIL FUNDING OF THE BEACH AND BEACH PARK FACILITY CLEANING PROJECT; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE

VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

TAB 4: Resolution Approving TDC FY 2021 Capital Project Grant for Founders Park Tennis Complex

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA ACCEPTING THE GRANT AWARD FROM THE MONROE COUNTY TOURIST DEVELOPMENT COUNCIL FOR SPORTS LIGHTING FOR THE FOUNDERS PARK TENNIS COMPLEX PROJECT; APPROVING THE GRANT AGREEMENT BETWEEN MONROE COUNTY, FLORIDA AND ISLAMORADA, VILLAGE OF ISLANDS TO PROVIDE REIMBURSEMENT FUNDING FOR THE PROJECT FROM THE MONROE COUNTY TOURIST DEVELOPMENT COUNCIL DURING FISCAL YEAR 2020-2021; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE

Regarding Tab 2, Councilman Rosenthal expressed concern regarding the price on the vehicle going up and asked the Village Manager for a list of Village vehicles and their uses. Regarding Tab 3, Councilman Rosenthal noted there was a historical plaque missing from The Fills.

Mayor Pinder opened public comment. No public comment was offered.

Councilman Mark Gregg made a motion to approve the consent agenda. Councilman David Webb seconded the motion. Council voted and the motion passed 5-0.

QUASI-JUDICIAL

Village Attorney Roget Bryan provided the quasi-judicial procedures explaining that the meeting was being conducted using communications media technology and that anyone giving testimony had to be sworn in by the Village Clerk, and that if a person were not sworn in their statement would be considered public comment. Village Clerk Kelly Toth swore in the witnesses.

TAB 5: Application for Administrative Relief (PLAR20200285) for Native Rental Properties

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY NATIVE RENTAL PROPERTIES FOR ADMINSTRATIVE RELIEF FROM THE VILLAGE BULDING PERMIT ALLOCATION SYSTEM (BPAS) FOR PROPERTY LOCATED AT 151 SIOUX STREET, PLANTATION KEY, AS LEGALLY DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE

At 9:03 p.m., Village Attorney Roget Bryan read the title of the resolution and asked the Council to disclosed ex parte communications. Mayor Pinder, Vice Mayor Bacheler and Councilman Gregg each disclosed that they had spoken with Brett Ekblom. Councilman Rosenthal and Councilman Webb each stated that they did not have ex parte communications. Planner Christina Neel provided the staff report and provided options that the Council could consider. Village Attorney Roget Bryan stated that the comments received by the Village would be added to the official file. Councilman David Webb asked if there was any information in the comments provided by the attorney from Carlton Fields that should be considered in their deliberations. The Village Attorney explained that

they could consider the public comments and noted that the administrative relief item was properly before them and was eligible for administrative relief. Councilman Gregg stated he reviewed the Carlton Fields email carefully and saw nothing in the administrative relief item that would indicate there was anything that was in violation with the Village's Code. He noted most of the email content was commentary about policy decisions. Councilman Gregg explained that the Council was considering providing administrative relief to someone that had been in BPAS for four years. He stated this meant the council was considering whether to take them out of BPAS and award an allocation from a separate pool of allocations. Councilman Gregg explained the purpose of administrative relief; opined, based on his experience, that the item before them was a textbook lot for what BPAS and the Code were designed to do which was to steer development into areas that were already developed and away from environmentally sensitive areas and sparsely developed areas. Councilman Gregg stated that there was nothing unusual about the application before them. Councilman Webb commented regarding the 2023 building permit issue noting the value of the administrative relief pool with regard to future takings claims.

Mayor Pinder opened public comment.

Aaron Dunlap, Attorney with Carlton Fields, spoke on behalf of the Islamorada Community Alliance, expressed opposition. He noted his objections that speakers appearing virtually could not be seen nor did they have access to present things on their screens. Mr. Dunlap commented about Council's requirement to consider the substantial competent evidence before them; that the staff memo stated that there was no investment backed expectation; that there was no diminution in value for the property, that it had increased in value by 50% in the last four years; and that there needed to be a balancing of which properties should receive allocations from the administrative relief pool considering those properties that would be the most expensive to deal with from a takings context.

Applicant Brett Ekblom stated he was available to answer any questions.

Councilman Gregg stated it was the Council's prerogative to determine the policy of the Village and not the previous objectors. Councilman Webb stated that if you followed the logic of the attorney from Carlton Fields, the Village would make the decision to let someone build, whose lot was worth \$10 million dollars, even if they entered BPAS one day before the deadline to avoid a potential takings claim. He rejected this logic.

Mayor Pinder closed public comment.

Village Attorney Roget Bryan stated there was a misrepresentation during public comment about what the staff report said. Mr. Bryan stated the staff report does not say that the applicant or property owner did not have any investment backed expectations and clarified what the staff report actually stated.

Councilman Gregg asked the applicant if he had an investment backed expectation for the property. Village Clerk Kelly Toth swore in the applicant. Mr. Ekblom stated he did have an investment backed expectation.

Vice Mayor Pete Bacheler made a motion to approve administrative relief in the form of one (1) BPAS allocation award from the administrative relief pool. Councilman Mark Gregg seconded the motion. Council voted and the motion passed 5-0.

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY TY AND MARY BETH HARRIS FOR ADMINSTRATIVE RELIEF FROM THE VILLAGE BULDING PERMIT ALLOCATION SYSTEM (BPAS) FOR PROPERTY LOCATED AT 190 FONTAINE DRIVE, PLANTATION KEY, AS LEGALLY DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE

Village Attorney Roget Bryan read the title of the resolution and asked that the Council disclose ex parte communications. Councilman Gregg disclosed that he spoke with Ty Harris when he performed a site visit and asked about the conditions of the lot. Vice Mayor Bacheler stated he spoke with Ty Harris about his application. Mayor Pinder stated he spoke with Ty Harris. Councilman Webb and Councilman Rosenthal each stated that they did not have ex parte communications. Planner Christina Neel presented the staff report. Village Attorney Roget Bryan stated that the comments received by the Village for the administrative relief item would be added to the official file.

Councilman Gregg explained that he performed a site visit. The lot was located in a platted neighborhood and the infill lot was scarified with zero environmental concerns. He stated the lot was located in a subdivision and for some reason the developer did not dedicate the road to the Village making it a public road and that the road was a dirt road which caused the applicant to be penalized which was the reason the lot did not score higher in the BPAS rankings. Mr. Gregg stated the application was a good candidate for administrative relief. Councilman Webb asked how many points the application would have had were it not penalized. Councilman Gregg stated it would have had ten more points.

Mayor Pinder invited the applicant to speak. Village Attorney Roget Bryan noted the applicant submitted written comment that has been included with the administrative relief file.

The Applicant, Ty Harris, stated that if points were awarded, he would have another application, another application fee, more time spent in BPAS waiting for an allocation and mortgage payments for a property he could not use. He noted the written comments he submitted were in response to comments submitted by the Carlton Fields attorney who represented the Islamorada Community Alliance.

Councilman Rosenthal asked if there were applicants with better qualifications ahead of the applicant. Council stated that there were, but that the applicant had been in the system much longer. Councilman Gregg explained that awarding relief in the form of an allocation was consistent with decisions made by past Councils. Councilman Webb commented regarding the three options available to Council. He commented that there was a difference between "policy" and historical council decisions, the importance of making the appropriate fiduciary decision when granting administrative relief; and noted that the Council had more flexibility with the administrative relief pool of allocations.

Mr. Harris explained that if he were awarded ten points, he would still remain in BPAS causing another applicant to be pushed down into the next quarter causing the other applicant to wait longer. Councilman Gregg provided background information regarding the administrative relief allocation that was granted to the 20-acre property located at 86600 Overseas Highway in which he

suggested the Council award points because it was predominantly environmentally sensitive and identified on the Florida Forever list. He noted that the Council awarded the allocations despite his objections. Councilman Webb expressed concern regarding the importance of determining the more beneficial long-term option. He commented that the Council had the option, which had no significant impact on the applicant, to have the applicant receive an allocation from the current BPAS pool or to provide administrative relief in the form of an allocation from the market-rate roll-over allocation pool. He noted that there did not appear to be any investigation or recommendation as to what the better option would be. Councilman Webb asked, that going forward, information be provided that would identify the best form of administrative relief.

Mayor Pinder opened public comment.

Aaron Dunlap, Attorney with Carlton Fields, spoke on behalf of the Islamorada Community Alliance, Inc., expressed opposition. He incorporated his arguments from Tab 5. He noted that Council makes determinations based on the information before them. He opined about a portion of Code Section 30-477, specifically that the "applicant" was eligible for administrative relief and not the property. He commented that the property was undeveloped; that the staff report said there was no diminution in value; noted the property had gone up in value year after year; and that there was no substantial evidence in the record that indicated why the property was low scoring. He asked that tree removal permit number TRM201802071 be entered into the record. Mr. Dunlap noted that the permit showed that there were native trees on the property and that mitigation and replacement of six trees was required. He noted that the required mitigation was never completed. Mr. Dunlap noted that the applicant was the Planning & Development Services Director with all the rights as any other permit holder in the Village. He commented that the staff report came through the applicant from one of his staff members. He expressed concern regarding granting administrative relief to a BPAS property with a score of 8, that was number 62 of 65 on the BPAS list, for a historically undeveloped piece of property, and for a property owner of 15 months. He asked when would there be a point when the Council did not consider granting administrative relief noting the 2023 exhaustion of building permits. He noted that making decisions based upon historical decisions was not a decision based upon the substantial competent evidence. Councilman Webb asked that the attorney address whether the applicant had to have the application in BPAS for four years or if the section of the Code pertained to the property. Village Attorney Roget Bryan noted that the substantial competent evidence was included in the staff report; and that the quasi-judicial procedures define the "applicant" as the owner of record, the owner's agent, or the person with the legal equitable interest in the property for which an application for a development order has been made. He commented that the owner of record is the person that has submitted the application which is sufficient. Mr. Bryan recited Code Section 30-253 providing the definition for "competent substantial evidence". He stated the application before Council was procedurally proper and timely.

At 9:58 p.m. Councilman Webb made a motion to continue the meeting for 30 minutes. Vice Mayor Pete Bacheler seconded the motion. Council voted all in favor.

Susan Raffanello commented about the applicant definition as provided by the Village Attorney that the applicant was the owner of record and not the property itself. She expressed concern that there be objective evidence, to ensure that this was precedent going forward to remove the allocation from market rate roll-over pool rather than the BPAS pool and that such evidence be sustainable and on the record.

Mayor Pinder closed public comment.

Councilman Mark Gregg explained some of the considerations when awarding administrative relief: the burden on the owner specifically the time cost of ownership; if points are awarded the applicant rises toward the top of the BPAS list pushing applicants behind him down a notch and that this can cause some of the applicants to have to wait longer due to the fact they have now been pushed into a different allocation period as BPAS awards are allocated quarterly. He noted that it would be a service to the public to not make applicants wait longer than they have to. Vice Mayor Bacheler noted that if an applicant had to remain in the BPAS list that they had to pay additional application fees. Mayor Pinder asked Ty Harris the amount of additional fees associated with staying in BPAS if points were awarded. Planner Christina Neel stated the application fee to enter BPAS was \$300. Councilman Webb explained that he desired to know what the consequences were for the various administrative relief options; and stated the Council had what was needed to make the decision, but how Council made the decision could be improved upon with more information and a deeper look. Councilman Webb noted that the Council was not establishing a policy that anyone applying for administrative relief would be awarded an allocation. Village Attorney Roget Bryan explained that the staff report outlined the criteria the Council would consider and evaluate; the Council decision was based on the three options available in the Code; no blanket formula for the number of points that could be awarded; that the decision is application driven; and that the code provides the Council with flexibility in making their determinations. Mayor Pinder commented about the financial burden placed on applicants noting that he paid almost \$35,000 to obtain a building permit.

Council and staff discussion ensued regarding the permit for tree removal which was in the name of the prior owner. Councilman Gregg explained that if there were mitigation requirements associated with the property those requirements had to be filled before a certificate of occupancy would be issued. He suggested that if the Council awards an allocation, they can impose a condition that the mitigation requirements are met in accordance with the Code and permit approval requirements.

Councilman Mark Gregg made a motion to award one allocation from the administrative relief pool conditioned on verification that any mitigation requirements associated with the 2018 tree removal permit are met in accordance with the Code. Councilman David Webb seconded the motion. Council voted and the motion passed 5-0.

Councilman Rosenthal expressed an interest in being able to set a precedent on administrative relief items that the Council an applicant would be able to rely upon going forward.

ORDINANCES

TAB 7: First Reading: An Ordinance Amending Chapter 50, Article 5, "Motor Vehicles and Penalties" of the Village Code to Revise Civil Fines and Penalties for Illegal Parking on Streets and Right-of-Way within the Village

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 50 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", ARTICLE 5 "MOTOR VEHICLES AND TRAFFIC" OF THE VILLAGE CODE OF ORDINANCES RELATED TO ILLEGAL PARKING ON RIGHT-OF-WAY AND STREETS WITHIN THE VILLAGE; SPECIFICALLY AMENDING SECTIONS 50-63, SECTION 50-65 AND SECTION 50-66 OF THE VILLAGE CODE TO INCREASE THE CIVIL FINES AND PENALTIES FOR VIOLATIONS AND PROVIDE FOR

METHODS OF COLLECTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

This item was heard at 10:20 p.m. Village Attorney Roget Bryan read the title of the ordinance and provided the staff report. He noted the changes to fines which included increasing the fine from \$30.00 to \$100.00 and if paid after 30 days increasing the fine from \$50.00 to 125.00 noting the fines had not been increased since they were established. Councilman Webb reported on a conversation he had with a reserve deputy assigned to the Fills explaining that people laughed at the deputy when he wrote them a citation because they paid more to park in Miami Beach. He suggested the fines be raised enough to discourage the activity. Councilman Webb suggested a fine of \$200.00 if paid in 30 days and \$250 if paid after 30 days. Councilman Gregg noted it was important where the requirements would be enforced. Vice Mayor Bacheler asked if the enforcement could be controlled through the placement of signs. Councilman Webb noted that signs had to be present in order for law enforcement to enforce the code. Councilman Rosenthal noted that the Fills was the priority but had concerns about enforcement in the business district. He suggested the fine amount be placed on the signs.

At 10:28 p.m., Vice Mayor Pete Bacheler made a motion to continue the meeting. Councilman David Webb seconded the motion.

Mayor Pinder opened public comment.

Robert Moser, speaking on behalf of the Lower Matecumbe Beach Property Owners Association, commented about the parking issues in his neighborhood and asked if all rights-of-way in the Village could be prevented from parking. The Public Works Director explained that signage was necessary in order to issue a citation.

The Village Attorney suggested the Public Works Director could bring other suggestions to Council for areas that were not marked with signage.

Mayor Pinder closed public comment.

Councilman David Webb moved to amend the ordinance to reflect a fine of \$200.00 if paid within 30 days and \$250.00 if paid after thirty days. Vice Mayor Pete Bacheler seconded the motion. Council voted and the motion passed 5-0.

RESOLUTIONS

TAB 8 : Resolution Approving the Purchase of AIRVAC Vacuum Pits from Aqseptance Group

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING THE PURCHASE OF 52 AIRVAC VACUUM PITS FROM AQSEPTENCE GROUP FOR THE VILLAGE CENTRAL WASTEWATER SYSTEM; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE NECESSARY DOCUMENTS; PROVIDING FOR A WAIVER OF COMPETITIVE BIDDING; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

This item was heard at 10:36 p.m. Village Attorney Roget Bryan read the title of the resolution. Public Works Director A.J. Engelmeyer presented the staff report that recommended approval.

Mayor Pinder opened public comment; no comment was offered.

Councilman David Webb made a motion to approve. Councilman Mark Gregg seconded the motion. Council voted and the motion passed 5-0.

TAB 9: Resolution Approving Project Agreement No. 1 between Page Excavating, Inc. and Islamorada, Village of Islands, to Replace the Remaining Phase II Vacuum Pits in North Plantation Key

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING PROJECT AGREEMENT NO. 1 BETWEEN PAGE EXCAVATING, INC. AND ISLAMORADA, VILLAGE OF ISLANDS, TO REPLACE 46 PHASE II VACUUM PITS WITHIN NORTH PLANTATION KEY FOR THE VILLAGE CENTRAL WASTEWATER SYSTEM; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF PROJECT AGREEMENT NO. 1; 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 10:40 p.m. Village Attorney Roget Bryan read the title of the resolution. Public Works Director A.J. Engelmeyer presented the staff report that recommended approval.

Mayor Pinder opened public comment; no comment was offered.

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

MAYOR / COUNCIL COMMUNICATIONS

Agenda Additions:

Update on the Village Manager Search

This item was heard at 10:42 p.m. Mayor Pinder reported that the Village published an RFP for executive search firms on December 28, 2020 with a proposal submittal deadline of January 15, 2021; the ICMA recommended seventeen search firms; seven submittals had been received as of 3:00 p.m.; the RFP evaluation committee would meet on January 22, 2021 to review and evaluate the proposals; and a recommendation would be made to Council at the February 4, 2021 Council meeting.

Attention Media, LLC

This item was heard at 10:44 p.m. Mayor Pinder suggested a pilot project with Attention Media, LLC to improve transparency and communication with the community. Councilman Gregg spoke in support of the Mayor's suggestion. Councilman Webb liked the idea of a pilot program and making it easier for people to see what the Council was doing. Mayor Pinder requested the item be added to the next agenda.

VILLAGE ATTORNEY / VILLAGE MANAGER COMMUNICATIONS

TAB 10: Update Regarding Fees for Public Records Requests - Village Clerk

This item was heard at 10:47 p.m. Village Clerk Kelly Toth presented the staff report addressing fees for staff time for voluminous records requests. She explained the statutory requirements associated with public records requests, provided the legal basis for compounded rates, noted that the Village currently provided the first hour of staff time free. Ms. Toth explained that she had reached out to the members of the Florida Association of City Clerks to determine when other cities began charging for staff time. Fourteen cities responded: six cities charged after fifteen minutes, six cities charged after thirty minutes, one city charged after an hour and one city charged after two hours due to a contractual arrangement.

She reported that the City of Key West charged \$16.98 per hour after 30 minutes. The City of Marathon charged \$14.00 per hour after 15 minutes for a standard request. Requests involving department heads or attorneys are charged the department head hourly rate. She explained that Monroe County charged after 30 minutes and used the compounded hourly rate of the person fulfilling the request. The lowest hourly rate charged was currently \$31.00 noting that if the Records Administrator fulfilled the request the hourly rate was \$42.21. She stated that if the request involved litigation records, the attorney's hourly rate is charged. Ms. Toth stated that the Monroe County Clerk of the Court charged flat fees for fulfilling records requests. They charged \$2 for each year searched and \$1 per page for each record provided to the requestor regardless of whether the records are provided in paper or electronic format. Ms. Toth provided calculated cost examples for each of the Monroe County agencies based on a request that would take an hour and a half to produce.

Ms. Toth stated the budget impact was favorable as revenue generated from extensive records requests would offset some of the labor costs associated with fulfilling the request. She clarified that the fees would not cover the staff costs only offset them. She explained that staff has found that when a requestor was advised of the fee to produce a request, they changed their request to only those documents they actually needed and provided recent examples noting that the amended request saved staff time.

Ms. Toth stated that based on the information staff recommended that the Village change its process to provide the first thirty (30) minutes of staff time free of charge. She also recommended that if a requestor broke up a large request into smaller requests in order to avoid fees, the smaller requests may be aggregated and charged as though only one request had been made. Vice Mayor Bachler asked if the Clerk was looking for direction. She confirmed she was requesting direction to begin charging after 30 minutes and to aggregate requests.

At 10:56 p.m. Councilman David Webb made a motion to extend the meeting for 30 minutes. Councilman Mark Gregg seconded the motion.

Council discussed aggregating requests and the idea of providing a request free of charge for indigent individuals. Councilman Webb asked if the determination would be made on a financial basis only. Councilman Gregg stated yes and that the person requesting the fee waiver could explain their situation. Councilman Webb stated that the suggestion would place the burden on staff to make the decision which could have legal ramifications. Councilman Gregg commented that the Village Attorney could provide guidance in those situations.

Mayor Pinder opened public comment.

Ed Davidson commented that it was reasonable to aggregate requests that were clearly part of the same subject but not to aggregate requests just because they were from the same person. He commented that staff needed to account for the actual time spent.

Mayor Pinder closed public comment.

Councilman Rosenthal inquired as to the hourly rate. The Village Clerk explained that the rate stayed the same, that the change was being made to the amount of staff time provided free of charge. She explained the hourly rate without benefits was \$18.86 and that when compounded it was \$26.44; that the rate was broken into fifteen-minute increments.

Councilman David Webb made a motion to approve charging after 30 minutes and to allow for aggregating the requests. Vice Mayor Pete Bacheler seconded the motion. Council voted and the motion passed 4-1 with Councilman Rosenthal voting in opposition.

Councilman Gregg expressed that he was offended by the editorial in the Free Press by Dan Campbell regarding the allegations the editor made regarding his opinion as to what was driving the change and his opinion that the fee change was not cost recovery but intended to discourage public records requests by making them more costly and thereby less likely council decisions will be questions. Councilman Gregg stated the Council has gone out of their way to make fair and easy for members of the public to obtain records. Councilman Gregg stated he wished the editor had spent more time investigating as the Village was not isolated in charging for records requests.

Councilman David Webb requested Council support in requesting the Acting Village Manager conduct a review of the amount of time utilized on fulfilling records requests noting that the community was not responsible in subsidizing the requests. He commented that the Village did not have a dedicated person to fulfill requests. Councilman Webb stated he would like to know if the amount of request would justify hiring one or two individuals to fulfill records requests. Councilman Rosenthal expressed support for Councilman Webb's suggestion.

TAB 11: For Discussion: Expanded Venetian Shores Stormwater Management Project Property Owner Survey Results- Acting Village Manager

Acting Village Manager Maria Bassett announced Village Hall would be reopened to the public on Tuesday. She asked to be given authority to reimburse contractors or property owners that had to enlist the services of inspectors while the Village was closed. She stated an invoice with reasonable costs would have to be submitted for reimbursement. Council expressed agreement.

This item was heard at 11:09 p.m. Ms. Bassett provided the staff report providing background information about the Venetian Shores Stormwater Management Plan and provided the results of the Venetian Shores Stormwater Survey. She stated staff was not confident that the survey showed support for payment of the project and grant funds could not be guaranteed and explained that the property owners would be responsible for payment and that staff was estimating \$10 to \$12 million to finish Venetian Shores. Ms. Bassett stated that an option was to update the Stormwater Management Master Plan. She stated the Venetian Shores HOA made it clear that the stormwater project was not their initiative. Public Works Director A.J. Engelmeier stated an updated Stormwater Management Master Plan would provide project estimates which would help staff to determine if

stormwater assessments needed to be increased in order to fund projects. Ms. Bassett stated staff could ask the consultant to prioritize the areas. If the plan was updated, the consultant should incorporate the efforts of Monroe County in addressing road and sea-level rise plans. Councilman Webb spoke in support of addressing the issue as a whole rather than individual streets with flood issues and recommended updating the master plan. He expressed concern regarding the sea level rise plans specifically about how flooding would increase in areas where the highway was raised to address sea-level rise. He stated that the FDOT needed to incorporate stormwater control for highway projects that addressed sea-level rise. The Public Works Director stated that the FDOT projects addressed stormwater. Mayor Pinder and Councilman Gregg spoke in support of updating the plan. Councilman Webb agreed with Ms. Bassett's suggestion to have the engineers rank the areas by critical need. Discussion ensued regarding Venetian Shores and other areas with critical needs; mobilizing equipment for a project; and the importance of incorporating Monroe County's road and sea-level plans.

Ms. Bassett stated an option in the council communication was to begin the design and engineering for Venetian Shores and that the property owners would be responsible for the costs which would be approximately \$500,000 which could be paid with a small initial assessment. She stated staff was concerned about the Monroe County sea-level rise plans noting that staff did not want property owners to pay for something that may become insufficient or obsolete.

At 11:28 p.m. Councilman David Webb made a motion to extend the meeting. Councilman Mark Gregg seconded the motion.

Ms. Bassett stated staff needed a motion for direction to move forward with the stormwater management plan and to include Monroe County's road and sea-level rise plans.

Mayor Pinder opened public comment.

Jim Bellizzi commented that Venetian Shores had a specific need for stormwater control; that they were requesting to opt-out of the Village-wide stormwater assessment and become a self-funded stormwater enterprise in Venetian Shores. He commented regarding the terrible roads in the neighborhood; and the survey results that indicated 36% of property owners were willing to pay without any grant funding. He stated that they would not be able to determine what type of grant they would be eligible for until they had a shovel-ready project that could be put out to bid which required engineering.

Robert Moser, President of LMBPOA, commented that the stormwater plan had prioritized the drainage basins on Lower Matecumbe above other areas; prioritizing should occur; public-private partnerships should be sought; and noted that they were in the original stormwater plan and the 2015 report conducted by Weiler engineering.

John Cooper commented about the survey results; that Venetian Shores had significant flooding issues; and the immediate nature of their need versus the long-term sea-level rise issues.

Art Johnson, Venetian Shores property owner, recommended prioritizing the streets in Venetian Shores.

Councilman Webb noted that if the Village requested engineering for Venetian Shores it would be affected by the future FDOT changes to the Snake Creek Bridge. Mayor Pinder asked about the

suggestion for an assessment specifically for Venetian Shores. Councilman Webb stated the survey results showed that over 60% of the property owners in Venetian Shores did not want the assessment. Vice Mayor Bacheler suggested the Venetian Shores item be tabled for a while, complete the Stormwater Master Management Plan update then revisit Venetian Shores. Councilman Gregg provided a temporary suggestion for immediate relief from flooding issues in Venetian Shores.

Councilman David Webb made a motion to update the stormwater management plan in concert with Monroe County's road and sea-level rise plans and FDOT projects. Vice Mayor Pete Bacheler seconded the motion. Council voted and the motion passed 5-0.

TAB 12: Discussion Regarding Development of Village-Owned Lots for Affordable / Workforce Housing- Acting Village Manager

This item was heard at 11:48 p.m. Acting Village Manager provided the staff report. Council directed staff to give the item to the Achievable Housing Committee so they could evaluate and make recommendations on how to move forward.

Mayor Pinder opened public comment.

Ed Davidson commented about the late hour and the diminishing public participation and suggested two meetings a month.

Mayor Pinder closed public comment.

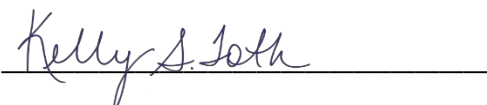
Legislative Agenda

This item was heard at 11: 56. Village Attorney Roget Bryan reviewed the legislative agenda.

ADJOURNMENT

Councilman David Webb made a motion to adjourn. Councilman Mark Gregg seconded the motion. The meeting adjourned at 11:58 p.m.

Approved by the Village Council February 4, 2021.

A handwritten signature in cursive script, reading "Kelly S. Toth", is written over a horizontal line.

Kelly S. Toth, CMC
Village Clerk