

**CITY COUNCIL/COUNTY COMMISSION JOINT MINUTES  
SEPTEMBER 8, 2021 – 2:00 P.M.  
INDIAN RIVER CHARTER HIGH SCHOOL  
6055 COLLEGE LANE, VERO BEACH, FLORIDA**

**1. CALL TO ORDER**

Mayor Brackett called today's meeting to order at 2:00 p.m.

**A) Pledge of Allegiance**

Mayor Brackett led the City Council, the County Commission, and the audience in the Pledge of Allegiance to the flag.

**B) Roll Call**

**CITY OF VERO BEACH:**

**PRESENT:** Mayor Robbie Brackett, present; Vice Mayor Rey Neville, present; Councilmember Honey Minuse, present; Councilmember Bob McCabe, present and Councilmember Richard Winger, present **Also Present:** Monte Falls, City Manager; John Turner, City Attorney; Tom Cloud, Outside Counsel and Tammy Bursick, City Clerk

**INDIAN RIVER COUNTY:**

**PRESENT:** Chairman Joseph E. Flescher; Vice Chairman Peter O'Bryan; Commissioner Susan Adams; Commissioner Joseph Earman and Commissioner Laura Moss **Also Present:** Jason Brown, County Administrator and Dylan Reingold, County Attorney

**2. TOPICS FOR DISCUSSION**

**A) Statement of the issues by City of Vero Beach Mayor Robbie Brackett and staff**

Mayor Brackett stated that he and Chairman Flescher would first make their statements and then staff would be making a presentation. He started his statements with the question why is the City asking the County to recognize the permanent of generation of the 1989 Territorial Agreement (TA). He reported that in the late 1960's the City was asked to provide utilities to the barrier island areas adjacent to the City and the City supplied those utilities. In the early 1980's the County made an unsuccessful attempt to provide utilities to the South Beach area. In 1984 the Board of County Commissioners expressed their appreciation to the City for their cooperation of providing service to that area. The County then granted the City their first permanent service territory of South Beach for water in 1984 and sewer in 1985. In 1987 the City let the County collect the franchise fee. The first year franchise fee for water and sewer were approved. He stated that those agreements have since expired and the City continued to collect those fees on the County's behalf. In 1989, after a joint meeting of the City Council and the County Commission, the 1989 Territorial Agreement (TA) was adopted by the City and by the County. The City is currently working on

two (2) projects that would not only serve the City's service area, but would benefit the entire County. They will be constructing a project that will repurpose stormwater from the Main Relief Canal for irrigation. The second project, which is the most important, is they will be constructing a new state of the art advanced Waste Water Treatment Plant (WWTP). He said that fighting over a service area makes no sense. He asked that they work together and serve their community in the most efficient economical way possible. The City needs the County to recognize the permanent duration of the 1989 TA so the City can move forward with the new advanced WWTP to the capacity to serve the entire service area. If the County is unable to recognize perpetuity of the document now then they can conclude this meeting.

**B) County's response and its statement of the issues by Indian River County Chairman Joseph E. Flescher**

Chairman Flescher stated that it was his position that the City continues to serve the Town of Indian River Shores (IRS) consistent with the terms of the existing Franchise Agreement (FA) and the City continues to serve the south barrier island under a reasonable FA. It is not his intent or the Commission's intent for the County to take over any of the City's service areas, nor is it their intent to have the City and the County engage in litigation. The County's offer to the City would be the return of the key points that the County staff presented to the City several weeks ago. In the spirit of cooperation the County would be willing to acknowledge the validity of the Service Territory Agreement (STA) in exchange for a reasonable FA for the unincorporated areas in Indian River County that are currently served by the City. That FA would have a phase in to the City rates. County staff had proposed five (5) years of the continued County rates with the rates then shifting to City rates, but with a maximum annual increase of 5% per year. After that the rates would be City rates with no restrictions. It is his understanding that City staff had concerns about the inability to control the rates during the phase in that period. To resolve that issue, he would propose that if the County were ever to decrease rates, the City could charge City rates. The City would also have to not impose any surcharges, which is consistent with the current City billing practice. Finally, the level of service would be the same for both customers in the City and in the unincorporated areas served by the City, both with respect to water quality and scheduling of improvements to the system. He said that he felt that was a very reasonable compromise that would help them avoid litigation and give the needed certainty to the City. He said that they know IRS has filed a lawsuit against the City about the STA and any resolution here may end up causing the County to be a co-defendant. He said that he wants to come to a meaningful resolution between the City and the County. He stated that it is not his intention to have the County be an active participant in any such litigation. He said that he is not interested in hearing from staff and outside attorneys today about litigation positions. They want to hear about resolutions and solutions. It is his understanding that the intent of the process is to have their two (2) Boards (the City Council and the County Commission) try to seek an agreement. To find a common ground, understanding, and commitment to the service of the citizens of Indian River County and any other jurisdiction involved. He wants to hear from the City Council and his fellow Board members on this proposal. He said if the County agrees to the terms of the TA, the County becomes a defendant in the IRS lawsuit. If the County takes the position that the TA is invalid, the City could then in turn sue the

County. Therefore it is a catch-22 so the County has stayed away from that and not committed to the TA.

**C) City' response by City of Vero Beach Mayor Robbie Brackett and staff**

Mayor Brackett said the City is not ready to start discussing prices. They have studies that they need to continue. He said this issue is strictly about the 1989 TA, which is why Chapter 164 was filed. He said they are not interested in talking about prices at this time so if the County does not agree to the contract then they don't have much to talk about. He said the City has a presentation that they would like to give on the history on how this all came about if they would like to see it. If they don't want to see it or hear from staff then that is their prerogative.

Chairman Flescher said they have already heard from staff.

Mrs. Adams said their staff keeps them well aware of what has been going on. She felt at this point they are in the joint public meeting phase of the Chapter 164 process. She said in reading from the Statue relating to the joint public meeting phase, this is the time where staff has not been able to come to a resolution so now it is for both Governing Boards to try to work out a resolution. She said that Chairman Flescher indicated that he, and she believes the rest of the Commission members would be more interested in having a dialogue with the City Council versus having a dialogue with City staff. She said staff is to get together and go over their positions and if that doesn't work out then the next step is for the Governing Boards to try to work something out and that is where they and that is where the dialogue should be happening.

Mayor Brackett said that dialogue would happen after staff makes their presentation.

Mrs. Adams said the Commission is aware of what the presentation is about. They are very aware of the information provided in the binder that was given to them (on file in the City Clerk's office). They have been given multiple emails on public records requests, etc. She is more interested in jumping into the dialogue than going over the history of these documents that they have seen several times.

Chairman Flescher said that he would like to see the "grit" of why they are there. He said the Mayor stated that they were not proposing rates, which he understands, but they can't expect any reasonable dialogue without knowing some kind of general number or some kind of a guarantee. He said what he previously stated was not an exact number. It was reasonable rates, consistent rates, and the transition of a five (5) year ease in with a 5% increase. That is not talking numbers, it is some general obligation rules so that they could go forward and make some sort of a cohesive decision together. That is why they are here today.

Mayor Brackett said they have followed Chapter 164 for one (1) document and one (1) document only and there is no mention of rates anywhere in that document. He said that he is not prepared to talk rates and making a deal conditioned on rates. He said lets judge the document on its merit.

Ms. Moss said that she requested documents from staff in preparation for today's meeting and received one (1) single document. She had all the contracts months ago, but as far as these documents they have not been reviewed. She felt it always helped to get the history and the context of a matter in order to make a sound decision. She said that she is amenable to hearing the presentation.

Chairman Flescher said the presentation is appropriate, but it has already been vetted out by staff. Their conversation today was to bring them together to find out what was really causing them to be at odds.

Mayor Brackett said what is odd is that the City thinks the document says "permanent" and has no expiration date, but apparently a Commissioner thinks it does not say that.

Chairman Flescher asked is he correct that it is in litigation with another party.

Mayor Brackett answered yes.

Chairman Flescher said so if they engage in supporting or denying any TA then the County would then be engaged in the Courtroom for testimony.

Mayor Brackett said that is a possibility. He said they have kicked this down the road for 15 years and they have to decide if the TA exists or not. He said the City has to know if the TA exists or not because until they know they cannot move any further. The City can't talk to IRS on prices or anything to try to work out an agreement with them.

Mrs. Adams questioned why. She said the City already has engaged in conversations with IRS and does service with them under this existing contract. She felt the discussion point should be with IRS.

Mayor Brackett said IRS is not mentioned anywhere in the TA. The County and the City is and they need to find out if this agreement exists between them, no other entities.

Vice Mayor Neville said the people who are watching this meeting have no idea what the background of this is. He felt it was important to make it clear and understandable on what they are discussing. Once they understand the tasks and accept them or reject them then they could all discuss it. He said to lay everything out and have the presentation and then they can have a discussion.

Ms. Moss agreed.

Chairman Flescher asked Mayor Brackett if that is the way he wanted to proceed.

Mayor Brackett said that is the way they intended to proceed.

Chairman Flescher said it was their intent that they would all be discussing this because the County Commission has all been involved in the process.

Mayor Brackett said that he does not have a problem discussing the document, but not the prices.

Chairman Flescher questioned so the City is not going to discuss prices.

Mayor Brackett answered no. He said not until the City completes their rate study they don't have anything to guarantee to anyone.

Chairman Flescher said that he is amenable to have as many meetings as possible to bring this to a conclusion, to a common ground so that the citizens can be serviced properly. He said they have no interest whatsoever in getting into this water business.

Mayor Brackett questioned why was a feasibility study on a recent County Commission agenda. He asked if they don't want to do it then why would they do a feasibility study.

Mr. O'Bryan said IRS is doing a feasibility study and they asked the County Commission to work with them by providing them information they need in order for them to do the study. Indian River County is not doing a feasibility study to provide service to IRS. Also, IRS was looking for a new water service provider and at that point in time the County was an active participant in that process and submitted a bid, but never during the entire time did they ever bring up a STA. He said that he doesn't know why it is a big thing now, but six (8) – eight (8) years ago it was never mentioned. He said there was an open competition for service to IRS and at no time did anyone from the City bring up the STA. He said that he sees two (2) things; whether the agreement is permanent and more importantly, is the County in violation of the STA. He asked if IRS had sent the County a public records request asking for the same information that the County currently provided the City through cooperation, would the City be suing them.

Mayor Brackett said the City is not suing the County right now.

Mr. O'Bryan said that is why they are here.

Mayor Brackett said Chapter 164 is not litigation.

Mr. O'Bryan asked would they be sitting here if IRS asked the County for a public records request.

Mayor Brackett said the County can respond to IRS.

Mr. O'Bryan said that is what the County is doing, but they are doing it in a cooperative manner. They haven't laid any pipe, built any more capacity, or done anything that would indicate they were moving forward to provide service to IRS. He said that he didn't think they violated the STA.

Mayor Brackett said the City is not saying that they did.

Mr. O'Bryan asked then why are they here.

Mayor Brackett explained that they are trying to find out if the STA exists or not.

Mr. O'Bryan felt that was irrelevant. He said the County has not tried to provide service.

Mayor Brackett questioned then the County's intention is to walk IRS down the aisle and walk away at the last minute. He asked what happens if it is feasible.

Mr. O'Bryan said IRS would have to settle the issue with the City on if they could get out of the City's service territory.

Chairman Flescher said it is IRS's lawsuit and when the County discussed this with IRS he cautioned them to be careful what they wish for because they might not be happy with the result. It is either going to be for them to support their study if it is feasible and if it is not feasible it is not feasible. He said the County is not interested in the water business. He felt this was about feasibility on IRS's end. He said the Mayor stated that he was not prepared to discuss pricing, but he (Chairman Flescher) was not talking about "dollars per gallon."

Mayor Brackett said to understand this, if the County is stating that if it becomes feasible it is IRS's responsibility to come to the City to be released and the County is stating that this contract isn't enforced.

Chairman Flescher thought so.

Mr. O'Bryan said if IRS decides they think it is feasible to have the County provide service it is their responsibility to figure out how to get out of the STA.

Mayor Brackett said the City needs to know if the 1989 TA is permanent or not because the City has to build a new facility and if they have to worry about anyone taking their customers they cannot build an appropriate facility.

Mr. Winger said that he was the Mayor at the time when the City tried to have a franchise agreement with the County and the sticky point of why they didn't come to terms at that time was the fact that there was no acknowledgement of the permanency of the 1989 TA. He said they should have resolved what they are trying to resolve today at that time. He said that was a historical mistake and what the Mayor is trying to do is fix it.

Mr. Flescher said the number one (1) reason why there is a lawsuit is because of fear of rates. They want to know what they are going to be paying.

Mayor Brackett said they have done that to the best of their ability without the rate study, which they stated was about \$17.77 over a 10-year period of time. He said this has been communicated to IRS and to the people of South Beach. He said they have done the most they can based on the information they currently have and without a rate study. He said they believe the \$17.17 is a worst case scenario.

Mrs. Adams said the Chairman stated earlier in today's meeting that they would be willing to take no position on the TA provided that they receive something on the rates for South Beach residents.

Mayor Brackett said the City needs a position to be taken.

Mrs. Adams said regardless of what position the County takes related to the TA today, the TA is going to be litigated. Either the City is going to sue them or IRS is going to sue them when really this is between the City and IRS. What they can resolve is the South Beach issue.

Mayor Brackett felt the City had a solid plan in place that IRS would be happy with if the City gets a chance to speak with them.

Mrs. Adams said that she is struggling to understand why they are here when the issue is between the City and IRS. She felt that the County was being sucked into this.

Mayor Brackett said that is not it. He said the County is only brought into this because the agreement is between the City and the County. He explained that the City needs to be sure that the County has the same viewpoint as the City has on the agreement. He said what that means is what if the County 10-years from now recruits IRS. He said then the City would be stuck with a facility that they overbuilt. The City needs to make sure that they have an agreement and that is all they are asking of the County. If they don't then the City can move on from there.

Mrs. Adams said based on that argument, nothing they decide would prevent that from happening anyway because they can't bind a future Commission or Council.

Mayor Brackett said that is correct, but this would give the City more of a sense of security with an honorable agreement. He said the City has a current contract with IRS and does not have a contract with South Beach.

Chairman Flescher asked how can they move forward today if they don't know a reasonable price and if they don't know if the agreement is in concrete, changeable, etc. He felt that once they find out where the court case goes and the City feasibility study is done as to the cost factor, they would be able to hold a one-stop shop meeting and get this done. Until then the ratepayers do not feel that they have a safety zone as far as the rates go.

Mr. Winger said that he did not think IRS was part of this conversation. He said the City Council and the County Commission makes policy, budget, and laws, but he thinks it is staff's responsibility to work out negotiations and to run the day to day business.

Chairman Flescher said it is going to take time for the rates to be established and this court case is going to take time. He said the County cannot get involved in the discussion of the TA because they have to wait for the court case to be resolved.

Vice Mayor Neville asked does the County have the capacity to serve IRS.

Chairman Flescher said they are not interested in getting into the water business. He said the question of if they have the capacity is inappropriate because it is irrelevant to the discussion.

Mayor Brackett asked in an effort to continue the conversation, would the County Attorney allow them to speak to each other (Mayor Brackett and Chairman Flescher).

Chairman Flescher felt that they should be able to speak with each other. He said the challenge is that they need to bring the information back to the table.

Mr. Dylan Reingold, Indian River County Attorney, said this is designed to be a joint public meeting and he has always taken the position that this is to be a Sunshine Law style and he has concerns of violating the intent of the Statute.

Mr. John Turner, City Attorney, said there is nothing in the Statute as to Chapter 164 that prohibits discussion between the perspective Governing bodies in individual meetings. The Sunshine Law does not apply.

Mr. Tom Cloud, City's Outside Attorney, said a City Councilmember meeting with a County Commissioner is not a violation of the Sunshine Law and he doesn't think it was a violation of Chapter 164.

Mr. Reingold said if the Chapter 164 proceeding was to stop or put in abeyance then the dialogue could continue.

Chairman Flescher asked is there a way to put Chapter 164 in abeyance.

Mr. Reingold read Section 164.1055 (1)(c) of the Florida Statute, "*Schedule additional meetings of the entities in conflict or of their designees, to continue to seek resolution of the conflict.*" His suggestions would be that the Board of County Commissioner and the City Council could push this back to staff to see if they can come to a resolution, they could stop the Chapter 164 process and go back to having open dialogue and if that doesn't progress they could start the Chapter 164 process back up. His strongest recommendation so that they don't have any concerns about the challenge that they didn't properly follow the Chapter 164 process would be that the two (2) sides agree that the Chapter 164 process would cease and/or that they delegate the issue back to staff under the Chapter 164 process.



Mrs. Adams said her concern with multiple Councilmembers and Commissioners having sidebar conversations is that it might be allowable, but the perception of the public that they were having a backdoor deal or they were not operating in the public eye. She would be more comfortable if each Board selected a designee to try to negotiate something rather than everyone having sidebar conversations.

After discussion, the City Council and the County Commission agreed to bring this back to staff to try to reach a resolution and then hold another joint City Council/County Commission meeting. The City Council would appoint one (1) member from the Council to work with the City Attorney and the City Manager and the County Commission would appoint one (1) member from the County Commission to work with the County Attorney and the County Administrator.

The City Council appointed Mayor Robbie Brackett as their designee.

The County Commission appointed Chairman Joseph E. Fletcher as their designee.

It was noted that there would be an agenda and the meetings would be open to the public.

### **3. CITY COUNCIL/COUNTY COMMISSION DISCUSSION**

- A) Discussion by City Council**
- B) Discussion by Board of County Commissioners**

\*Please note that items 3-A) and 3-B) were discussed under item 2-C) on today's agenda.

### **4. AGREEMENT**

- A) Action on request seeking an agreement**
- B) If no agreement, consider scheduling additional meetings on the entities, or their designees, to continue to seek resolution of the conflict**

\*Please note that items 4-A) and 4-B) were discussed under item 2-C) on today's agenda.

### **5. PUBLIC COMMENT**

Mayor Brackett opened and closed public comment at 3:36 p.m., with no one wishing to be heard.

### **6. ADJOURNMENT**

Today's meeting adjourned at 3:36 p.m.

/sp