

Jay G. Foy, Mayor
James E. Woods, Vice Mayor
Jerry E. Beavers, Council Member
Lawrence Gordon, Council Member
Mark C. Uptegraph, Council Member
John Fenn Foster, Town Attorney
Janice C. Rutan, Town Administrator



TOWN COUNCIL REGULAR MEETING
Town Hall Council Chambers
Thursday ~ January 12, 2012
7:00 p.m.
AGENDA

- I. CALL TO ORDER**
- II. INVOCATION AND PLEDGE OF ALLEGIANCE**
- III. ROLL CALL**
- IV. APPROVAL OF AGENDA**
- V. APPROVAL OF THE CONSENT AGENDA**
 - a. Approve Minutes of the December 15, 2012 Regular Council Meeting**
- VI. PROCLAMATIONS AND PRESENTATIONS**
- VII. COMMENTS FROM THE PUBLIC**
- VIII. COMMENTS FROM THE PALM BEACH COUNTY SHERIFF'S OFFICE**
- IX. PUBLIC HEARING**
- X. FIRST READINGS AND REGULAR AGENDA:**
- XI. REPORTS**
 - Town Attorney**
 - Mayor**
 - Consultants**
 - Town Administrator**
- XII. Committee/Delegate Report**
- XIII. Treasurer's Report (included in packet)**
- XIV. UNFINISHED BUSINESS**
- XV. NEW BUSINESS**
- XVI. ADJOURNMENT**

Notice: If any person decides to appeal any decision of the Town Council at this meeting, he/she will need a record of the proceedings and for this purpose; he/she needs to ensure that a verbatim record of the proceedings is made. The record must include the testimony and evidence upon which the appeal is to be based, pursuant to F.S. 286.0105. The Town of Haverhill does not prepare nor provide such verbatim record.

In accordance with the provisions of the American with disabilities Act (ADA), this document can be made available in an alternate format (large print) upon request. Special accommodations can be provided upon request with three (3) days advance notice of any meeting, by contacting Janice C. Rutan, Town Administrator at the Haverhill Town Hall, 4555 Charlotte Street, Haverhill, Florida. Phone Number (561) 689-0370 Facsimile Number (561) 689-4317

**TOWN COUNCIL REGULAR MEETING
Town Hall Council Chambers
Thursday, January 12, 2012
OFFICIAL MINUTES**

Pursuant to the foregoing notice, the regular meeting of the Haverhill Town Council was held on Thursday, December 15, 2011 at the Town Hall, 4585 Charlotte Street, Haverhill. Those present were Jay G. Foy, Mayor; James E. Woods, Vice Mayor; Jerry Beavers, Council Member, Lawrence Gordon, Council Member and Mark C. Uptegraph, Council Member. Also present were Town Attorney John Foster, and Town Administrator, Janice C. Rutan.

CALL TO ORDER

Mayor Foy called the meeting to order at 7:00 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Foy offered the Invocation and led the Pledge of Allegiance.

ROLL CALL

The Town Administrator recorded all members were present.

APPROVAL OF AGENDA

A motion was made by Vice Mayor Woods, seconded by Council Member Uptegraph and unanimously approved (5-0) to amend the Consent Agenda to include the approval of the November 3, 2011 and December 6, 2011 Workshop Minutes.

APPROVAL OF THE CONSENT AGENDA

Approve Minutes of the December 15, 2012 Regular Council Meeting; November 3, 2011 Workshop and the December 6, 2011 Workshop.

PROCLAMATIONS AND PRESENTATIONS

None.

COMMENTS FROM THE PUBLIC

None.

PUBLIC HEARING

None.

FIRST READINGS AND REGULAR AGENDA

None.

REPORTS

Town Attorney

Attorney Foster notified Council of a letter he had Attorney Christopher Sacco of Carlton Fields, Attorneys at Law representing American Traffic Solutions (ATS). The purpose of the letter was to put the Town on notice that it was the intention of ATS to invoke the dispute resolution provisions of the Agreement between Town of Haverhill and ATS.

Attorney Foster then provided the Council with a full history of the Town's relationship with ATS. The Town had entered into the good faith Agreement that would allow the Code Enforcement Officer for the Town to issue the citations and would set the fee schedule on a per violation basis. After the Town entered into the agreement with ATS, legislation was passed that prohibited a per ticket fee and also required that all violations be authorized by a certified traffic infraction officer, thus rendering the Agreement invalid and unenforceable.

Attorney Foster reviewed the letter in detail. He took exception to the insinuation that the Town breached the agreement and suspended the program after the cameras were installed.

Attorney Foster provided a memo to the Town Council that summarized the gist of the Carlton Fields' letter, the Town's possible response to the letter, his concern that there were still a number of questions the town could consider asking, supporting documentation for termination and requesting Council direction:

ATS Letter from Carlton Fields Dated January 5, 2012:

Requests mediation within 30 days (Feb. 4) under Sec. 16

Alleges that the Town has breach Agreement because of Town decision to suspend the Red Light Program "after installation of the cameras."

Claims that it attempted good faith negotiations with the Town to resolve the dispute by way of an amendment to the Agreement and Town Ordinance.

Section 16 of the Agreement says decision to mediate has to be mutual and contains no time limitation.

Response to the Letter:

Agree to mediation.

Don't agree to mediation.

Make further inquiry prior to making a decision on mediation.

Issue Notice of Termination as RPB has done.

Further Inquiry – There are a number of questions the Town could consider asking ATS in order to fully evaluate whether mediation or some other means of dispute resolution is warranted including, without limitation, the following:

Did the Town ever "suspend" the Red Light Program after installation of the cameras and, if so, when and how did the suspension occur?

Did ATS ever notify the Town it would suspend processing violations if a contract amendment had not been approved by a time certain?

When and how did ATS disagree with the Town's alleged decision to suspend the Program?

After passage of the Mark Wandall Traffic Safety Act ("Act") was it possible for the Town's Code Enforcement Officer to issue Notices of Violation and would the Town be eligible to receive its compensation based on the number of violations?

Did ATS ever work out an agreement with Palm Beach County to take over the Program in Haverhill and, if so, was that agreement ever presented to Haverhill?

Was the Agreement ever amended to conform to the Act?

Under the amendment proposed by ATS, wouldn't the Town of Haverhill be required to competitively bid the contract?

How would ATS propose to resolve the dispute?

Is ATS still willing to attempt "informal, good faith discussions" in order to resolve the dispute?

What facts do you rely upon to support a conclusion that "amicable resolution through continued negotiation...is not likely?"

Please provide a C.V. on each of the suggested mediators.

Termination of Agreement for Cause:

The Town may terminate the Agreement for cause under Section 6 of the Agreement. Section 6.1(i): "...state or federal statutes are amended...to prohibit or materially change the operation of TSCP including, without limitation, changes that would prohibit the red light enforcement program or which would impose restrictions on revenues and uses that are contrary to the terms of this Agreement so as to make it reasonably impractical to operate the red light enforcement program..."

Per Section 3.0, services to be provided in accordance with the terms and provisions of the Ordinance. Ordinance 380 has been amended and the agreement is inconsistent with the Ordinance, as amended.

Town entered into Agreement on basic assumptions that Code Enforcement Officer could serve as traffic infraction enforcement officer and Town would not only cover its direct and indirect costs, but would have NOI from agreement. It also determined that the per violation pay structure was best suited for the Town. The Act makes that impossible.

Council/ Direction:

A discussion followed. Attorney Foster had been in contact with the law firm of Corbett and White that were representing the Village of Royal Palm Beach. Royal Palm Beach did terminate the Agreement with ATS and he would like to wait to hear the determination in that case before moving forward.

Mayor Foy suggested the Town Council suspend discussion to allow the Palm Beach County Sheriff's office to report.

COMMENTS FROM THE PALM BEACH COUNTY SHERIFF'S OFFICE

Deputy Sergeant Samples was present and had nothing to report to the Town Council. The Council in return had not questions of the Deputy.

Continuing the discussion, Attorney Foster reminded the Town Council that because the Town's Code Enforcement Officer could not issue the citations, ATS was to contact the County in an attempt to secure an Interlocal Agreement for the County to run the Town's program. Also, he Town's Ordinance had been amended to match the provisions of the legislation and to protect the Town from losses. He also reminded all that the Council had granted the Mayor authorization to terminate the Agreement if necessary.

Council Member Gordon suggested that instead of prolonging the matter, the Town Council cut to the chase and terminate the Agreement as no Agreement can violate the State law.

Attorney Foster agreed, but added that the additional time for discovery could allow the Council to wait for their decision with Royal Palm Beach.

It was the general consensus of the Town Council to authorize the Attorney to send the letter of inquiry to Carlton Fields.

Mayor

Mayor Foy announced he would be scheduling a Code and Ordinance Committee meeting at which time they would be discussing an Ordinance regulating pain clinics. He also expressed his concern that once a land use designation was granted in response to an application for special exception, and the use for which it was granted ceased to exist, all permitted uses for that designation would be allowed on the land. He was hoping that the Committee could discuss and consider a reversion of the use back to the original land use if the special exception should cease.

Consultants

None.

Town Administrator

The Town Attorney informed Council that he would be delivering complementary fair tickets to the Council and Staff for the South Florida fair.

The Town Administrator reported on the residential rebate program being offered to residents through the State Energy Grant. Signs have put up around Town and representatives would be available to take application at the Neighborhood Yard Sale scheduled for January 21, 1012 . Discussion followed.

Committee/Delegate Report

Council Member Beavers updated all on the Palm Beach County league of Cities District II and III meeting held in Atlantis the previous day. There had been discussion involving proposed legislative issues. He had also attended a webinar on the same subject matter.

He had spoken with Attorney Trela White of Corbett and White concerning a recent annexation in the North Palm Beach area that may have an affect on other municipalities when annexing commercial properties.

Michael Bornstein, Manager of the Town of Lantana spoke at the District II and III luncheon concerning the PACE program which was an energy sustainable program being offered to commercial establishments in the Lantana and Lake Worth areas.

Treasurer's Report

Included in Packet

UNFINISHED BUSINESS

The Town Administrator reported that she would be meeting with an engineer to discuss the Town Hall HVAC retrofits under the Energy Grant Award.

NEW BUSINESS

The Town Administrator reminded all that China Chef, the restaurant located at 1099 No. Military Road, would be opening on January 15, 2012.

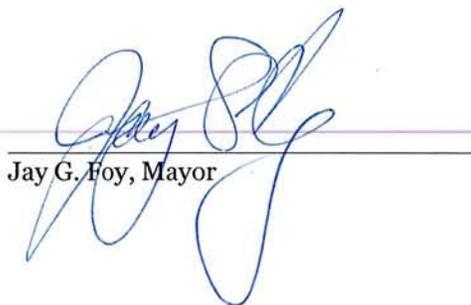
ADJOURNMENT

With no further business to come before the Town Council, the meeting adjourned at 8:03 p.m.

Approved: February 9, 2012



Janice C. Rutan, Town Administrator



Jay G. Foy, Mayor