

Special Meeting of the Town Commission of the Town of Ocean Ridge held in the Town Hall on Monday, April 27, 1998 at 6:00 PM.

The meeting was called to order by Mayor Kaleel. Roll call was answered by the following:

Commissioner Aaskov	Commissioner Bridges
Commissioner O'Hare	Commissioner Stamos
Mayor Kaleel	

Pledge of Allegiance

Mayor Kaleel began the meeting by thanking Director Hillery and Lt. Katz for their participation in and planning of the Public Safety Open House on April 25, 98. He stated that the day was very successful and a lot of fun especially for the children who attended.

1. Town Commission inquiry and staff report on Land Development Code violations, including the recent stipulation entered for a "use" violation on property owned by Christopher F. O'Hare and Shelley Childers O'Hare at 21 Tropical Drive

Staff: Gary Lanker, Town Manager

Mayor Kaleel read his memo which he had distributed to the other members of the Town Commission outlining his request to have this special meeting. He stated that as a result of the situation, many hours of staff time has been spent gathering information requested by residents. He advised that the meeting was not a forum to criticize either Comm O'Hare or Town Manager Lanker, but rather an inquiry due to the allegations of misconduct by the staff which have been made. He added that there would also be discussion on the allegation that preference was given to Comm O'Hare regarding the stipulation.

Mayor Kaleel asked Town Manager Lanker to give a description of the code enforcement actions taken at 21 Tropical Drive.

Town Manager Lanker explained that the Town Manager has the responsibility to enforce the Town codes and may do this by using the Special Master. He explained that typically a violation would be issued which gives an apparent offender a specific amount of time to correct the violation or explain the circumstances to the Special Master. He explained that the owners at 21 Tropical were cited with violating the grandfathering section of the Town code by allowing recently added loft/storage space to be used as living space. He advised that the owners, who objected to making any changes to the area, entered into a stipulation which prohibits the loft area to be used as living space, calls for regular owner inspections, and Town inspections under certain conditions.

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Town Manager Lanker explained the steps taken in the investigation process. He stated that Comm Bridges had given Director Hillery pictures of one of the loft areas with a bed in it. Following an inspection by Director Hillery, Officer Darville, a public health department representative, the O'Hare's, and Roger Saberson, a representative of the O'Hare's, it was discovered that the bed was still in place in one of the lofts. He explained that he felt it was obvious that some of the units had been used as living space, which was a violation of the code.

Town Manager Lanker discussed the issue of whether or not some of the amenities currently installed are allowable under the Town code. He stated that in retrospect he felt there should have been written agreements outlining what amenities would be allowed although this is not something which has ever been done before in the Town. He explained that the Building Official could not disallow a resident from adding anything which is allowable under code.

Town Manager Lanker concluded that he was surprised that the O'Hare's did not make the suggested modifications to avoid appearing before the Special Master. He stated that certain issues were discussed at the time of issuing the Certificate of Occupancy to which the owner has taken exception. He advised that although he has no proof of the issues discussed, there was an abundance of evidence suggesting that the lofts were used for living space.

Mayor Kaleel asked Director Hillery to give an account of the investigation.

Director Hillery advised that he had been given photos by Comm Bridges who had received them from someone who was visiting in the apartment. He advised that he began the investigation which involved speaking with several residents who had spoken at the Town Commission meeting when Comm Bridges first revealed the existence of the pictures. He added that he researched the building permit and received information from the contractor and gave his results to the Town Manager. He added that he had also spoken to the tenant who was using the loft as a sleeping area. He advised that Comm O'Hare was given the choice of a voluntary inspection or a warrant would be obtained to gain an inspection. Comm O'Hare had agreed to the voluntary inspection. During the inspection, they found indications of the storage area being used as living space.

Mayor Kaleel asked who was involved in the inspection and Director Hillery repeated the same list of individuals as stated by the Town Manager.

Mayor Kaleel asked when the violation was issued to which Town Manager Lanker replied that it was issued on March 18.

Mayor Kaleel asked the Town Commission if they had any questions for the Town Manager or Director Hillery and there were none.

Comm Bridges moved to ratify that there was no misconduct on the part of the staff regarding their actions taken, seconded by Comm Aaskov.

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Comm O'Hare advised that he would abstain from voting and also from commenting on the validity of the investigation. Atty Nicoletti advised that he could participate in the discussion without any conflict.

Roll call was taken on Comm Bridges' motion.

Motion carried – yea 4 (O'Hare abstain).

Mayor Kaleel advised that the next issue that needed to be discussed involved whether or not preferential treatment was given to Comm O'Hare regarding the stipulation.

Atty Nicoletti explained that he does not become involved in a code enforcement case until a hearing has been set in which he takes a role similar to a prosecutor for the Town. He explained that the goal for code enforcement is compliance, not punishment. He advised that typically once the violation is issued time is given to correct it, it is reinspected, and the case resolved. He added that he was contacted by the O'Hare's attorneys in this case requesting a postponement of the code enforcement hearing which he declined.

Atty Nicoletti stated that the day preceding the code enforcement hearing, he met with the O'Hare's attorneys and produced the stipulation which he recommended to the Town. He explained that it was a fairly typical stipulation which included perhaps more facts than normal. He stated that he felt it was a stringent stipulation in that all new tenants must sign an agreement that the lofts will not be used as living space, the O'Hares must inspect the units quarterly for the first year, and inspections can be done by the Town when the situation warrants it. He explained that the building would be allowed to remain as is providing that no new violations occur within the next five years which could be fined at up to \$500 per day. He stated that the stipulation was submitted to the Special Master who made it binding upon approval by the O'Hare's.

Comm Bridges asked if the property had been reinspected before the stipulation was entered into. Atty Nicoletti advised that it had not been inspected and the O'Hare's had represented to the Town that the significant offender had been evicted. Comm Bridges asked if there had been any reinspection of the other lofts which had exhibited signs of being used as living space to which Atty Nicoletti replied that there had not.

Comm Bridges advised that when Emmett Pace had brought his appeal to the Board of Adjustment, the Board saw no reason for a variance because there was no living space added. He added that the Board was told that the space would only be accessible by a pull down staircase. Atty Nicoletti advised that the Board of Adjustment minutes had to be taken as advisory only as the Board only deals with the zoning code and the building official has control of the building code. He explained that the violation is a bit confusing because it is a zoning code violation which can be corrected by building code changes.

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Comm Bridges advised that the plans had originally included a pull down stairway adding that he believed the Board may have changed their decision if they knew there would be a ladder as there is now.

Comm Bridges asked who would be responsible for policing the building now. Atty Nicoletti explained that the O'Hares will inspect the building and if they report a possible violation, the Town will go after the tenant or after both the owners and the tenant if the violation is discovered by other means. Mayor Kaleel asked why the inspection process was set up this way to which Atty Nicoletti explained that it not only takes some of the burden off the Town, but also induces the owners to comply.

Mayor Kaleel asked for clarification that all amenities which were added will be allowed to remain as long as the loft area is not used for living space to which Atty Nicoletti replied that was correct.

Mayor Kaleel asked what was gained for the Town by entering into the stipulation to which Atty Nicoletti explained that the Town wanted to achieve compliance as soon as possible and the stipulation brought them that.

Comm Aaskov asked if the tenant was evicted because they were occupying the loft to which Atty Nicoletti replied that he believed the eviction was for other reasons. He added that the reason is not relevant since compliance was achieved regardless.

Mayor Kaleel asked if there was any preferential treatment given to Comm O'Hare because of his position in Town to which Atty Nicoletti replied that there was absolutely no preferential treatment given.

Mayor Kaleel advised that he would entertain a motion regarding the treatment given regarding the stipulation.

Comm Bridges advised that he thought the case should have been brought before the Special Master and the Town Commission should have approved any stipulation. Atty Nicoletti advised that there was absolutely no reason for the stipulation to go before the Town Commission as the process must remain the same for all code enforcement cases. He explained that an investigation was done and compliance was achieved. He stated that the process was conducted openly and uniformly and that compliance, not punishment, is the goal. He added that if there is a violation in the future, there would be a substantial fine.

Comm Bridges moved that the stipulation was handled in accordance to the law by the staff, seconded by Comm Aaskov.

Motion carried – yea 4 (O'Hare abstain).

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Mayor Kaleel asked Atty Nicoletti to update the residents on the status of the four land development code appeals filed by Comm O'Hare at the end of February. Atty Nicoletti advised that the applications were rejected on technical grounds that Comm O'Hare is not an aggrieved party and therefore can not file the appeals. He added that he understands that the appeals have been filed again by Comm O'Hare and stated his intention to reject them again.

Mayor Kaleel asked the location of the permits which were appealed. Atty Nicoletti advised that one was Mr. Currie's at 27 Tropical, Dr. Vinas on Harbour Dr. S., the Becker's on Harbour Dr. N., and a property between Old Ocean and A1A. He explained that those were permits similar to Comm O'Hare's in their involvement of permits to a grandfathered structure which were approved without a variance.

Mayor Kaleel asked Comm O'Hare if he intended to pursue the appeals. Comm O'Hare advised that he and his wife had been hurt by the actions of the officials of the Town and that he was unsure at that point what his course of action would be.

Atty Nicoletti explained that during many attorney-client meetings between himself and the Town Commission, other potential cases were discussed which prompted the ordinance which limited appeals to thirty days after administrative approval. He stated that Comm O'Hare filed his four appeals on the thirtieth day with information possibly acquired at these attorney-client meetings.

Mayor Kaleel asked if the Town should seek special counsel. Atty Nicoletti advised that if the four appeals were brought forward against the Town, he believed he would be conflicted out and the Town would have to seek special counsel. Atty Nicoletti stated that he had urged Comm O'Hare not to go ahead with the appeals because Comm O'Hare was not damaged by any of these renovations and the conflict regarding the source of the information.

Comm Stamos questioned if there would be any additional liability against the Town for rejecting the appeals which were filed within the thirty-day limit. Atty Nicoletti explained that there would be no additional liability and the rejection means that the O'Hare's would have to go to court to file.

Comm Bridges moved to look into the hiring of special counsel.

Mayor Kaleel questioned if there would be any conflict to Comm Bridges' participation in seeking special counsel due to his involvement as architect in one of the permits being appealed. Atty Nicoletti explained that there would only be a conflict if there was an opportunity for him to gain personally which would not pertain to this case.

Comm Aaskov seconded Comm Bridges' motion.

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Comm Stamos commented that he believed investigating special counsel would be presumptuous at this point and suggested that the Town Commission see if the issue could be settled without it. Mayor Kaleel stated that he would love to settle this issue at this meeting similar to the other two issues which have been resolved. He stated that he did not believe the Town Commission should be without preparation.

Comm Bridges questioned why the public had not been allowed to comment before each vote. Atty Nicoletti advised that there did not need to be public comment before each vote and Mayor Kaleel added that he intended to allow the public to speak after the Town Commission makes their inquiry.

Comm Bridges reiterated that he did not agree with the stipulation, but that the staff did act accordingly in its regards. He added that he believed the Town should investigate special counsel, but not expend any funds on it.

Tom Dyer, 92 Island Dr, stated that the Town needed to have a lawyer to protect the Town's interests and that if anyone on the Town Commission does not agree with that, there is something wrong.

Roll call was made on Comm Bridges' motion.

Motion carried – yea 3 (Aaskov, Bridges, Kaleel)
nay 1 (Stamos)
(O'Hare abstain)

Town Clerk Hancsak advised that she had received a letter from Dr. Ritota, 4 Hudson Ave, which he had requested be read into the record. She read the letter which outlined Dr. Ritota's unhappiness with Comm O'Hare's behavior. He questioned Comm O'Hare's motives in voting against approval of funding for a walkover and circulating a "commission look-a-like draft" regarding changing the traffic patterns along old A1A. He urged the Mayor to take some action to appease all those residents who feel the same way he does regarding Comm O'Hare. He suggested that Comm O'Hare repay the Town the \$75,000 from the lawsuit paid by the Town and the Town's insurance company and/or the Town Commission revoke his status if he refuses to resign.

Vera Klein, 7 Sailfish Lane, questioned why if the plans called for a pull down staircase, they were not installed. Town Manager Lanker explained that legally they could be replaced by Comm O'Hare, as they had been.

Bruce Gimmy, 12 Ocean Ave., questioned what the stipulation covers if the property is sold. Atty Nicoletti advised that the new owners would start with a clean slate, but any violation would still be brought against the owner.

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Charlotte Carle, 7 Harbour Dr. S, advised that she is tired of reading about Comm O'Hare in the papers when all he did was improve a building which was an eyesore for those who live on the street. She advised that the improvements should be a beacon for other owners on the street as it is to everyone's advantage to add more living space to the property and lure a better quality of tenant. She mentioned that people are too quick to sue nowadays as it is evident that municipalities prefer to settle rather than fight. She concluded that Comm O'Hare is a fair and intelligent man who the residents should be proud to have represent them on the Town Commission.

Betty Bingham, 1 Ocean Ave., advised that when Blue Ocean subdivision was annexed into the Town, it was a non-compliance area which was grandfathered. She stated that the hope at the time was that owners would buy additional lots and renovate their buildings to conform to code by increasing the square footage of the building and also the property on which it would sit. She advised that she did not desire to have such a cramped multi-family area in Town.

Earl Jones, 14 Sailfish Lane, advised that he has been watching the project since Mr. Pace originally brought the suit against the Town. He stated that through his observations, he believed the intent was always to increase the living space. He stated that when he was a member of the Planning and Zoning Commission and they were considering changes to the building code, Comm O'Hare was suggesting that the FAR be increased and setbacks decreased for multi-family zones. He advised that at the time he was not aware that these were changes which would directly affect Comm O'Hare.

Mr. Jones stated that many of the expenses he witnessed on the renovation would not be normal for an area which was to be kept as only storage space. He explained that some of these additional expenses are the dormer windows, finished floors, outlets, and cabinets. He advised that he contacted HRS when he saw work being done to the septic.

Mr. Jones stated that he was concerned that the Town spent funds on the stipulation which only alleges that Comm O'Hare may have violated Town ordinances and allows for Comm O'Hare to inspect his own property. He concluded that in regards to the Special Master hearing, the investigation showed the appearance of a living area in three of the lofts of which the Town does not know if there was compliance because there was no reinspection.

Felix Zajac, 9 Tropical Dr., advised that he has only seen the outside of the building, but that he sees it as a wonderful improvement to the street.

Chris Currie, 27 Tropical Dr., advised that when he saw the stipulation he thought of the resident who requested a fine reduction from \$1200 to \$500 when he was unable to rid his property of the required number of cats before the deadline given by the Special Master. He advised that in light of the recent lack of fines for Comm O'Hare, the Town owes the resident with the cats his money back and an apology.

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Mr. Currie explained that at the February 2, 1998 Town Commission meeting, he expressed his concern that what had happened deals with appearances and one's manipulation of the letter of the law to circumvent the intent. He stated that regardless of the stipulation, he believed that the building has been expanded to include eight second story bedrooms and the only question was how long would it be before someone lived in it again. He stated that he believed the credibility of the Town Commission has been diminished because of this situation.

Mr. Currie advised that he did not know what the solution to the problem is. He suggested that Comms. Aaskov, Bridges, Stamos, and Mayor Kaleel ask themselves if the stipulation completely exonerates Comm O'Hare as he has been quoted in the paper and if they are satisfied with the whole situation.

Mr. Currie also suggested that the code be evaluated to find the portions which are unenforceable. He suggested that they be rewritten to include the intent of the portion of the code. He stated that there needs to be even-handedness and fairness in the revisions of the code.

Atty Nicoletti explained that with regards to the resident with the cats, he had been given a time certain by the Special Master to get rid of the cats and he was unable to meet that deadline. He added that the staff supported the reduction. He added that the Special Master has a mixture of cases and how they are enforced varies. He concluded that the stipulation is good for the Town.

Emmett Pace, 5550 N Ocean Blvd., commented that the Town knew that the cat problem had been resolved because a reinspection was done. He stated that Comm O'Hare's apartment building does look better although it could have been improved without adding eight potential bedrooms. He stated that he owns a lot next to this, but he would not be able to build something similar.

Mr. Pace stated that the Town Commission took no interest in the situation when he first filed his lawsuit.

Mayor Kaleel thanked everyone for his or her participation and for speaking intelligently and articulately. He advised that this has been a difficult situation from the start. He explained that the Town Commission is responsible for the policy making for the Town and the staff is responsible for their enforcement. He stated that if there is a problem, then the Town Commission needs to reevaluate the process.

Mayor Kaleel expressed hope that this situation would be resolved intelligently and fairly and that this would be the last meeting to discuss it. He implored Comm O'Hare to rethink his decision to file the four appeals against the Town. He stated that Ocean Ridge is a great Town which needs to move forward and address the issues which it will be faced with in the future.

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The meeting was adjourned at 7:50 PM.

Mayor Kaleel

Commissioner Aaskov

Commissioner Bridges

Commissioner O'Hare

Commissioner Stamos

Attest By:

Town Clerk