

Regular Town Commission Meeting of the Town of Ocean Ridge, Florida held on Monday, April 3, 2000 at 6:30 PM in the Town Hall Meeting Chambers.

The meeting was called to order by Mayor Aaskov and roll call was answered by the following:

Commissioner Bingham	Commissioner Bridges
Commissioner Kaleel	Commissioner Willens
Mayor Aaskov	

Following the Pledge of Allegiance, an invocation was read by Comm Willens.

Additions, Deletions, Modifications and Approval of Agenda

Town Manager Dunham stated that he would like to add an item regarding the Ridge Blvd irrigation and landscaping as item #10.

Consent Agenda

1. Minutes of Town Commission Meeting of March 6, 2000
2. Minutes of Special Town Commission Meeting of March 16, 2000
3. Minutes of Special Town Commission Meeting of March 20, 2000

Comm Kaleel stated that the minutes of March 6, 2000 did not include the discussion involving districting the Town for the Board appointments and requested that the tapes be reviewed regarding scheduling a meeting with Mayor Aaskov and the Kelsos.

Comm Bingham moved to approve the consent agenda as amended, seconded by Comm Kaleel.

Motion carried – yea 5.

Announcements and Proclamations

None

Public Comment

Victor Martel, 46 Harbour Drive S, advised that he was concerned over the electric fence that has been installed on Anna St. and Old Ocean Blvd. He stated that it is very low and within a child's grasp. Town Manager Dunham stated that there was nothing in the current code to address the issue to which Mayor Aaskov advised that the staff would look into the problem.

Tom Ambrose, 10 Hudson Ave, read the mission statement of the Town and advised that there is a home on the corner of Hudson Ave. which has very high weeds and dying trees

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which are in conflict with the Town's mission to be a beautiful seaside community. Mayor Aaskov stated that this problem would be looked at also by the staff.

Public Hearings

None

Regular Agenda

Actions and Reports

4. Action to Fill Appointments to Board of Adjustment, Planning and Zoning Commission and Advisory Board (Postponed Item) By: Karen E. Hancsak, Town Clerk

Town Clerk Hancsak advised that she had received a few resumes since the previous Friday when she distributed the agenda packets to the Commissioners. She then read the names of all who had submitted resumes and which board they wanted to serve on. She then explained which openings there were on the boards adding that all the alternates for the boards have expressed a desire to move up to regular members.

Mayor Aaskov suggested that the Town Commission look at the members of the Board of Adjustment first in which there were appointments for two regular positions and the two alternate positions.

Phil Barlage, 35 Anna St., advised that he has been the Chairman of the Board of Adjustment for five years and in that time he has found all of the members to be very competent. He stated that he knows it is a commitment to be on the board, but that those members who are unable to attend a meeting should give proper notice. He explained that he did not feel it reflected well on the town for decisions to be made without a full board.

Comm Kaleel stated that he would be in favor of districting the Town and that it would be the only fair way to appoint members to the boards. He stated that the Commission needed to make some policy decisions before any appointments were made.

Comm Bingham advised that she had requested copies of attendance records for the Board of Adjustment meetings and was surprised at how many meetings were attended by only three members. She stated that she felt a member should automatically be off the board if he or she is absent without notice. Mr. Barlage advised that a permanent time and day were set for the meetings every month so the members could plan ahead for them.

Comm Bridges questioned if there is a policy to remove a member after a certain number of absences to which Atty Spillias stated that there was no state statute, but a Town policy could be implemented.

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Regarding districting, Mayor Aaskov questioned what would happen if there were no volunteers from a certain district to which Comm Kaleel stated that the Commissioners would have to ask individuals to volunteer who are from the unrepresented areas.

Comm Willens stated that he is concerned with the notion of districting in that there may be no volunteers or bad volunteers from one area. He suggested that geography be one component when deciding on appointments. Comm Kaleel stated that he felt the districts could be as simple as North and South of Ocean Ave. Mr. Barlage stated that he felt it is important to look at the geography of the candidates first and then go with the most qualified individual.

Comm Bridges moved that Richard Lucibella be appointed as a regular member of the Board of Adjustment, seconded by Comm Willens.

Motion carried – yea 4 (Bingham, Bridges, Willens, Aaskov)
nay 1 (Kaleel)

Comm Bingham moved that Earl Jones be appointed as a regular member of the Board of Adjustment, seconded by Comm Bridges.

Motion carried – yea 4 (Bingham, Bridges, Willens, Aaskov)
nay 1 (Kaleel)

Comm Kaleel advised that the Town Commission had just discussed the importance of geographical balance and then ignored it with these two appointments.

Comm Bingham moved that Terry Brown and Geoff Pugh be reappointed as alternates to the Board of Adjustment. There was no second to the motion.

Comm Bridges stated that he would like to get more North end residents involved as alternates now that a full board has been appointed.

Comm Willens moved that Dr. Arsali be appointed as an alternate to the Board of Adjustment and then withdrew his motion.

Comm Bingham noted that the Planning and Zoning Commission helps get residents acquainted with the Town and suggested that residents must live in the Town for a year before they can serve on the Board of Adjustment.

Comm Willens stated that he would like to see a policy which outlines the characteristics that the Commission would like to consider in a candidate such as geography.

Comm Bridges stated that there are many volunteers on the advisory boards although he does not really know what these two boards are accomplishing. He stated that he felt the Town only needed the Town Commission, Board of Adjustment and Planning and Zoning Commission.

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Dr. Martel, member of the Environmental Resources Advisory Board, stated that the advisory board members put in a tremendous amount of time. He advised that the beautiful entrance monuments which are planned for the Town are as a direct result of the efforts of the Environmental Resources Advisory Board.

Mayor Aaskov stated that there are two regular (one just vacated by Richard Lucibella) and two alternate positions to be filled on the Planning and Zoning Commission.

Comm Kaleel wanted to nominate Jim Bonfiglio as a regular member of the Planning and Zoning Commission, but reiterated his desire to have geographical diversity in the board members.

Comm Bridges stated that he would like to see Craig Baskin moved from an alternate to a regular member of the Planning and Zoning Commission.

Comm Bingham moved to appoint Jim Bonfiglio and Craig Baskin as regular members of the Planning and Zoning Commission, seconded by Comm Bridges.

Motion carried – yea 5.

Comm Bingham moved that Mauro Walker and Greg Dawson be appointed as alternate members to the Planning and Zoning Commission, seconded by Comm Willens.

Motion carried – yea 5.

Comm Kaleel moved that the Town Commission set forth regulations for the boards and to have them codified, seconded by Comm Bingham.

Richard Lucibella, 5 Beachway N, advised that the Town Commission is not districted. He suggested that the Commissioners use geography as a criteria in their minds, but that they may be hobbling their ability to make good choices if this criteria is codified.

Comm Kaleel stated that he was in favor of anyone serving on the boards, but there have been some on the Town Commission who have expressed concern over the geography of the members and some of the decisions of the board. He suggested that this matter be put to rest by a codified policy. He also explained that the Town Commission is unique in that they are elected to their positions where the Town Commission appoints the other boards.

Comm Bridges stated that he did not feel all of these rules would be good adding that he felt the Town Commissioners could just use their own best judgment in appointing board members. Comm Kaleel reiterated that he was in favor of any resident serving at any time.

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Comm Kaleel summarized the consensus of the Town Commission by stating that “there is no distinction and it is upon the individual conscience of the Commissioners, there is no policy set forth by this Commission as to who should serve on the boards.”

Comm Kaleel then withdrew his motion to codify qualifications for board members.

Comm Kaleel stated that he would also like to show his support for Richard Lucibella and Earl Jones as members of the Board of Adjustment.

Julia Steere, 40 Oceanview Drive, suggested that in addition to geography, the Town Commission consider appointing more women to the boards. Town Clerk Hancsak advised that currently Barbara Souther serves on the Board of Adjustment and Peggy Smith on the Planning and Zoning Commission.

Comm Bingham stated that acknowledgements should be sent to all those who sent in resumes volunteering for service on the boards.

Comm Kaleel moved that the appointments to the advisory boards and alternates to the Board of Adjustment be tabled until the May Regular Town Commission meeting, seconded by Comm Bingham.

Motion carried – yea 5.

5. Report of Right-Of-Ways Located in Town By: Gregory L. Dunham,
Town Manager

Town Manager Dunham advised that he was instructed by Mayor Aaskov to prepare a report on the town’s right-of-ways. He reported on nine different right-of-ways and indicated who maintains each of them and any known encroachments on them.

Comm Bingham stated that she felt some residents purposely planted vegetation on the right-of-ways so that it would not be used as an access to the waterway. She added that she felt the right-of-ways should be cleared.

Town Manager Dunham explained that he would like some direction from the Town Commission and perhaps budget funds next year to clear some of the areas.

Korrine Postma, 23 Coconut Lane, stated that the right-of-way behind her property, if cleared, would only provide someone access to her home and not to any waterway. She explained that it would not be to the Town’s advantage to clear it and thought it should be abandoned.

Town Manager Dunham stated that the Town Commission would have to decide if the areas should be cleared and if the Town would want to enter into an agreement with the homeowners to maintain it.

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Ann Syring, 50 Coconut Lane, stated that she feels the right-of-way north of Coconut Lane has been abandoned for over seventy years and that she has been the only person who has cleared it. She stated that she felt the Town should abandon it. Atty Spillias stated that non-use does not constitute abandonment by a government entity.

Comm Bridges stated that he felt the Town Commissioners could use this report to think about which right-of-ways to clear and which to abandon. Comm Kaleel stated that the Planning and Zoning Commission had already recommended that none of the right-of-ways be abandoned and that the Town could possibly license some of the properties.

Town Manager Dunham stated that the engineers would also need to determine if any of these areas could be used for drainage.

There was no further discussion at this time.

6. Action to Appoint Alternate Member to South Lake Worth Inlet Advisory Committee By: Gregory L. Dunham, Town Manager

Comm Kaleel stated that it was suggested that Ocean Ridge and Manalapan be allowed to have alternate members to the South Lake Worth Inlet Advisory Committee of which he is the regular member.

Comm Kaleel moved that Comm Bridges be appointed as the alternate member to the South Lake Worth Inlet Advisory Committee, seconded by Comm Bingham.

Motion carried – yea 5.

Resolutions

7. No. 2000-07; Approving the Mayor and Town Clerk to Execute Contract for Engineering and Surveying Services Concerning Drainage Improvements for the Town

Mayor Aaskov read Resolution No. 2000-07 by title only.

Comm Kaleel moved to adopt Resolution No. 2000-07, seconded by Comm Willens.

Comm Bridges asked Dan Shalloway, of Shalloway, Foy, Rayman & Newell, the Engineering Firm being awarded the contract, if there was any landscape architect on their team as there were for other firms bidding on the job. Mr. Shalloway explained that he felt this was a drainage and engineering study, but that they could probably hire a landscape architect and stay within their proposal. Comm Bridges stated that he felt a landscape architect would be helpful.

Comm Bridges stated that he would like the insurance increased from \$250,000 liability to \$1,000,000 to which Mr. Shalloway stated that he felt they would be able to make that

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increase within the current budget. He suggested that the Town Commission approve the contract tonight and if they needed to amend it due to the addition of a landscape architect, they would do so at a later time.

Comm Kaleel amended his motion to approve Resolution No. 2000-07 with the amendments of the increase in the insurance to \$1,000,000 and the inclusion of a landscape architect with the contract to be funded from the general government professional services account. Comm Willens amended his second.

Motion carried – yea 5.

Mr. Shalloway suggested that the Town Commission wait until after the drainage study to make any decisions regarding the right-of-ways in Town.

8. No. 2000-08: Authorizing the Town Attorney to Institute and Prosecute Legal Proceedings Hereinafter Described Regarding David Lane, Authorizing the Employment of Experts Deemed Necessary by the Town Attorney to Establish and Support the Town's Position in the Litigation

Atty Spillias summarized the situation in that Scott and Betty Kelso have purchased the National Wildlife Federation Property at the end of David Lane which is currently landlocked. He explained that Cheryl Olanoff and the Town own the portion of David Lane fronting the two lots to the immediate Northwest of the property. He added that the Kelso's Attorney has advised that there is a public easement over the Olanoff property. He stated that the Kelsos have demanded access over the Town's portion of the right-of-way which is impassable because of encroachments placed there by the property owner to the east, Mr. Katz. He stated that Mr. Katz has challenged the Town's claim of ownership after so many years and stated his intent not to remove the encroachments without a court order.

Atty Spillias explained that the attorney for the Kelsos argues that there is a 20' wide road right-of-way providing access to the property and has demanded that the Town assure that this access is provided. He advised that in review of the documents presented by the Kelsos' attorney, he is questioning whether the easement on the Olanoff's property is an easement in favor of the public or is an easement limited to certain property owners in that particular subdivision.

Atty Spillias recommended that the Town proceed in seeking a declaratory judgment from the court as to the Town's ownership of the right-of-way adjoining Mr. Katz' property and as to the Town's rights to enforce an easement for right-of-way purposes over Mrs. Olanoff's property. He added that in addition to the above, it would also be appropriate to ask the court for an injunction to enforce any such rights that it determines the Town has.

Atty Spillias stated that Mrs. Olanoff's attorney has sent a letter challenging the public access over her property. Atty Spillias advised that the Town is caught in the middle of a

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dispute between property owners and it is clear that they will not be able to come to an amicable agreement on their own. He stated that the initial action of the Town would be to receive a declaration on the easements on Mr. Katz' and Mrs. Olanoff's properties and present an injunction to Mr. Katz to remove the encroachments on the right-of-way.

Atty Spillias explained that he did not believe this would be a fast process and suggested that any building permits applied for by the Kelsos should be put on hold until after direction is received from the court.

Town Clerk Hancsak read Resolution No. 2000-08 by title only.

Comm Willens moved to adopt Resolution No. 2000-08, seconded by Comm Bingham.

Comm Kaleel questioned if Mayor Aaskov had met with the Kelsos since the previous Town Commission meeting to which Mayor Aaskov advised that she had not.

Comm Kaleel stated that the engineers interviewed for the drainage project had told the Town Commission that this property may be needed for the drainage plan. He suggested that the Town move forward in the direction of eminent domain.

Comm Bingham questioned if the Town has the opportunity to stall the other option of the declaratory judgement. Comm Kaleel stated that the key issue is still that the Commission decide what action should be taken adding that he feels all or part of this property will be needed for the drainage plan.

Comm Bingham questioned if the Town would be able to file for eminent domain before getting studies from the engineers to which Atty Spillias stated that the due diligence for the eminent domain would require that information. He stated that he did not think it would be wise to postpone the lawsuit to study eminent domain. He stated that if the Town Commission believes this property will be needed for drainage, they should direct him to send a letter to the Kelsos advising them of that intent. He explained that once this letter is sent, it would be difficult for the Kelsos to seek reimbursement for any improvements done to the property after that point. He advised that the lawsuit for right-of-way and access would take six to eight months.

Atty Spillias explained that if the Town was found liable for inverse condemnation (i.e. the property was landlocked and the Town would have to buy it), the result would be the same as eminent domain. He stated that if the Town Commission did not want to attempt eminent domain on the entire property, access would still have to be provided to the remaining property.

Comm Willens stated that he believed it was premature of the Town to decide what property is needed for drainage. Comm Kaleel stated that he felt it was important for the Town Commission to make a policy on this issue to take all or part of it. Atty Spillias stated that the litigation and surveying for eminent domain action could be done at the

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same time although it would be costly. Comm Bridges stated that he always thought this property would be needed for drainage.

Comm Willens stated that he felt the solution presented in Resolution No. 2000-08 was most fair to everyone. Comm Kaleel stated that within six to eight weeks the Town would know how much of the property is needed for drainage by applying his suggestion of sending a letter of intent of eminent domain and start engineering and surveying of the property.

Betty Kelso, 16 Sailfish Lane, stated that the Town Commission needed to decide whether temporary or permanent access was to be given. She stated that she felt the Town has an obligation to clear the right-of-way. She advised that she had previously offered to give some of the property to the Town in exchange for the right-of-way. She explained that if the property was supposed to be preservation conservation then it should have been zoned as such and since it was not, it can not be landlocked. She added that she did not think the Town should waste taxpayer's money by going to court and should just clear the access.

Comm Kaleel asked if there was any way she would meet with the staff and other residents involved to discuss the access and give time to start the drainage study to which Mrs. Kelso stated that she would like to discuss both issues, but that she needs to have access to the property as soon as possible.

Comm Kaleel suggested that the Town move forward with giving notice to the Kelsos regarding the possibility of eminent domain and also discuss other options with the concerned residents. Mrs. Kelso advised that almost all of her architectural plans, surveys, and building plans are completed and would be included in any costs in an eminent domain case.

Comm Kaleel suggested that the Town discuss temporary access with the other property owners so that Mrs. Kelso would be able to clear and clean the property. Town Manager Dunham stated that there are two options for temporary access which would be either over the Olanoff's property or by Beachway N.

Chris Currie, 27 Tropical Drive, stated that he has doubts over whether the Kelsos' property is necessary for the drainage plan. He commented that he finds it incredible that a family who is trying to build a home on an ample piece of property is being held up by what he sees as a group of hysterical neighbors. He advised that he feels the Town may be liable if access is not provided. Comm Kaleel stated that he was not aware if the entire property or even part of it would be needed for the drainage study, but that it should be considered as a catch basin.

Town Clerk Hancsak read a letter into the record from Earl Jones, 14 Sailfish Lane, which touched on a variety of topics which he had been told about the property. He stated that he did not feel that because the National Wildlife Federation had owned the property, it was a nature preserve. He stated that homes were built on other properties in that area

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which were sold by the National Wildlife Federation. He stated that one of the residents who opposed the development of the property by the Kelsos had previously tried to purchase the same property in order to build a guest house on it. He added that he had also heard that those trying to prohibit the Kelsos from developing their property have also tried, unsuccessfully, to buy the property from the Kelsos. Mr. Jones' letter also stated two subjects which he claims to know as fact. The first is that the National Wildlife Federation approached the Kelsos regarding purchase of the property. The second subject is that no laws were broken by the Kelsos on the date that they removed trees from their property.

Rich Lucibella, 5 Beachway N, stated that he felt the property was donated to the National Wildlife Federation by Mrs. Whitney with the intent that it not be developed and contained only a 10' footpath for access to ensure that it would remain a preserve. He stated that all those who bought property around it were aware of that intent. Regarding issues brought about in Earl Jones' letter, Mr. Lucibella stated that he did intend to buy the property, but not to develop it. He advised that in his due diligence, he was told that the property could never be developed so he did not purchase it believing it would remain in its current state.

Mr. Lucibella stated that he had an appraisal for the property placing its value at \$560,000 if it were buildable adding that the Kelsos paid only \$280,000 for it which should have been an indication to them that the property was not buildable. He commented that if the Town gives them access to the property, the Town is, in essence, giving them \$280,000 (the difference between the appraisal for the property if buildable and what was paid by the Kelsos). He concluded by stating that the Kelsos went to their property through Beachway N where they did not have proper access to clear it. He stated that they are now asking for access to clean up what they should not have done in the first place.

Cheryl Olanoff, 566 David Lane, stated that Mrs. Kelso had continually told her that she (Mrs. Kelso) was going to remove all of the trees near Beachway. She stated that Mrs. Kelso and her surveyors have continuously trespassed on her property. She commented that there have been drainage ponds on this property which fill when the flooding in Town gets bad. She concluded by saying that she feels Mrs. Kelso will be destroying four properties in order to get access to her home.

Robert Katz, 5691 David Lane, stated that this property has long since been used for drainage and the Town would need to determine what the best use of the property would be.

Atty Spillias advised that absent the drainage issue, he would recommend adopting Resolution No. 2000-08.

Roll call was taken on Comm Willens' motion.

Motion failed – yea 2 (Willens, Aaskov)

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May 3 (Kaleel, Bingham, Bridges)

Comm Kaleel moved to send a letter of intent to the Kelsos concerning the Town's need of their property for drainage and use the engineering firm to determine what, if any, portion of the property is necessary for drainage, seconded by Comm Bridges.

Motion carried – yea 5.

Comm Kaleel moved to work with the Kelsos and other affected homeowners to provide temporary access to the property for the purpose of Public Safety, seconded by Comm Bridges.

Motion carried – yea 5.

First Reading of Ordinances

9. No. 526; Providing for an Advisory Referendum Vote; Establishing a Date for the Advisory Referendum Vote; Enacting a Moratorium on the Enforcement of Chapter 26, Article XIV, Section 26-222(b) of the Code of Ordinances

Town Clerk Hancsak read Ordinance No. 526 by title only.

Comm Bridges moved to approve Ordinance No. 526 on first reading, seconded by Comm Kaleel.

Atty Spillias explained that the ordinance would establish an advisory referendum on February 13, 2001 with language found in the ordinance which would ask the residents to provide an opinion on whether or not to repeal Section 26-222 and grandfather current businesses and their current use. He stated that the ordinance would also allow a six-month moratorium on Section 26-222 and require the 5011 N Ocean Blvd. stores to terminate commercial use on August 1, 2001 if the section is not repealed.

Comm Kaleel stated that he would like to have more time to review the language of the referendum to which Atty Spillias stated that changes could be made to the language, but if any other changes are made, the ordinance would have to be brought back for first reading.

Comm Willens suggested that the following modifications be made which were clarified by Atty Spillias. These modifications included changes that the ballot language be presented no later than 120 days prior to the election or by the deadline provided by the Palm Beach County Supervisor of Elections, whichever is later.

Comm Bridges amended his motion to include the modifications suggested by Comm Willens, seconded by Comm Kaleel.

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Bernd Schulte, 5 Osprey Court, stated that he believed the vote would be biased no matter how the referendum is worded.

Roll call was taken on Comm Bridges' motion.

Motion carried – yea 5.

10. Ridge Blvd. Median By: Gregory L. Dunham, Town Manager

Town Manager Dunham explained that irrigation is needed for the new landscaping at the median of Ridge Blvd. and that he is seeking authorization for \$3,000 from the environmental beautification account for this purpose.

Comm Willens moved to approve \$3,000 from the environmental beautification account for irrigation of Ridge Blvd median landscaping, seconded by Comm Bridges.

Town Manager Dunham explained that it would be irrigation similar to that of the Harbour Drive median.

Roll call was taken on Comm Willens' motion.

Motion carried – yea 5.

Comm Kaleel advised that he had a few comments regarding the vote for Mayor at the previous Town Commission meeting and the appointment of members to the various boards. He stated that he felt the Town Commission needed to have a consistent policy regarding the appointment of the Mayor and that his feelings were not personal against Mayor Aaskov. He stated that he feels that Mayor Aaskov has done a great job as Mayor, but there needs to be consistency in the Town Commission. Comm Bridges stated that he felt the Board of Adjustment was balanced very badly and that the Town Commission had a legitimate reason for wanting a change in the policy for appointments. Comm Kaleel stated that he felt the Town Commission should develop a set of criteria to address these issues so that everyone is “on the same page.”

Adjournment

The meeting was adjourned at 9:35 PM.

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Mayor Aaskov

Commissioner Bingham

Commissioner Bridges

Commissioner Kaleel

Commissioner Willens

Attest By:

Town Clerk