

SPECIAL MEETING HELD BY THE TOWN COMMISSION FOR THE TOWN OF OCEAN RIDGE, FLORIDA, TO BE HELD IN THE TOWN HALL ON THURSDAY, MARCH 7, 2002, AT 8:00 A.M.

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

Commissioner Aaskov
Commissioner Bingham
Commissioner Schulte
Commissioner Willens
Mayor Kaleel

ACTIONS AND REPORTS

1. OLANOFF vs. KELSO, et al – PROPOSED SETTLEMENT AGREEMENT

Prior to any discussion Comm Schulte declared a conflict and stepped off the dais. Town Clerk Hancsak advised that she would have a Voter Conflict form prepared for his signature.

Mayor Kaleel commented that the format of this meeting would be as follows: the Town Atty will summarize the settlement agreement and his proposed modifications, followed by the opportunity for each party in the litigation to speak, Town Atty rebuttal, questions by Commissioners and minimal public comment.

Norman Malinski, attorney representing the Beachway North Homeowners Assoc., commented that he did not feel 10 minutes was adequate for public comment and he may require additional time to address the Commission.

Atty Spillias summarized the events leading up to this litigation and the settlement agreement distributed to the Commission on March 4, 2002 along with his proposed modifications (copies made a part of these minutes). He concluded by recommending approval of the agreement with his modifications and the reconfiguration drawing submitted by the Mr. and Mrs. Kelso showing the new boundaries and the 20' access. He stated that his has been a long and torturous litigation. He added that he feared that if the Town continued to be caught in the middle between neighbors the case would go to trial and whoever lost would appeal and costs above the \$60,000 would occur.

Cole Fitzgerald, attorney representing Bob Katz and Cheryl Olanoff, commented that his clients wanted this litigation to end. He stated that Mr. Katz grew up on David Lane and Ms. Olanoff has lived in her residence for 20 years. He added that his fees have been a burden on his clients and that Ms. Olanoff even had to come out of retirement and return to teaching. He stated that in his view the National Wildlife created this mess, which includes 3 to 4 separate lawsuits, up to 8 different law firms, and 3 experts prepared to testify. He advised that his clients just want this matter concluded with leaving David Lane as it is and all parties now agree that this agreement will accomplish this goal with Mr. Katz and Ms. Olanoff being compensated by the Kelsos. He concluded by stating that he agreed with Atty Spillias' comments and felt the litigation would continue if this agreement were not executed.

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Atty Spillias commented that the suits involving George Elder and Ann Englehardt would be dismissed if the agreement is executed.

Linda Conahan, attorney representing Mr. and Mrs. Kelso, reminded the Commission that they have been residents for over 10 years, have established friends in the area and remain active in the community as ordinary residents. She added that they have incurred much expense involving this property even though the property has been zoned Residential Single Family for over 40 years and there was no reason for them to believe that they could not build on the lot. She concluded by stating that her clients were not asking for the extraordinary but simply asking for Commission support in approving an agreement that would satisfy all involved.

Ms. Olanoff, 566 David Lane, stated that the Commission should realize the financial burden this has been on her, the mental anguish, and that she is giving up her land in order to achieve this settlement and hopes they take this into consideration.

Philip Barlage, 35 Anna Street, stated that he was present as a citizen of the Town and also as the Chair of the Board of Adjustment. He stated that as a member of the board they have to make decisions based on the hardship presented by the applicant. He commented that he is a real estate appraiser and broker and his firm has been given a subpoena to testify and he wanted the record to show that there was no conflict of interest because he would not have any financial gain.

Mr. Barlage stated that in his personal opinion he hoped this issue moved forward and mentioned that the property owners should be given rights as commonly enjoyed by others and he would like to see a strong result. He also commented that David Lane is actually a part of the Ocean Shore Estates Subdivision and not the Beachway North Subdivision.

Atty Malinski, representing the Beachway North Subdivision, stated that he received the settlement agreement on Monday afternoon that was apparently reached on Sunday and added that he received the memorandum by the Town Attorney on Wednesday afternoon. He stated that all this came about because the Kelsos purchased the property and when they couldn't get an easement from a 93-year-old resident they sued everyone and the Town. He stated that he was shocked to learn that the Town has expended over \$60,000 regarding this suit. He commented that the Town should have bulldozed the encroachment on the Katz property years ago or at a minimum determined if the Town owns the 10' or not. He stated that the current document allows for Mr. Katz to gain the 10' easement, 3,000 sq. ft of land and Mrs. Olanoff will receive \$50,000 and a piece of land to allow for a 5 vehicle overflow and her home at a 10' setback. He stated that the Kelso's would get the opportunity to build a second house later because of the 20' access. He mentioned a current suit brought on by Green Machine Management Corp. that is similar to this situation in possibly creating flag lots and the possible creation of a subdivision. He stated that the Town needed to be consistent. He questioned the fire safety regulations and how a fire truck would get out of the property if necessary. Atty

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Malinski also stated that he believed that the Town was creating a subdivision by landlocking Ms. Olanoff, Mr. Katz and Mr. and Mrs. Kelso and questioned the use of the easement owned by the Ocean Shore Estates property owners. He concluded by stating that he did feel the Town should let the litigation proceed and then pending the outcome should do what it has to do. He added that he felt signing this agreement would create more havoc.

Chris Currie, 27 Tropical Drive, stated that he agreed with Atty Malinski in a couple of respects. He stated that he felt the agreement should be kept simple. He added that the obvious solution would be to access the property through Beachway North and could not believe the mean spirited residents in Town. He also stated that to his knowledge the property was never a wildlife refuge and was always Residential Single Family. He concluded by stating that he applauded the Town Commission for finally coming around with some sort of accommodation.

In response to the comments made by Atty Malinski, Atty Spillias stated that the suit involving the Green Machine Development Corp. was different in that they already subdivided the lot, which they can do, but whether they can develop the property in that manner is the question. He also stated that they appealed the decision of the Town Manager to the Board of Adjustment (BOA) regarding the interpretation on one provision that if they subdivide into a flag lot situation whether the subdivision regulations would kick in. The BOA upheld the Town Manager's interpretation. He clarified that the Kelsos did not sue everyone and the Town and added that suits were actually brought upon them first. Regarding the thought that it was already approved in the agreement for the Kelsos to subdivide the property he stated that the Kelsos would have to present plans in accordance with the Town Codes that would then be reviewed. He clarified that there would be 20' of access continuing on David Lane to the Kelsos new proposed north property line. He added that the unpaved road in Paragraph 15 does not imply that they can have a dirt road and the legal access must be at least a 20' paved road. Regarding the Town giving away the easement, Atty Spillias clarified that the Town would only be abandoning the general public easement and not any other easement holders.

Richard Lucibella, 5 Beachway North, commented that the Kelsos would be creating a flag lot with the Town's endorsement and he compared this situation with that of the Green Machine Management Corp. Atty Spillias advised that Green Machine had already subdivided the lots and had to provide access with 10'.

Bill Finley, 3 Beachway North, questioned whether the Kelsos have applied for a permit to which he was advised that they have applied for one house on one lot. He questioned who approves a subdivision if they decide to slice the property in the future. Atty Spillias stated that he was not sure. Mr. Finley asked if the document proports subdivision to which Atty Spillias commented no and that section was not a Town necessity but the other parties wanted this section included. Mr. Finley commented that he felt the Town should not approve that part of the document.

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Regarding Atty Malinski's comments, Cole Fitzgerald stated that he respected Atty Malinski, however, he added that he came today to try to frighten and confuse the Commission and added that he was an advocate and not representing the Town. He commented that the Commission was not being asked to do anything improper. He added that the Kelsos were asking the Town to sign the entire agreement because they need a level of comfort.

Linda Conahan agreed with Atty Fitzgerald's comments. She added that this property was never a wildlife sanctuary and the National Wildlife even has on record that they did not want it to be. She stated that the property was offered to the Town in 1998 and also to the Beachway North Homeowners Assoc. She even stated that Mr. Lucibella had an option to purchase it. She commented that the Beachway North Subdivision has private roads and questioned why Mr. Katz, Ms. Olanoff and the Kelsos should not have the same right.

Scott Kelso thanked Philip Barlage regarding his statement that everyone should enjoy the same rights. He stated that his family has lived in Town for many years and he hopes that the Commission realizes that they are friendly people. He clarified that they did not bring suit on anyone and that a suit was brought against them. He stated that the settlement has taken approximately 2 ½ years and now all three parties have agreed to this agreement. He added that they have given a lot to settle this suit and hope that it finally comes to an end.

Mayor Kaleel commented that he felt a lot of people have been hurt as a result of these suits.

Comm Aaskov questioned why the extension of David Lane could not be 10' instead of the 20' proposed. Atty Spillias stated that Mr. Katz's obstruction is in the way and added that the Town Commission could waive certain regulations pursuant to Chapter 14. He stated that he did not feel it would be proper for him to recommend to the Commission to waive the requirements.

Comm Aaskov stated that she was in favor of abandoning the 10' easement to Mr. Katz and she could go along with the agreement, however, she would prefer that some of verbiage she did not feel was necessary be removed.

Comm Bingham agreed with Comm Aaskov that she would prefer nothing in writing regarding the legal access and felt this agreement implied that a subdivision could be automatically completed. She questioned the parking arrangement for Mrs. Olanoff because there is essentially an 8' setback now. Mrs. Olanoff stated that she would park in another place during construction and at an angle when construction is completed.

Comm Bingham asked if properties owned by Mr. Katz and Ms. Olanoff would be re-grandfathered on lot size to which Atty Spillias stated only by virtue of the new code and not this agreement.

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Comm Bingham questioned if this would become a private road where the access would be. She was advised that the public portion would end at Mr. Katz and Ms. Olanoff's property. Atty Spillias reminded her that the Kelsos would not cut off access for those who have a right to the easement. He also stated that there was still an argument as to whether the public could go over Ms. Olanoff's easement.

Comm Bingham also suggested that Ms. Olanoff execute a Hold Harmless Agreement so that the Town would not be held responsible for any increased flooding. Ms. Olanoff and Mr. Katz advised that the Town would still have to approve any building permit applications including drainage. Mayor Kaleel asked if this was covered in the agreement to which Atty Spillias stated that the agreement included that the Kelsos would not increase any drainage and the Town does not have an obligation for the road.

Comm Bingham stated that she was in favor of the agreement as long as the Town protects itself from future subdivision. Atty Spillias stated that language could be added so as not to allow pre-approval of a subdivision. Mayor Kaleel clarified with the Town Atty and Mr. and Mrs. Kelso that there was no inference for a pre-approved subdivision and that all code requirements would have to be met. Comm Bingham was satisfied that this was placed on the record.

Comm Willens reiterated that the Town's only involvement in this agreement is whether to compel Mr. Katz to his 10' through abandonment. Atty Spillias advised that the Town is challenged by Mr. and Mrs. Kelso on having to allow access. Comm Willens stated that he did not favor approving an agreement that goes far beyond what the Town would require. He added that he felt the Town should only approve the access portion. Atty Spillias stated that most agreements generally include other general information and the Town's portion of the agreement relies on their agreement. Comm Willens questioned whether there could be two agreements with the one involving the Town addressing the legal access. Atty Spillias stated that this could be accomplished, however, this would make the issue more complicated than simplifying.

Mayor Kaleel stated that he understood Comm Willens concerns but he also understood why it is being presented in this fashion. He added that the agreement does impose each party to specific paragraphs. Atty Fitzgerald stated that the agreement was mutual for all three parties. Comm Willens still stated that he does not want the Town to be a party down the road on a concept that is actually opposed. Atty Spillias suggested reformatting the agreement so that it separates what the Town agrees to follow and what the parties agree to with each other. Atty Fitzgerald and Atty Conahan agreed so long as the terms remain the same. Comm Willens clarified that the Commission would receive and approve the new format.

All parties, including the Commission, concurred with Atty Spillias' recommended modifications.

Mayor Kaleel stated that this has been difficult to see the anguish in so many people involved. He agreed that the easiest solution would be to access through Beachway

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North, however, they are entitled to their private property rights. He stated that he believed the three parties definitely benefit from the agreement as stated by Atty Malinski, however, this was not relevant here. He also stated that Atty Malinski made some good points but on the dead end issue he advised that the road would dead end anywhere. Regarding the overflow parking, again the parties involved agreed to this issue and there is not impact to the rest of the Town. On the Green Machine Management Corp. he concurred with Atty Spillias that this was a separate litigation. He also stated that he believed in being consistent, however, there are times that one can't be and there are times to right a wrong. He commented that in this case three parties got together and worked out an agreement that they could live with and he did not see how the Town could go against it and no one today told him today why not to go along with it. He stated that there would probably be those that may want to continue litigation regarding this particular property but he felt the Town should agree with the Town Atty's recommendation.

Mayor Kaleel asked Mr. and Mrs. Kelso if they could review the possibility of creating some sort of turn-around to allow the Public Safety Dept. to turn around if necessary. Mrs. Kelso stated that they would need to make sure it was feasible since the paving is now comes off their calculations. She added that she would have their engineer review the possibility.

Regarding Comm Aaskov's suggestion on reducing the easement to 10', Mayor Kaleel stated that it sounded interesting instead of more pavement. Mrs. Kelso stated that they have already asked the Town on two occasions to permit 10' and spent approximately \$100,000, however, they were turned down. She added that if in the future they want to build another home (with no plans to do so now) then they would want the 20' there because it currently meets the Town codes. Mayor Kaleel asked who would maintain the road to which he was advised that the Kelsos would maintain from the proposed Kelso property south. Comm Bingham questioned who would maintain the road north of the Kelso property. She was advised that Ms. Olanoff would be responsible for 1/2 and so would Mr. Katz.

Comm Aaskov moved to approve the settlement agreement, subject to the modifications suggested by the Town Attorney, and the new format to be approved by the Town Commission, with the most recent reconfigured drawing, and that the advertisement for the hearing for the abandonment be scheduled for the regular meeting to be held April 1, 2002. Comm Bingham seconded the motion.

Mayor Kaleel clarified that the Kelsos would investigate the possibility of constructing some sort of turn-around for the Public Safety Dept.

Motion carried – Yea (5).

Town Manager Dunham advised the Commission that County Commissioner Mary McCarty would like to have a workshop at Town Hall sometime in April.

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ADJOURNMENT

The meeting was adjourned at approximately 10:20 A.M.

Mayor Kenneth Kaleel

Vice Mayor Aaskov

Comm Bingham

Comm Schulte

Comm Willens

ATTEST:

Town Clerk