

Special Meeting of the Planning and Zoning Commission of the Town of Ocean Ridge held on Monday, November 18, 2002 in the Town Hall Meeting Chambers.

The meeting was called to order at 8:00 AM by Vice Chair James Bonfiglio and roll call was answered by the following:

Bruce Gimmy
Ward Northrup

Jeff Lee
James Bonfiglio

It was noted that Peggy Smith was absent with notice.

III. Approval of November 4, 2002 Minutes

Mr. Northrup stated that the paragraph at the bottom of Page 2 starting with Mrs. Smith needed to be amended or deleted altogether. The Commission concurred that the paragraph could be deleted.

Mr. Gimmy moved to approve the November 4, 2002 minutes as amended, seconded by Mr. Lee.

Motion carried – Yea 4.

Mr. Gimmy requested that the Agenda be rearranged to discuss Item V before Item IV.

V. Re-Discuss the ROW's or Alleys Located East of SR A1A

George Bierlin, 26 Hudson Ave., commented that he thought this Commission had already addressed this item, however, he realized that the Town Commission requested that it be readdressed again. Mr. Bierlin commented that over the last two years one letter and two petitions have been given to the Town Commission requesting that the Edith St. ROW east of SR A1A be returned to its full 20' width. He advised that this is a very active easement and asked that this Commission recommend that it not be abandoned and suggested that it be returned to its full width.

Vice Chairman Bonfiglio stated that he was the one who requested that this item be readdressed because of the discovery that there were encroachments in the ROW's. He commented that he felt oceanfront property owners were taking valuable land from the Town. He added that the property owner south of Edith St. must have obtained a survey and therefore known of the encroachment. He suggested charging the property owners for a license for allowing the encroachment and stated that he had asked the Town Attorney to investigate this possibility. He stated that this fee could offset income to maintain the ROW if there is a cost. He also stated that possibly both oceanfront and other property owners could be charged.

Mr. Bierlin questioned if a buy out was possible for the Hudson Ave. residents. Vice Chairman Bonfiglio again commented that property owners should know if they have an

encroachment and stated that the Town was partially at fault for not enforcing the removal of the encroachment, however, the Town is dealing with the issue now. Mr. Bierlin stated that he felt the Town was rewarding the property owners for bad behavior.

Mr. Northrup commented that this was the first time he has heard of the concept of charging property owners for utilizing a portion of the ROW's and stated the members needed to think about it. Mr. Bonfiglio stated that if the Town were to charge the residents it may possibly require obtaining surveys.

Atty Spillias stated that his firm is still researching whether property owners could be charged, however, the Town can permit encroachments in the ROW's (ie a 50' ROW where property owners utilize a part of a swale leading to the street). He stated that towns could lease property but it has limitations. He stated that he was hopeful he would have an answer at the next meeting.

Douglas Fuerring, owner of 6195 North Ocean Blvd. (just south of the eastern Edith St. ROW), stated that he acquired the property last year and was aware of the encroachment, but added that it has been there since approximately 1978. He stated that his encroachment has not impeded the intended use of the easement, which is a walkway to the beach. He stated that his fence and walkway encroach approximately 4' into the ROW adjacent to his house. He added that the property owner to the north also encroaches into this ROW. He stated that the Town discovered the encroachment because of an underground irrigation line being installed running east and west with an above ground backflow preventer that has since been relocated out of the ROW.

Mr. Fuerring stated that he has spoken with his attorney and was advised that he could stipulate to some type of removal agreement if the property was ever needed. He stated that he was advised that if the encroachment was not impeding anything then there should be no reason to be required to remove the encroachment. He added that this fence has been there since the 70's and no one had ever asked for it to be removed in the past. Mr. Bonfiglio again stated that this was exclusive use of very expensive land and he was still being permitted to use something that other property owners cannot. He added that the ROW appears to belong to the resident to the north and suggested that at a minimum some type of signage be erected to advise that it was a public easement. Mr. Fuerring stated that he believed that the residents like the idea that this easement looks very natural and at a neighbors expense.

Vice Chairman Bonfiglio stated that Mr. Fuerring, as a homeowner, could suggest utilizing a portion of the ROW for a fee because he recognizes that he has an encroachment in the ROW. Mr. Fuerring commented that he would like to hear the Town Attorney's opinion prior to making any suggestions or requests.

Mr. Bierlin stated that he felt the plantings by 6201 North Ocean Blvd. restricted the use of the ROW. He added that the building permit for the fence by 6195 N. Ocean Blvd. in 1988 showed the fence was supposed to be erected on the property line.

Vice Chairman Bonfiglio stated that this item was back on the agenda to determine if their recommendation needed to be changed or reconsidered with a thought of allowing an encroachment with a license.

Atty Spillias stated that prior to the adoption of the license ordinance the town had and still has the inherent right to have a homeowner remove an encroachment. He stated that the adoption of the ordinance made clear that the Town was declaring that every encroachment was a code violation and a public nuisance and provided for property owners to specifically request permission for an encroachment by a license agreement. The intent was once a license agreement was approved it would be recorded advising of the encroachment. He stated that the status now is that each encroachment is a public nuisance. He commented that he did not feel that any action was necessary to solidify their recommendation because an enforcement procedure is already in place. Regarding the suggestion of giving or offering a fee for an encroachment, Atty Spillias advised that this could be done; however, charging for the use was still being researched. Vice Chairman Bonfiglio commented that is why he felt an annual fee may be a good idea. Atty Spillias stated that it would need to be determined how a fee would be based and criteria would need to be established; such as making a distinction on front, rear or side yard encroachments.

Vice Chairman Bonfiglio stated that either the Town will absorb the costs to maintain or give up the land. The Commission concurred that no changes on their original recommendation regarding the beach ROW's was necessary.

- VI. Discuss Options Regarding Abandonment, Retaining and/or Maintaining the Following Rights of Ways or Alleys
 - i. Alley located between Ocean Ave. and Coconut Lane
 - ii. Alley located between Coconut Lane and Town Hall Property

Sandra Morrison, 2 Coconut Lane, stated that the residents have heard of all kinds of uses for the alleyways such as: ingress/egress for driveways, walking dogs, utility uses, and walking to the ICWW. She stated that other than the two most eastern residences the rest of the southern alley is jurisdictional and floods and stays wet after it rains. She stated that she was concerned if the alley was raised for a roadway the water would sit on their properties longer. She also stated that if the alley was opened up it would provide more of a security issue because intruders could go over the bridge more quickly.

Ms. Morrison stated that she spoke with Jim Carson, FPL supervisor for this area, and he had advised her that FPL can successfully get to all the power poles if necessary by whatever means. She added that at times they have knocked on her door to obtain access through her yard. She commented that both alleys go to mangrove swamp areas before they reach the ICWW and she stated that she felt the property should be abandoned.

Vice Chairman Bonfiglio questioned when the last burglary occurred in the area to which he was advised approximately six months ago at 41 Coconut Lane. Ms. Morrison again

stated that she felt if the alleys were opened up it would present more of a security risk to the residents.

Ty Fender, 41 Coconut Lane, commented that he used to maintain the alley behind his house until all these discussions concerning the ROW's and alleys was brought up.

Vice Chairman Bonfiglio advised the residents that most of both alleys were jurisdictional and any improvement or maintaining would be minimal. Mr. Northrup stated that he did not believe the Town planned on maintaining or improving the jurisdictional areas but he added that he did not feel that it would hurt the Town to maintain the upland area. He stated that it may actually assist the drainage further west. He also stated that the Town questioned the Engineer if the ROW's or alleys were needed for drainage, which the Town was advised negative, however, the question was never posed on whether any changes to the alleys would actually help an area. Mr. Fender stated that he felt the flushing in the alley works well enough now.

Mr. Lee asked if the Town could partially abandon the ROW's or alleys. Atty Spillias advised that this could be done. Mr. Bonfiglio questioned if the Town could abandon these areas as is and he was also advised they could. Mr. Lee commented that he felt a homeowner probably has a better chance to obtain any permitting to alter or clear this area than the Town.

Town Engineer Tropepe stated that alley #1 and #2 could be abandoned with easements and restrictions. She stated that this would not hurt the current drainage and any filling could be subject to restrictions. She added that the upland area could be maintained annually and the jurisdictional area could probably only be altered by removing the exotics. Ms. Tropepe advised that she had received the proposal to clear, grub, grade and sod the three alleys. The proposal was as follows: Alley #1 (\$2,505), Alley #2 (\$5,267.50), and Alley #3 (\$11, 467.50) and did not include any continual maintenance.

Vice Chairman Bonfiglio questioned if the clearing and maintenance would take special equipment. Town Manager Dailey commented that it would be necessary to hire a landscape contractor as she did not believe the Town's two maintenance personnel had the equipment to continually do this work. Mr. Northrup agreed stating that he would not want the Town to do this work, however, he added that once cleared the land should probably only need to be continually mowed.

Ms. Morrison and Mr. Fender expressed their concerns that any hardscape driveways in the alleys could worsen the drainage problems they experience now. Ms. Tropepe commented that the Town is currently discussing a mandatory proposed front swale with cross sections.

Mr. Gimmy questioned why the proposal for clearing did not include Edith St., adding that Pelican Cove expressed that they did not want the ROW abandoned. He also questioned access to the land west of Town Hall if Alley #1 were abandoned. Atty

Spillias stated that there is a 50' easement in the parking lot running west and added that he did not feel that Alley #1 was for access to any western properties anyway.

Mr. Gimmy moved to obtain an estimate on Edith St. to clear, grub and grade on the areas not improved by the homeowners. Mr. Northrup seconded the motion.

Motion carried – Yea (4)

Ann Syring, 50 Coconut Lane, questioned why the Town would want to retain the alleys if they can't use them because they are jurisdictional wetlands. Vice Chairman Bonfiglio stated that if for some reason the ICWW in depth went down in the future it may dry up the area.

Betty Ackerly, 31 Coconut Lane, inquired why the Town is so enamored with grass to which Mr. Northrup stated that the Town has only received proposals at this time, however, turf would be the easiest to maintain.

Linda O'Neil, property manager for Pelican Cove, stated that it was the consensus of the residents in Pelican Cove to keep the Edith St. ROW as is and not abandon it. She also stated that they were concerned with larger closer houses. Mr. Northrup advised that the Town could abandon the ROW's and alleys with restrictions. Atty Spillias stated that if the Town keeps the Edith St. ROW as public, there is a chance that the property owner at the far west of the ROW could request a road be constructed in the ROW to obtain access to his property.

The Commission decided that their next meeting would consist of making recommendations for the various ROW's and alleys and would either be held on Dec. 4th or Dec. 9th, 2002. They asked Town Clerk Hancsak to schedule the meeting.

The meeting was adjourned at approximately 9:40 A.M.

Vice Chair Bonfiglio

Attest:

Town Clerk