

Special Town Commission Meeting of the Town of Ocean Ridge held on Thursday, March 24, 2003 at 6:00 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 Pugh
Commissioner Schulte
Mayor Aaskov

Comm Kaleel arrived late with notice.

Mayor Aaskov advised that the meeting was being held as a workshop for the purpose of reviewing the rights-of-ways and alleyways in Town. Mayor Aaskov stated that there would be public comment after the Commission discussion.

Pledge of Allegiance

Action Items

1. Discuss Planning & Zoning Recommendations for Rights-of-Way
2. Town Commission Recommendations for Rights-of-Way

Comm Schulte asked for a synopsis of the Planning and Zoning Commission recommendations.

James Bonfiglio, 5616 N. Ocean Blvd, vice chair of the Planning and Zoning Commission, advised that the P&Z had the responsibility of reviewing the right-of-ways in Town. Mr. Bonfiglio stated that they held several public meetings and discussed what should be done with the right-of-ways.

Mr. Bonfiglio advised that the P&Z had reviewed the ROW's 3-4 years ago, however, no formal action was taken and they were asked to review the right-of-ways all over again. Mr. Bonfiglio also stated that the P&Z had done a lot of hard work going over all the various options available and discussing the advantages and disadvantages.

Town Attorney Spillias followed up indicating that the beach access crossovers being discussed are the right-of-ways East of A1A. Attorney Spillias stated that the recommendation by the Planning and Zoning Commission was for the Town to retain and maintain each of them.

Comm Bingham questioned which of the right-of-ways on the beach currently have crossovers and which have proposed crossovers and also if the Edith Street crossover is the only one with an obstruction.

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Mayor Aaskov stated that the proposed crossovers were at Thompson St. and Edith St. and the only obstruction is at the Edith Street right-of-way.

Attorney Spillias stated that the right-of-ways should be marked as public access.

Mr. Bonfiglio stated that a visual inspection was conducted of the Edith Street right-of-way and public posting was recommended because it does not appear as a public access to the beach due to the adjacent landowners landscaping.

Ward Northrup, 5505 Osprey Dr, stated in regards to the Edith Street right-of-way it was discovered that the fence was permitted in the proper location which was on the property line but was constructed in the right-of-way.

Mr. Bonfiglio clarified that the recommendation by the Planning and Zoning Commission was to retain and maintain the Edith Street right-of-way and also to mark it with signage as access to the beach.

Comm Bingham suggested a public access sign be put at Edith St. on the east side as well as a small sign on the west side.

Comm Kaleel arrived at approximately 6:20 PM.

Attorney Spillias stated that the issue was the palm tree and fence. Attorney Spillias mentioned that if the Commission determined that the pathway that currently exists is sufficient and that neither obstruction prevent the use of the right-of-way then the property owner should request the right to retain the obstruction and execute a indemnification agreement requiring the property owner to maintain the obstruction.

Mayor Aaskov questioned if a notice would have to be made to the property owner advising them that they are required to appear before the Commission for the request to keep the obstruction. Attorney Spillias advised that the property owner should be notified of the procedure for requesting to keep and maintain the obstruction.

Comm Schulte advised that the code should be enforced. Attorney Spillias stated that an application for a building permit can be required but generally it is unwise to allow a fence to be constructed in a right-of-way for vehicular access ways. Attorney Spillias also stated that pedestrian access could be treated differently.

Comm Bingham questioned if the drawing had been completed for what the crossover would look like. Town Manager Dailey stated that the crossover is an on ground type and approximately two and a half feet wide.

All agreed to notify the property owners to request permission from the Commission to keep and maintain right-of-way obstructions.

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Mayor Aaskov stated that property owners requesting to keep obstructions in rights-of-ways that are not being abandoned should also receive notification of the process to request permission from the Commission as well.

Comm Pugh stated he felt that obstructions should either all be permitted or none be permitted and that proof of hardship should be provided for obstructions to be kept.

Town Clerk Hancsak read the last paragraph of the P&Z recommendations which stated that any structural obstructions be removed and license procedures should be enforced for landscape obstructions provided there is sufficient ingress/egress on any utility easements for utility vehicles, vehicles or pedestrian traffic in the current upland areas. Comm Kaleel advised that he is not in favor of allowing obstructions because they are illegally in the right-of-way and they should be removed.

All agreed that the western Corrine St. and Thompson St. right-of-ways not be abandoned because of the County's request not to abandon in relation to the Mangrove Restoration Project.

All agreed that the Chickasaw right-of-way not be abandoned.

All agreed that the Coconut Lane right-of-way (extension of) not be abandoned.

Comm Bingham questioned what was being done with the property referred to as Alleyway #1 by the P&Z, located in back of the Town Hall. Comm Kaleel advised he felt there was a need to keep the fifteen-foot alleyway on the south side until the County decides what they are going to do with the mangroves and more information is obtained on access to the western properties.

All agreed that Alleyway #1 not be abandoned.

Comm Kaleel commented that he felt there was no purpose to retain Alleyway #2 and that it could be easily abandoned and easement rights retained. Comm Schulte advised he believed at one time all the property owners requested abandonment of the alley. Town Clerk Hancsak stated she believed all but one property owner wanted abandonment at that time.

Attorney Spillias advised that the right-of-way is an alleyway that is designed as a secondary access way and that there is no real difference between an alleyway and a street.

Comm Pugh questioned if the alleyway could be abandoned in perpetuity to use it for their needs and the Town could use it if needed at a later time. Comm Bingham stated people use the alleyways to get into the back portions of their yards. Comm Kaleel stated he felt the Commission should only reserve what the Towns needs and he feels there is no need to retain Alleyway #2.

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There was a discussion on the size of the alleyways. Comm Bingham stated she believed the Edith Street alleyway was 15' plus an additional 5' utility easement on each side. Mayor Aaskov clarified that people could still not get down the alleyway if it was abandoned.

Attorney Spillias advised that whether or not the Commission determines to abandon the right-of-way as a public right-of-way the owners could agree to have an easement for each other.

Attorney Spillias advised that it is a function of the Commission to determine if there is or will be a need to retain the right-of-way for public use to justify abandonment.

Comm Schulte questioned the jurisdictional areas of the west portions of the right-of-ways and if access must be made to jurisdictional property. Town Manager Dailey advised that if the Town retains or abandons the right-of-ways, obtaining a permit to clear or use the property would still be difficult.

Comm Kaleel advised that due to the Town not abandoning the Coconut Lane extension, and there being access from Hudson Ave., all properties could be accessed.

Comm Bingham questioned which yard the power department would have to enter if access was needed to work. Comm Kaleel advised that easement rights could be retained for utilities and drainage and they could still be accessed.

Comm Bingham mentioned that at one time there was a drainage ditch in the alleyway that pushed the flow of the water up Hudson Avenue and as a result it has turned into a swamp area with mangroves and she feels there is a need to retain control for the future.

Comm Kaleel stated that he does not believe there will ever be a road or pathway put in the area and that the Town should abandon the right-of-way and keep utility and drainage easement rights. Comm Schulte commented that all objectives could be achieved and that the homeowners could come to an agreement to maintain the areas and the Town could retain easement rights for work orders needed in the future. Comm Bingham stated that the alleys should be firm enough for maintenance and utility vehicles to access.

Town Clerk Hancsak advised that Town Engineers from Shalloway, Foy, Rayman and Newell stated that most likely nothing could be done in jurisdictional areas. Comm Kaleel questioned if objectives could be met by abandoning Alleyway #2 and keeping easement rights. Attorney Spillias stated that easement rights could be kept but that the Town might consider retaining the area due to the drainage project.

Comm Kaleel mentioned his concern with abandoning Edith St. because of the pending litigation regarding the two lots on Hudson Ave. Attorney Spillias stated that the lots are platted as fronting on Hudson, and the new code also states that flag lots cannot be done. Attorney Spillias stated that the Edith Street right-of-way abandonment should be held off as a precautionary measure.

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Town Manager Dailey commented that on pg. 5 of Town Engineer Tropepe's report, in regard to the drainage, it was recommended to retain a drainage easement and also that a specific condition be added that the area could not be filled, in order to maintain the drainage swale.

Comm Bingham stated that Alleyway #3 could not be abandoned because there are three homeowners that use the alleyway to access their residence. Town Clerk Hancsak advised that a private easement agreement could be established over each of those homeowner's properties.

Comm Bingham questioned if the Town could impose a private easement agreement. Attorney Spillias advised that the homeowners could create an easement among themselves. Comm Kaleel stated that if the right-of-way is abandoned the Town has to have an agreement for easement usage and if an agreement cannot be made the right-of-way should not be abandoned.

Attorney Spillias stated that a portion of the right-of-way could be abandoned and that the portion that is determined to be needed for public use could be retained and the homeowner would be responsible for maintaining the area. Attorney Spillias also advised that even if the homeowners created a private easement agreement between themselves, the property could not be used in a manner that would interfere with the easement-holders right to use it for easement purposes.

Comm Bingham questioned the drainage needed for Alleyway #3. Attorney Spillias advised that the Town Engineer stated the alleyways are not needed for the drainage project. Comm Kaleel suggested the Town create a quid-pro-quo stating that if the Town abandons the right-of-way then the Town will retain easement rights.

Comm Schulte questioned if an agreement is required between the homeowners. Attorney Spillias advised that an agreement or permission from the homeowners is not required to abandon a right-of-way. Attorney Spillias also stated that if sufficient access can be made for utility and drainage and it is determined there would no longer be a public need for a right-of-way, he can advise the correct way to abandon the right-of-way. Attorney Spillias mentioned that each right-of-way is unique and would need to be addressed separately.

There was a discussion regarding the Anna Street right-of-way. Comm Kaleel stated if the Town retains the right-of-way then the Town needs to maintain it. Town Clerk Hancsak advised that it is currently being maintained.

All agreed that the Anna Street right-of-way not be abandoned.

Attorney Spillias advised he would bring back the correct process for abandoning the Alleyways #2 and #3 at the next Regular Commission Meeting in May. Comm Kaleel

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stated he is in favor of abandoning the two alleyways but wants to have more information from the Town Attorney on the correct process for abandonment.

Public Comment

Justus Brown, 39 Coconut Lane, stated he was in favor of abandoning the ROW's that are not used and also that he was especially in favor of abandoning the Coconut Lane right-of-way behind his home because it is never used by the public.

George Bierlin, 26 Hudson Ave., mentioned he was pleased that the Commission is deciding on a policy for abandoning the right-of-way's and also requested that another right-of-way be considered that was not mentioned. Mr. Berlin stated that there is a right-of-way that exists along the Boynton Beach Park Subdivision, Noyes Avenue, which runs north and south and is submerged. Mr. Bierlin advised that Noyes Avenue abuts his property and has never been protected by the Town. Mr. Bierlin also read Ordinance 64-78 and stated that he wants to facilitate abandonment procedures for Noyes Avenue.

Kathleen McMann, representing William Morris and Sandra Morrison of Coconut Lane and Cory Heath of Hudson Avenue, stated that her firm sent a letter to the Town Attorney and Commissioners advising that her clients were taking the position that both Alleyways #2 and #3 have already been abandoned. Attorney McMann stated that the Town has not maintained the alleyways and has not used the alleyways for public use for a time period longer than 16 months. Attorney McMann advised that according to Florida State Statute the Town has legally abandoned the alleyways due to lack of past use. Attorney McMann stated that her clients would take formal action on the reference of past use and requested the Town take appropriate action.

Attorney Spillias advised that he received the letter and would review the Statutes, determine the factual information and then give his opinion at that time.

James Vecchione, 6306 N Ocean Blvd, stated he was confused about the utility easements and questioned what could legally be done with utility easements. Attorney Spillias advised that the Florida Power and Light utility easements that currently exist cannot be interfered with and the Town has no control over those easements.

Linda Giesler, 37 Coconut Lane, stated she was in favor of abandoning the alleyway because she could assure that Florida Power and Light will be able to access the area if needed.

Steve Romanowski, 23 Hudson Ave, stated his appreciation in the direction the Commission was going and also requested that the Edith Street right-of-way also be reviewed by the Town Attorney along with Alleyway #2 and #3 regarding lack of use by the Town for public purpose. Attorney Spillias stated he would distribute a memo to the Town Manager if something occurs in litigation.

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Bruce Gimmy, 12 Ocean Ave, questioned the use of the right-of-way being used in the FAR. Attorney Spillias stated it could be used towards FAR and that drainage is an issue. Mr. Gimmy advised that he has plans for a two-car garage and is disappointed with the Planning and Zoning Commissions work being rejected.

Mayor Aaskov and Comm Kaleel both stated they did not feel the work was rejected and that there were legitimate concerns. Comm Kaleel commented that the issue is more than someone not wanting to abandon a right-of-way. He stated that the legal ramifications are that the Town has to have a public purpose for the right-of-way and if the Town cannot use it for public purpose than the Town does not have a right to retain a right-of-way.

Town Clerk Hancsak advised that the letter received from Pelican Cove requesting not to abandon Edith Street was re-distributed to the Commissioners and Staff per their request.

Lothar Mayer, 6009 and 6017 Old Ocean Blvd, read the Town Mission Statement and questioned the seagrape maintenance. Mayor Aaskov stated that trimming the seagrapes will be addressed at another meeting.

Linda Geisler, 37 Coconut Lane, stated she hoped the Commission would consider that the majority of the residents vote for abandoning right-of-ways and are willing to work with the Town regarding easements.

James Bonfiglio, 5616 N Ocean Blvd, stated that he sat on the Planning and Zoning Commission through the hearings and the Edith Street right-of-way was reviewed. Mr. Bonfiglio advised that a five-foot easement was needed for the beach access. Mr. Bonfiglio commented on his concerns with neighbor disputes and stated if the Town retains control of the right-of-ways it prevents problems.

Adjournment

Meeting adjourned at 8:05 PM.

Attest By:

Town Clerk

Mayor Aaskov

Commissioner Bingham

Commissioner Kaleel

Commissioner Pugh

Commissioner Schulte