

REGULAR TOWN COMMISSION MEETING HELD ON MAY 5, 2003

Regular Town Commission Meeting of the Town of Ocean Ridge held on Monday, May 5, 2003 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 Kaleel
Commissioner Pugh Commissioner Schulte
Mayor Aaskov

Pledge of Allegiance

Additions, Deletions, Modifications and Approval of Agenda

Consent Agenda

1. Minutes of Special Town Commission Meeting of March 24, 2003
2. Minutes of Regular Town Commission Meeting of April 7, 2003
4. Ocean Ridge Resolution No. 2003-10; Opposing Senate Bill 654 (PBCC BR 03-06) Which Removes Local Governments' Authority to Enforce Existing Cable Franchise Agreements with Regard to all Broadband or Information Services, and Allows Telephone Companies to Implement Unconscionable Rate Increases with Very Limited Governmental Oversight

Comm Schulte requested to move item #3 and #5 from the consent agenda to number #11 and #12. Comm Schulte also requested that the minutes from the March 24, 2003 meeting be corrected regarding Pelican Cove's request not to abandon the Edith St. right-of-way.

Comm Bingham requested that the minutes from the March 24, 2003 be changed from 2 homeowners to 3 homeowners on the second paragraph on page 5.

Comm Kaleel requested to add Resolution 2003-11; Request for Bethesda Memorial Hospital to become certified to perform open-heart surgeries and endio-plastic services to the consent agenda. All concurred

Comm Kaleel moved to approve the agenda and the consent agenda as modified, seconded by Comm Schulte.

Motion carried - yea 5.

Announcements and Proclamations

6. The Administrative Office will be closed Monday, May 26, 2003 for the official holiday
7. Proclamation that the Month of May be Declared as Civility Month

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Public Comment

Cheryl Olanoff, 566 David Lane, requested that the light at Old Ocean Blvd and Adams Road be shielded because it is shining onto the beach. Ms. Olanoff also mentioned that there are bushes causing a traffic obstruction at Adams Road and David Lane. Ms. Olanoff stated that the homeowner has trimmed the bushes partially but that they are still a safety concern and requested that the issue be taken care of. Director Hillery advised that he would look into the matter.

Lothar Mayer, 6009 Old Ocean Blvd, stated he felt at the last meeting the Commission had agreed that plantings could be put in the right-of-way provided a landscape plan be worked on and approved with staff. Town Manager Dailey clarified that Mr. Mayer was told a corrected drainage plan and acceptable landscape plan were required prior to the issuance of the certificate of occupancy. Mr. Mayer stated that the engineer would be providing drainage plans and then his landscaper would be submitting landscape plans that would be acceptable.

Comm Kaleel stated he did not think it was the proper forum to be discussing these issues and it was not the intent of public comment. Mayor Aaskov agreed.

Mr. Mayer stated that he met with Mark Taynton from DEP and was told by Mr. Taynton that he would issue a permit for the seagrapes to be trimmed if the Town and the Sullivan's agree. Mr. Mayer stated the Sullivan's signed an agreement to have the seagrapes trimmed and he was requesting the Town to request trimming as well. Mayor Aaskov questioned if Town Manager Dailey had any objections to the request.

Town Manager Dailey stated that there was a consensus from the Commission to adopt DEP guidelines and she did not object to DEP working with the Town on a design that met their standards for trimming.

Mr. Mayer stated that he was asking the Town request a permit from DEP to have the seagrapes trimmed in the Town right-of-way, his property, and the Sullivan's property. Mayor Aaskov stated she and Town Manager Dailey would work with Mr. Taynton on the issue.

Mr. Mayor then questioned if he would be able to plant in the right-of-way on Old Ocean Blvd. Comm Kaleel stated Mr. Mayer was advised to work on a plan with staff that would be acceptable and that this also was not the proper forum to be discussing these issues. Attorney Spillias commented that if there is a disagreement with the interpretation with the administrative official over a zoning matter that the appropriate procedure is to appeal the decision to the Board of Adjustment. Town Manager Dailey stated that he was advised that until the drainage plan is approved the landscape plan cannot be reviewed.

Justus Brown, 39 Coconut Lane, stated that Ocean Avenue is beautiful but questioned why there were no bushes planted in the right-of-way in front of 15 Ocean Avenue. Comm Bingham advised that the bushes were planted poorly and Town Manager Dailey would check on the matter.

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Betty Kelso, 16 Sailfish Lane, stated that there are bushes causing an obstruction at the intersection on the north end of David Lane that should be corrected.

Cory Heath, 7 Hudson Avenue, questioned what the status was with the construction at 3 Hudson and why the dumpster has been on the site for over a year. Town Manager Dailey advised that as long as the permit is active the dumpster is not in violation. Town Clerk Hancsak advised she would check on the status of the permit.

Christina De Angelo, 6115 N Ocean Blvd, thanked the police department for their courtesy during the construction of her home and also mentioned that the staff has been very helpful.

Public Hearings

None

Regular Agenda

Actions and Reports

8. Action to Fill One Appointment to Board of Adjustment By: Karen E. Hancsak, Town Clerk

Town Clerk Hancsak advised that one regular position to the Board of Adjustment was overlooked at the last meeting.

Comm Kaleel moved to appoint Storment Norem as a regular member to the Board of Adjustment, seconded by Comm Schulte.

Motion carried - yea 5.

The appointment of an alternate member was tabled and there was a discussion to advertise for resumes in the Ocean Ridge Reporter.

9. Update on Rights-Of-Way Located in Town By: Ken Spillias, Town Attorney

Attorney Spillias stated that during the March 24, 2003 workshop a discussion was made regarding abandoning rights-of-ways and he was asked to research alleyways #2 and #3 for easements, drainage and interest to the Town. Attorney Spillias advised he reviewed the plats and that alleyways #2 and #3 are included on the plats and dedicated as public right-of-ways. Attorney Spillias mentioned that at the time they were dedicated as public right-of-ways there was a north south dedication to Noyse Avenue so that each alley was connecting A1A to Noyse Avenue. He also stated that Noyse Avenue is now under water and was never developed.

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Attorney Spillias said that there was a small easement to the Department of Transportation for drainage and other than that no other expressed easement was found. Attorney Spillias advised that he had not done a title search at this point because of the cost involved.

Attorney Spillias stated that he had also looked at two franchise agreements for BellSouth and Florida Power and Light and at least one alleyway has power lines running from side to side over the right-of-way. Attorney Spillias advised that FPL has a franchise with the Town that gives FPL a non exclusive right and privilege to use all of the publicly dedicated or publicly owned rights-of-ways for purposes of running power lines. Attorney Spillias said that the franchise agreement is in effect until the year 2023. Attorney Spillias advised that if that right-of-way was abandoned an easement agreement would have to be made with FPL. Attorney Spillias suggested that a public utility easement or a private easement with the adjoining property owners would need to be retained if the right-of-way is considered for abandonment.

Attorney Spillias stated that BellSouth had a similar franchise ordinance that expired in the past couple years and that he would research the issue with BellSouth regarding the ordinance and bring the information back at another time.

Attorney Spillias advised that he did not locate anything in records that would indicate that the Town has given or received any easements or rights for drainage purposes. Attorney Spillias mentioned that with the help of the Town Engineer drainage easements could be made for what the Town would require for drainage needs in the alleyways if they are considered for abandonment.

Attorney Spillias also stated that discussions regarding the Edith Street right-of-way were held off for litigation purposes and now his suggestion is that a decision should be made on whether the Town has a need for the right-of-way.

Comm Kaleel questioned if the right-of-ways are abandoned if the Town could still retain easement rights. Attorney Spillias stated that if the Town abandons the right-of-ways a condition could be made to retain easement rights. Attorney Spillias also suggested that any agreement be recorded to carry forward to each property owner.

Mayor Aaskov asked if the item could be placed on the June agenda. Attorney Spillias stated that a decision should be made with the information provided and then a process could begin with preparing documents and contacting property owners to determine what cooperation will be given.

Comm Kaleel asked if a tentative policy decision could be made now. Attorney Spillias advised that it was listed on the agenda as a report however, direction could be given. Comm Schulte stated he would rather wait until the June meeting then incur the cost of researching the alleyways now. Mayor Aaskov stated she would like to have the rights-of-way issue resolved.

All concurred that the decision for abandonment of the rights-of-ways would be on the June agenda.

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Cory Heath, 7 Hudson Avenue, stated a letter was sent from his attorney regarding the Edith Street right-of-way and he has not received a response. Mr. Heath questioned if anything else was needed as he felt the letter was his formal request to consider the Edith Street right-of-way already abandoned. Attorney Spillias replied that a specific procedure was developed for requesting abandonment and he would need to research the court process to check what the law requires according to Florida State Statute.

Comm Bingham mentioned that Pelican Cove has used the right-of-way as access to maintain their trees. Mr. Heath stated that everyone would like to get the issue resolved.

Town Commission Comments

10. Discuss Boynton Beach Galas By: Comm Bingham

Comm Bingham stated she was concerned with the jazz concert that occurred on Good Friday at the Boynton Public Beach and suggested that the schedule for proposed festival dates be reviewed by the Town. Comm Kaleel suggested that Town Manager Dailey meet with the Boynton Beach Town Manager to discuss the issue.

Comm Bingham also suggested that the Town Manager also review the work hours in Town while meeting with the Boynton Beach Town Manager.

Consent Agenda

3. Ocean Ridge Resolution No. 2003-09; Approve and Authorize Execution of State Highway Lighting, Maintenance, and Compensation Agreement

Comm Schulte requested more information regarding the maintenance and costs involved with street lighting and also questioned if the Town was going to be responsible for the lighting liability. Town Manager Dailey explained that the Town is already responsible for the maintenance and liability and Resolution No. 2003-09 was a compensation agreement. Town Clerk Hancsak advised that a monthly fee is paid to FPL to maintain 38 light poles along State Road A1A that are in the Town's jurisdiction. Town Clerk Hancsak stated that several municipalities were paying for street lights on state roads and now the municipalities will be reimbursed for some of the monies paid for those street lights.

Comm Schulte requested more information regarding the liability agreement before he signed the agreement. Comm Kaleel stated that the liability to the Town does not change.

Comm Schulte moved to adopt Resolution No. 2003-09, seconded by Comm Kaleel.

Motion carried - yea 5.

5. Authorize Payment to Gerhardt M. Witt & Assoc., Inc. in the Amount of \$43,135 from the Capital Projects Fund to Drill two Test Pilot Holes near Tropical Drive and Coconut lane Regarding Possibly Using Injection Wells

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Comm Schulte advised that the Commission held a special work session regarding the injection wells and that the issue should be open for public discussion and views. Comm Schulte wanted clarification that if there is not success with the drilling of the first hole that the Town will not incur the cost of a second hole. Comm Kaleel mentioned he agreed in part but he felt it was clear that the set up costs to mobilize the rig would be the same. Comm Kaleel also said he understood that if there is no success with the first drilling, a second would not be attempted.

Comm Schulte questioned the liability of \$90,000. Town Manager Dailey advised that the liability amount is standard in the industry and is based on what the project is. Comm Kaleel stated that the \$90,000 of liability is between the Town and the contractor. Attorney Spillias stated that you cannot bind third parties to a contract and that the contract limits are between the contractor and the Town.

Comm Schulte questioned if the injection well process changed the grant funding. Town Manager Dailey advised that at this point the grant money is not affected and the only thing that would be affected with this method is the cost to the Town and that the grant money is based on the permits that are issued.

Comm Bingham questioned if the Town would lose any deposit if permits are not issued. Town Manager Dailey stated that no costs are incurred before permitting.

Comm Bingham also questioned the liability of replacing rental equipment if it is destroyed. Comm Pugh believed that any equipment would be covered under the contractors insurance. Comm Kaleel stated that any legal contract requiring the Town approval should be directed to the Town Attorney to give a legal opinion concerning the exposure to liability and a brief synopsis of what is being signed. Comm Kaleel also requested that a definitive statement regarding the total maximum cost be added to the contract before signing.

Comm Schulte moved to approve the contract as amended to become a two-step process and if the first hole drilled is successful then proceed with a second hole and as recommended by staff at an amount not to exceed \$43,135 from the Capital Projects Fund, seconded by Comm Kaleel.

Motion carried - yea 5.

Additions

13. Fire Situation

Comm Kaleel questioned if what was occurring with the County and Fire Official are doing is legal and requested to direct the Town Attorney to look into those issues as it is causing a serious situation and risk for the Town.

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Comm Kaleel moved to direct Attorney Spillias look into policy legalities from the County regarding Fire Services, seconded by Comm Schulte.

Motion carried - yea 5.

Adjournment

Meeting adjourned at 7:45 PM

Attest By:

Town Clerk

Mayor Aaskov

Commissioner Bingham

Commissioner Kaleel

Commissioner Pugh

Commissioner Schulte