

PUBLIC HEARING & REGULAR TOWN COMMISSION MEETING HELD SEPT 9, 2003

Public Hearing & Regular Town Commission Meeting of the Town of Ocean Ridge held on Tuesday, September 9, 2003 at 5:01 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 Kaleel
Commissioner Schulte
Mayor Aaskov

Pledge of Allegiance

Public Hearing

1. Presentation of Tentative Budget and Proposed Millage rate for Fiscal Year 2003-2004
 - a. Comment from Commissioners and Public

Town Clerk Hancsak stated that the budget changes were made as directed by the Commission and also that the financial summary, requested by Comm Bingham, had been sent to all the Commissioners on Friday September 5, 2003.

Comm Bingham stated that she felt a large portion of the public works landscape responsibility is now being done by Blue Water Lake Management and felt the department should be cut back. Town Manager Dailey explained that the public works personnel have a long list of tasks that they are responsible for and that many of their tasks require two employees. She stated that the tasks are numerous and include such things as maintaining the Old Ocean Blvd walkovers, removing dead animals, maintenance of the Public Safety and Town Hall building, inspecting the fire hydrants, gas and diesel supplies, various errands, etc. Town Manager Dailey also mentioned that Lt. Olejniczak is retiring at the end of September and the public works department will be picking up some of his responsibilities.

There was no comment from the public

- b. Adoption of Tentative Budget for Fiscal Year 2003-2004

Comm Kaleel moved that a budget in the amount of \$3,322,655 be tentatively adopted for the 2003-2004 Operating Fund, and a budget in the amount of \$152,270 be tentatively adopted for the 2003-2004 General Obligation Debt Service Fund, seconded by Comm Schulte.

- c. Adoption of Tentative Millage Rate for Fiscal Year 2003-2004

Comm Pugh moved that a millage of \$4.0000 per \$1,000 of assessed valuation be tentatively adopted for the 2003-2004 general operating revenues, and that a millage of \$.2946 per \$1,000 of

PUBLIC HEARING & REGULAR TOWN COMMISSION MEETING HELD SEPT 9, 2003

assessed valuation be tentatively adopted for the 2003-2004 bond debt service for the General Obligation Water Improvement Bonds of 1991, seconded by Comm Bingham.

- d. Announce Computed Millage Rate Exceeds Rolled Back Rate by 5.86%

Mayor Aaskov announced that the computed millage rate exceeds the rolled back rate by 5.86%.

- e. Public Hearing Date for Final Adoption

Mayor Aaskov announced that the date and time of the second and final public hearing is established as 5:01 P.M. (after 5:01 P.M.) on Tuesday, Sept. 16, 2002. The 2003-2004 operating and debt service budgets and corresponding millages will be finalized and adopted at that time.

Public Comment

None

Announcements, Deletions, Modifications, and Approval of Agenda

Attorney Spillias requested to add a brief discussion on a letter he received from Attorney Richard Levenstein regarding the right-of-ways.

Comm Bingham requested to add a discussion regarding the plantings on Old Ocean Blvd.

Mayor Aaskov requested to add a discussion on the Construction Board of Adjustment for appeals.

Comm Schulte requested to continue the Expectations and Assumptions discussion from meeting held at 4:00pm.

Comm Kaleel requested to correct the minutes from the July 29, 2003 meeting to read that he did not object with the balance sheets but disagreed with the check registers.

Consent Agenda

- 2. Minutes of Special Town Commission Meeting of July 29, 2003
- 3. Minutes of the Regular Town Commission Meeting of Aug. 4, 2003
- 4. Ocean Ridge Resolution No. 2003-15; Amending the Deferred Compensation Plan to Permit Loans

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

- 5. Presentation of "Check" for First Grant Awarded for Stormwater Project By: Honorable Mary McCarty, County Commissioner and Diane Crigger, Department of Environmental Protection.

Comm McCarty thanked everyone for all the hard work put into the stormwater project and stated that it is commendable that the Town got involved with the grant program. Comm McCarty mentioned that a lot of hard work will be needed to start the project and spend the grant money before May 2004.

At this time Comm McCarty presented Mayor Aaskov with the stormwater project grant check.

Public Comment

George Bierlin, 26 Hudson Ave., stated that the performance by the Commission during the Expectations and Assumptions meeting was pathetic and showed a lack of professionalism. Mr. Bierlin also questioned Town Attorney Spillias the cost for legal fees for the Green Machine and Sivitili lawsuits. Atty Spillias stated that he did not know the exact figure but staff would be able to research the legal costs to date.

Diane Crigger, Department of Environmental Protection, stated that she was proud to have the town involved in the grant program and stormwater project. Mrs. Crigger advised that she is pleased that the grant money is being spent and the Lake Worth Lagoon restoration is moving forward because it is a priority water body.

Actions and Reports

6. Request to Approve Assignment of Current Garbage, Trash and Recycling Collection Contract with Waste Management who is Purchasing Some BFI Assets
By: Harold Carter/Waste Management and Sally Stanton/BFI

Town Manager Dailey stated that Waste Management has entered into an agreement for the sale and purchase of certain BFI assets in south Florida that includes the Ocean Ridge contract. Town Manager Dailey advised that staff met with representatives from both BFI and Waste Management on Friday, Aug. 29, 2003 in regards to assigning the current agreement with BFI to Waste Management. She said that the representatives from both companies explained that the contract would continue as written until it expires on Sept. 30, 2004. Town Manager Dailey stated that the contract expires in one year which could be an advantage to the Town in that it could serve as a probationary period where the Town could assess the performance of Waste Management. Town Manager Dailey stated that staff is recommending the approval of the Assignment and Assumption of Contract as Addendum #3 to the current Garbage, Trash and Recycling Collection Contract.

Town Clerk Hancsak mentioned that she contacted several local municipalities that are currently serviced by Waste Management and received positive feedback.

Town Attorney Spillias stated that the BFI contract calls for limited assignment and suggested that if approved to make the contract clear that BFI's obligations are met through the remainder of the contract.

Comm Schulte moved to approve the Assignment and Assumption of Contract as Addendum #3 to the current Garbage, Trash and Recycling Collection Contract, seconded by Comm Pugh.

Motion carried - yea 5.

7. Request for Fountain in Anna Street Median and Improve Cul-De-Sac By: Philip Barlage, 35 Anna Street

Philip Barlage, 35 Anna St., thanked Town Manager Dailey for her assistance. Mr. Barlage mentioned that water taps, back flow and meter valves are currently installed but are not used and also that the landscaping is poor. He then advised that he and A&D Builders LLC, property owners on Anna Street, are requesting authorization to upgrade the cul-de-sac and install a decorative fountain and lighting in the median adjacent to their homes. He then distributed photographs of example fountain designs and stated that all improvements would be done at the expense of A&D Builders and would be made in conformance to the Town's Code and FPL's regulations. Mr. Barlage also stated that they are also proposing to replace the coral rocks with curbing to assist with keeping traffic off the property. He advised that the only request is for the Town to maintain the fountain and landscaping with proper chemicals, repairs and maintenance.

Comm Pugh stated that he has concerns with being responsible for the maintenance of the fountain. He explained that the type of fountain proposed is not easy to maintain. Comm Pugh advised that the water will have to be supplied by the Town. He also said the purchase and storage of pool poles, filters and chemicals, repairs and replacement of pumps and motors will have to be done by the Town which can be very expensive.

Comm Schulte stated that he would love to have a fountain on all of the medians but if the Town commits to maintaining one cul-de-sac it will appear that a special privilege is being given.

Comm Kaleel stated that he likes the idea but questioned if the Town could realistically do a good job maintaining a fountain. He mentioned that he would be in favor of anyone improving the beautification provided it can be realistically maintained.

Comm Bingham advised that she has a fountain in her back yard and replaces her pump approximately every four years. She did not feel it was a tremendous project.

Comm Pugh suggested that the size and scope of the fountain be reduced and offered to assist with working on plans.

The item was tabled until the September 16th meeting to be submitted with alternatives for the fountain.

Public Comment

Christina DeAngelo, 6115 N Ocean Blvd., questioned the liability to the Town if anyone was injured by falling into a Town fountain. Comm Pugh explained that anything under 18" does not require any type of barrier.

8. Approval of Hydro-geologist Contract in the amount of \$127,000 from the Capital Projects Fund By: Kathleen Dailey, Town Manager Dailey

Town Manager Dailey stated that in order to complete the design for bidding the drainage wells option for the stormwater drainage project, the services of a hydrogeologist are required. Town Manager Dailey advised that per the recommendation of the Town Engineer at the Special Town Commission Meeting of August 19, 2003, the Town Commission authorized staff to bring back a proposal from a hydrogeologist to provide these required services.

Town Engineer Tropepe stated that the proposed contract with Gerhardt M. Witt & Associates to do the hydrogeologic consulting services for the drainage wells for the stormwater drainage project is \$126,852.48 from the Capital Projects Fund.

Comm Schulte moved to approve the contract with Gerhardt M. Witt & Associates, Inc. in an amount not to exceed \$126,852.48 from the Capital Projects Fund for the hydrogeologic consulting services for the stormwater drainage project, seconded by Comm Kaleel.

Motion carried - yea 5.

9. Approval of the Electrical Engineering Contract in the Amount of \$25,000 from the Capital Projects Fund By: Kathleen Dailey, Town Manager

Town Manager Dailey stated that in order to complete the design for bidding the stormwater drainage project the services of a professional electrical engineer are required.

Town Engineer Tropepe explained that there is \$25,000 budgeted for the necessary electrical engineering design. She advised that as part of the bid for the stormwater drainage project, Smith Engineering Consultants, Inc. (SEC) is proposing to provide the electrical design, including power, control, instrumentation and backup generator, for the construction of the Tropical Drive pump station. Engineer Tropepe stated that SEC will also do the electrical design, power and lighting for the construction of the detention area pump station, the mechanical design including HVAC, plumbing, and the above-ground diesel fuel storage systems, including piping, for both pump stations.

Comm Kaleel requested that each contract be kept track of where it appears in the budget.

Comm Schulte moved to approve the contract with Smith Engineering Consultants, Inc. in an amount not to exceed \$25,000 from the Capital Projects Fund for the electrical engineering services for the stormwater drainage project, seconded by Comm Pugh.

Motion carried - yea 5.

PUBLIC HEARING & REGULAR TOWN COMMISSION MEETING HELD SEPT 9, 2003

Resolutions

None

First Reading of Ordinances

10. Ordinance No. 542; Amending Section 67-58 of the Code of Ordinances, to Reduce the Minimum Permit Fee

Town Attorney Spillias stated that the Commission has tentatively approved a permit fee schedule which establishes a minimum permit fee of \$45.00, and Section 67-58 of the Code of Ordinances establishes a minimum fee of \$50.00. Atty Spillias explained that establishing a permit fee less than \$50.00 would violate the Town's Code of Ordinances and either the Ordinance or Resolution must be amended to maintain consistency.

Town Clerk Hancsak stated that renewal notices and permit fee schedules have been mailed to contractors which state the minimum permit fee is \$45.00.

Comm Kaleel moved to approve Ordinance No. 542 on first reading, amending section 67-58 of the Code of Ordinances, to reduce the minimum permit fee to \$45.00, seconded by Comm Pugh.

Motion carried - yea 5.

Second Reading and Adoption of Ordinances

11. Ordinance No. 541; Amending Section 34-6 of the Code of Ordinances, concerning removal of rubbish, noxious plants, stagnant water and weeds; providing for exceptions to its requirements

Town Atty Spillias stated that the ordinance was adopted on first reading at the August 4, 2003 meeting with the following changes: exempting out the invasive species that must be removed by the year 2006, removing item #6 regarding binding oneself not to build or develop property for a period of ten years, and adding language to #5 to include, through no action of the property owner.

Comm Kaleel moved to approve Ordinance No. 541 on second reading, amending section 34-6 of the Code of Ordinances, seconded by Comm Pugh.

Motion carried - yea 5.

12. Discussion regarding letter received by Attorney Richard Levenstein in reference to the clearing of the right-of-way

Attorney Spillias summarized a letter he received from Attorney Richard Levenstein on behalf of Mr. & Mrs. Morrison regarding the code enforcement violation by the Town to remove their fence which is located in the right-of-way. Atty Spillias explained that the Morrison's are

scheduled for a code enforcement hearing on October 7, 2003 but have not filed legal action at this time. He mentioned that the Morrison's feel clearing the right-of-way would be against their wishes and they would prevail in court. Atty Spillias stated that generally a Town will agree not to clear a right-of-way until a court decision.

Comm Kaleel stated that the Town should preserve today's rights and is in favor of minimizing legal expense.

Director Hillery questioned if code enforcement should continue citing the right-of-way obstructions. Atty Spillias suggested that the code enforcement officers continue compiling a list of inventory that distinguishes between fences, landscaping, trees that block or allow passages, etc. and bring the list back to the Commission on the September 16th meeting if possible.

Comm Kaleel moved to continue with the code enforcement special master hearing scheduled on October 7, 2003 unless a temporary injunction is filed by October 1, 2003, seconded by Comm Schulte.

Motion carried - yea 5.

13. Corrine Street, Thompson Street and Old Ocean Blvd plantings.

Comm Bingham stated that there are huge plantings at the Thompson and Old Ocean Blvd right-of-way. Comm Bingham mentioned that if one person is required to remove obstructions than all obstructions should be removed.

Director Hillery stated that most homes encroach in the right-of-ways with mailboxes, shrubs, etc. Town Clerk Hancsak clarified that at the time the obstructions were put in there was not an Ordinance to enforce and staff is enforcing any new obstructions within 5' of the road.

Comm Bingham suggested that the landscaper, Lewis Graham, be informed of what vegetation and vines should be cleared or trimmed on the Dune on the East side of Old Ocean Blvd. Mayor Aaskov stated that the Dune begins at the pavement and should be trimmed so the vegetation does not grow over the right-of-way on the east and west sides. Mayor Aaskov also stated that Lewis Graham would need permission from Florida Department of Environmental Protection to remove any vines from the Dune.

14. Construction Board of Adjustments and Appeals

Town Manager Dailey stated that Building services will be coming in-house on October 1st, and the Commission will need to make appointments to the Construction Board of Adjustments and Appeals. She mentioned that the Commission had suggested that the P&Z serve as this board to review appeals to technical codes.

Comm Kaleel moved to appoint the Planning and Zoning Commission to sit as the Construction Board of Adjustment, seconded by Comm Pugh.

Motion carried - yea 5.

15. Expectations and Assumptions Continued

Comm Schulte stated that the comments from the public could be heard first.

Public Comment

Lawrence O'Daly, 13 Hudson Ave., stated that Town Manager Dailey acted gracefully during the previous discussion and questioned if her employment was under contract and if so if there were provisions for termination specific to date. Town Manager Dailey answered that she does have an employment contract with the Town that states termination provisions are three months salary if terminated before October 2003 and six months salary if terminated after October 2003.

Mr. O'Daly questioned how long it would take to replace the Town Manager and what the impact would be to the drainage project. Comm Kaleel answered that the hiring process takes three to four months and Mayor Aaskov stated there is a Town Engineer and Project Coordinator working on the drainage project.

Town Engineer Tropepe stated that there are several items that are still outstanding that the Town Manager has been involved with before construction can begin. Engineer Tropepe explained that the estimated date of October 1st to go out to bid was made with the assumption that the "team" would be working together. She mentioned that Town Manager Dailey has been working on the grants and submittals to Tallahassee.

Philip Barlage, 35 Anna St., spoke in favor of Town Manager Dailey. Mr. Barlage advised that he has been chair of the Board of Adjustment for 9 years and has worked with former Town Managers. He said that Town Manager Dailey has distributed memos that have been as good as he has seen and has been professional and cooperative with the residents. Mr. Barlage also stated that the Town Commission has a responsibility of due diligence and feels the Town Manager should be given an opportunity to work on the expectations of the Commission.

George Bierlin, 26 Hudson Ave., stated that he felt the Commissions behavior was less than stellar. He mentioned that it is essential to define tangible, measurable objectives. Mr. Bierlin advised that the contract with Lewis Graham for Landscaping was approved by the Commission at the budget meeting and if there was a question of quality it should have been discussed then. He also stated that there should be more professionalism by the Commission and if they are determined to terminate Town Manager Dailey they should do it in the right way.

Patricia DeStefano, 14 Tropical Dr., stated that Town Manager Dailey has mended a lot of bridges between the residents and has done a lot for the community.

Richard Lucibella, 5 Beachway N., stated that he understands how hard the matter is for the Commission and the Town Manager. Mr. Lucibella mentioned that he likes Town Manager Dailey however that is not the issue. He commented that the Town Manager acts as the CEO to the Town and the Commission is equivalent to a Board. Mr. Lucibella stated that it is easier for

those who are pleased with the Town Manager to speak highly of her but he knows there are other residents that have frustrations. He also stated that giving Town Manager Dailey guidelines now would be an insult to her and that the Commission does not need a cause for termination because she is a contracted employee.

Jeffrey Willens, 9 Hudson Ave., stated that he is disappointed in the Town Commission. He mentioned that the Manager Dailey is not a CEO or a COO and that she is a Town Manager who has great responsibility and little authority. Mr. Willens mentioned although he has not always agreed with Town Manager Dailey, he never felt she used bad judgment. He commented that the Commission has a right to terminate the Town Manager but he felt if she was terminated it was not being done fairly and she was not given due diligence.

Christine DeAngelo, 6115 N Ocean Blvd., stated that it would be a tragic loss if Town Manager Dailey was released. She commented that Town Manager Dailey has done a great job and been an asset to the Town. Mrs. DeAngelo mentioned that there may be room for improvement but it would be hurtful to the Town if changes were made at this time. She read several job descriptions of Town Managers to demonstrate the difference from a private CEO and a Town Manager.

Sandra Morrison, 2 Coconut Lane, stated that Town Manager Dailey should be given an opportunity to finish the projects she is involved with before the Commission makes such a decision.

James Bonfiglio, 5616 N Ocean Blvd., stated he was surprised and shocked to hear about the meeting and felt it was very unfortunate. Mr. Bonfiglio commented that he has served as Vice Chair of the Planning and Zoning Commission and felt Town Manager Dailey was very able and professional. He mentioned that the timing is wrong and it would be a big mistake to terminate the Town Manager.

Comm Kaleel stated that he did not understand how the discussion on expectations and assumptions turned into a discussion regarding termination. Comm Kaleel advised that he disagreed with Mr. Lucibella and felt guidelines and communication is necessary. He also said it was dangerous to classify a Town Manager as a CEO because the Town Manager answers to the Commission and the residents. Comm Kaleel agreed there was room for improvement but he did not agree with all the points mentioned. He added that he noticed that negativity can come from unsatisfied persons. Mr. Lucibella stated he took that comment personally to which Comm Kaleel stated the comment was made in a general sense. Comm Kaleel did not feel termination was the appropriate action.

Lawrence O'Daly, 13 Hudson Ave., questioned what the specific allegations were and if they were public record. Mayor Aaskov answered that the Commissioners conducted individual verbal evaluations and there were no written records made.

Comm Schulte advised that in spite of all the comments a decision needs to be made.

Comm Schulte moved to terminate Town Manager Dailey according to the contract effective immediately, seconded by Comm Bingham.

Town Clerk Hancsak stated that this was a very difficult time to consider termination due to the approaching of fiscal year end.

Comm Pugh stated that Town Engineer Tropepe had the most important opinion and she felt it would be a mistake to terminate Town Manager Dailey.

Town Attorney Spillias stated that the Town would have to have someone to deal with the grants and loans for the stormwater drainage project and that an Engineer cannot do it alone. Atty Spillias cautioned a decision that could cost the Town a lot of time and work.

Mayor Aaskov stated that Engineer Tropepe was instrumental in obtaining the stormwater grants.

Engineer Tropepe advised that the staff including Town Manager Dailey, Town Clerk Hancsak and Project Coordinator Tait were instrumental in helping obtain the grants. She asked that the Commission understand that all the staff has been involved.

Town Clerk Hancsak stated that regarding the plan iews, she has mainly assumed the role because of the code re-write and all of the office staff and Hy-Byrd were fairly new employees. She explained that she is specifically asked for by architects and residents to review plans because of her knowledge of the old and new codes.

Comm Kaleel advised that Comm Schulte cannot be condemned for his opinion but that the timing is not good. He also stated that he did not hear anything that has risen to the magnitude for termination. Town Manager Dailey stated that she is committed to her position and would like a chance to work on any issues the Commission has. Comm Kaleel questioned if Town Manager Dailey could work on the issues mentioned by the Commission and tweak her performance.

Comm Kaleel commented that the October deadline seems to be an issue and questioned if there was a middle ground for the probationary period instead of a decision of this magnitude. Comm Kaleel suggested extending the probationary period to 90 days with three months severance instead of the current six months severance.

Comm Schulte stated that he would attempt to aid Town Manager Dailey but he felt three months was not sufficient and suggested a probationary period of six months with three months severance.

Comm Kaleel agreed that six months probation was fair and hoped everyone could come together without animosity or discord among the commission or residents. Comm Kaleel questioned if the Town Managers contract could be modified to six months probation with three months severance.

Town Manager Dailey stated that she would accept six month probation with three months severance but would ask for a super majority vote of 4-1 for termination by the Commission.

PUBLIC HEARING & REGULAR TOWN COMMISSION MEETING HELD SEPT 9, 2003

Comm Schulte stated he would not agree to a super majority vote because he felt it would be taking the rights away from the Commission.

Town Manager Dailey accepted the six month probation with three months severance if terminated by the Town Commission.

Comm Schulte withdrew his motion, Comm Bingham withdrew her second.

Comm Kaleel moved to extend the three month severance provision in the contract with the Town Manager until the regular March 2004 Town Commission meeting provided that during this period the Town Manager will not be terminated without cause. If the Town Manager is terminated at the regular March 2004 Town Commission meeting she will be entitled to three months severance and if the Town manager is not terminated at the March 2004 meeting, the six months severance will become effective, seconded by Comm Bingham.

Motion carried - yea 5.

Adjournment

Meeting adjourned at 8:15 PM

Attest By:

Town Clerk

Mayor Aaskov

Commissioner Bingham

Commissioner Kaleel

Commissioner Pugh

Commissioner Schulte