

REGULAR TOWN COMMISSION MEETING HELD OCTOBER 7, 2013

Regular Town Commission Meeting of the Town of Ocean Ridge held on Monday, October 7, 2013, at 6:00PM in the Town Hall Meeting Chambers.

The meeting was called to order by Mayor Pugh. The roll call was answered by the following:

Commissioner Aaskov
Commissioner Brookes
Mayor Pugh
Commissioner Allison
Commissioner Hennigan

Pledge of Allegiance

ADDITIONS, DELETIONS, MODIFICATIONS, AND APPROVAL OF AGENDA

Manager Schenck requested to add Item #16 regarding the purchase of the New Alarm Signs. Atty. Spillias requested to correct the minutes of the September 10th meeting, Pg 4, the attorney's name is Corbett & White, and they service 5 municipalities not 4. He also requested to add Item #7a Inspector General Update, and Item 7b, Report on Telephonic Participation in Meetings. He also requested to announce that one of his attorneys was leaving while introducing another that will assist with the Town's legal services as Item 7c.

CONSENT AGENDA

1. Minutes of Tentative Budget Adoption/Regular Town Commission Meeting of Sept. 10, 2013.
2. Minutes of the Final Budget Adoption/Special Town Commission Meeting of Sept. 17, 2013
3. Authorize the Mayor and Town Clerk to Execute and Record Delinquent Garbage/Trash and Alarm Monitoring Liens for FY 2012/13

Comm. Allison moved to approve the agenda/consent agenda as amended. Seconded by Comm. Hennigan.

Motion Carried – Yea (5).

ANNOUNCEMENTS AND PROCLAMATIONS

4. The Mayor announced that the Administrative Offices will be closed on Monday, Oct. 14, 213 for the Official Holiday.
5. The Mayor proclaimed October as "Domestic Violence Awareness Month"

PUBLIC COMMENT

Betty Bingham, 1 E Ocean Avenue asked if the public would be allowed to comment throughout the meeting. Atty. Spillias stated that with the new policy, public comment would be allowed on any item throughout any meeting.

PUBLIC HEARINGS

None

REPORTS

6. Town Manager

Manager Schenck reported the following: 1) FDOT Discussions - the flap gate issue to reduce the flooding on Ocean Ave during high tides is still being researched. The original plans show that the pond discharge was not built in a way that a flap gate could be installed. FDOT is still reviewing the plans to find a solution. 2) Inlet Cay Batter Pile Replacement – The project is complete except for the removal of the piling caps in the water and we are still working with the contractor to repair the road. 3) Inlet Cay Island – The cul-de-sac improvements on Bimini Cove Dr and Eleuthera Dr. is complete. Inlet Cay Dr. should be complete by this meeting. Numerous changes had to be made throughout the project with most involving matching the numerous driveways involved. There is a problem with the valves on the discharge pipes not working properly by allowing tidal waters to flow into the streets. Another problem is the high groundwater seeping into the gutters and creating an algae problem. Additional field changes were also needed to make the project effective. He commented that a project this complicated results in plans that don't always work when actually in the field. 4) A1A Crosswalk at Town Hall – construction has started. 5) Old Ocean Blvd Right of Way – This item will be discussed later in the agenda. 6) Apartment Rental Fees – He reiterated the contents of recently adopted Ordinance 603 requiring property owners renting their properties to pay a \$50 fee per lease. He commented that this could be costly to apartment complexes if they rent up to 12 times per year. After reviewing the implications it could prove difficult to monitor. He felt the purpose of the ordinance was to enable the Town to know who rents their property to assist code enforcement and police surveillance. Annual fees are more commonly used in municipalities and questioned whether the Commission wanted to readdress this issue.

Comm Hennigan commented that an annual lease defeats the purpose the ordinance was adopted. Comm Aaskov disagreed and felt it would be easier to monitor with an annual lease. Comm Allison concurred with Comm

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Hennigan citing that the Town needs to know the who, when and where these multiple leases are in effect. After further discussion the Commission consensus was to enforce Ordinance 603 as adopted.

Town Clerk Hancsak mentioned that there would be a P & Z Commission meeting on Oct. 28, 2013 at 8 am to discuss the floor area ratio (FAR) requirements.

7. Town Attorney

7.a Inspector General Lawsuit

Atty. Spillias advised that a trial date has been scheduled to occur between 1/6 – 1/31/14 and on Dec. 20th they will identify specific dates. He stated he had spoken with Corbett & White, Esq. and advised that he would not be attending the trial but if a settlement was proposed he would be contacted.

7.b Regarding the telephonic participation, Atty Spillias commented that this issue has been discussed, written about and debated since the 1990's. He distributed a couple of Florida State Statutes which he explained and he also summarized portions of the Government in the Sunshine Manual. He stated that it has never been challenged, however; if it was determined that a violation of the Sunshine Law occurred by having these types of meetings it is actually a misdemeanor. He concluded by stating that his legal opinion was that telephonic participation can occur in extenuating circumstances but voting should not occur.

There was a consensus to have Atty. Spillias work on a policy to permit telephonic participation without voting privileges at this time.

7.c Atty Spillias announced the departure of Keri-Ann Baker as Deputy Town Attorney and the introduction of Tara Duhay as the new attorney that will assist him. Atty Baker stated that she has enjoyed her 6 ½ years of working with the Town but she and her family have an excellent opportunity to relocate in Alaska.

8. Police Chief

Chief Yannuzzi presented his monthly report and the monthly Boynton Beach Fire/EMS Activity Report.

Comm. Hennigan questioned the ticket vs. the fine money the Town actually receives. Chief Yannuzzi advised that the Town's portions of fines are 2nd to costs the court receives and sometimes it is even zero. He mentioned that even the \$12.50 monies are divided. He added that the Town receives all of the parking ticket money.

Chief Yannuzzi commented that the radar sign has been utilized and they have taken definitive action on Beachway. He stated that he may need to discuss reinstalling FDOT mandatory signage for the problem areas in the future. He reminded the Commission and the public that there was a prescription drug drop box located in the police lobby for those that want to anonymously discard old prescription drugs. He also stated that the annual Miami Dolphin Bicycle Event will take place on Nov. 2nd heading from the south to the north and then again on Nov. 3rd heading from the north to the south. Oceanfront Park will serve as a rest stop.

Town Clerk Hancsak mentioned a date needed to be determined for the Holiday Function. It was decided that the event will take place on Friday, Dec. 13, 2013.

9. Town Engineer

Engineer Tropepe was absent with notice.

ACTION ITEMS

10. Request for Lien Reductions Concerning Two Liens at 6011 N Ocean Blvd. (Deferred from Sept. 10, 2013)
By: Richard Zaretsky, Esq., representing Mr./Mrs. Romano

Town Clerk Hancsak summarized the memo distributed to the Commission. She stated that Atty Zaretsky was requesting lien reductions for a code enforcement case from 2009 and one from 2012. She advised that the property had been sold and the closing took place on Aug. 31, 2013 but the outstanding fines have been placed in escrow. She explained that the 2nd lien from 2012 actually resulted from an original code violation of columns erected without a building permit that was observed in 2010. During the period of citing the property owner it was discovered that the original builder/owner (who also currently owns the adjacent property at 6009) transposed the parcel number, legal description and physical address. It took almost 2 years to correct the addresses for both properties, however, at that time both owners were cited and the violation was still never corrected. In the end of 2012 the Romano's were cited and a hearing took place and the property was ultimately liened. This violation was finally corrected just prior to the closing on Aug. 31st, however; the outstanding fees total \$13,334.89.

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The 1st lien occurred as a result of a code violation involving a pool without the proper barrier in 2009. A hearing took place and the property was ultimately liened. The police department observed that the violation had been corrected in April of 2010 and closed the case even though the property owner never actually called to request an inspection as required for compliance. During that period of time Mr. Romano actually spoke with the Town Manager and also emailed the Town regarding this violation. Unfortunately because of the original title error the lien was placed on the adjacent property. Atty Zaretsky does not feel that this lien should be valid because of the error regarding the parcel number on the lien. This lien totals \$36,040.20.

Town Clerk Hancsak also advised that there is still an outstanding Code Violation Citation in the amount of \$25 from 5/2013 and also two Rental Registration Violations that total \$100. She also reminded the Commission that the Town even delayed any legal action on numerous code violations regarding vacation rentals that took place even when their attorney was in discussion with out attorney regarding the pending sale of the property. Staff recommends that both liens be paid in full, along with the code citations.

Atty Zaretsky, representing Mr./Mrs. Romano, advised that the violations did exist but unfortunately Mr. Romano ended up incarcerated and all of his properties were seized and/or liened during this period. He stated that clearing up these issues so they could sell took almost a year. He stated in order to sell the property to Mr. Simon (also present in the audience) the Romano's had to settle 6 or 7 open permits and remove the columns to correct the violation which cost them approximately \$40,000. He added that Mrs. Romano rented the property in order to have funds to live on. He also stated that he had previous conversations with the Town's attorney regarding the 1st lien and thought his client would be responsible for only the administrative costs, and then he was requesting consideration of a lien reduction for the 2nd lien since they paid approximately \$15,000 to have the columns removed correcting the violation.

Atty Baker stated that she spoke with Atty Zaretsky several times and felt he has done an excellent job representing his clients, however; after realizing all of the correspondence back and forth she felt the Town was justified in not considering any reductions.

Nancy Hogan, 37 Hibiscus Way, stated that as an adjacent property owner of another property that is still in code violation, she speaks regarding each lien reduction request. She stated that the Commission should believe in their own policies and enforce the rules.

Mayor Pugh stated he appreciated Atty Zaretsky's comments on behalf of his client but over the years they have flagrantly disregarded the codes and he himself stated that Mrs. Romano did what she had to do and he felt that now the Town needed to do the same. The other Commissioners agreed.

Comm Allison moved to follow the staff recommendation and deny the request for any lien reductions. Comm Aaskov seconded the motion.

Motion carried – yea (5).

11. Request for a Unity of Title for 5903 N Ocean Blvd. and Beach Parcel for the Purpose of Constructing a Dune Crossover By: Tim and Kim Marshall, 5905 N Ocean Blvd.

Town Clerk Hancsak summarized the request by stating that the applicants currently reside at 5905 N Ocean Blvd. but also recently purchased 5903 N Ocean Blvd. which also includes a beach parcel (Lot 5, Blk 6 Boynton Sub Amended). They would like to construct a dune crossover/deck on the beach parcel but because it would be an accessory structure they would need a Unity of Title to join the parcels. Staff recommended approval contingent on Unity of Title recordation with Palm Beach County.

Betty Bingham, 1 Ocean Ave., stated that this area has one of the highest dunes and questioned whether the invasive vegetation would be removed. She was advised that the field permit contained verbiage requiring exotic vegetation removal along with the crossover/deck approval.

Comm Brookes moved to approve the Unity of Title request by Mr. and Mrs. Marshall. Comm Allison seconded the motion.

Motion carried – Yea (5).

12. Discuss Rezoning of 5011 North Ocean Blvd.

Town Manager Schenck advised that the engineering report that was received from the Sivitilli's last month has been reviewed by our Building Official and they were in agreement with the conclusions that there was no major structure repairs required. They did suggest having an electrician look over the building to be sure it meets code because the

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report only addressed the structural aspects. He stated that if the Commission agrees to the zoning change the approximate \$13,000 funding would need to come from the Contingency Account. Comm Aaskov recused herself citing that she is a renter in the building and advised that she would complete the Voter Conflict Form.

Comm Hennigan questioned why the Commission would deviate from the approved Comp Plan and Code for one building, and how it enhances the character of the Town, and why the residents should fund the cost.

Comm Brookes stated the discussions on this issue has confused him on what the property owners actually want and he too questioned the \$13,000 cost for one building. He stated he could justify it more if it included enhancing the area as a whole possibly over a period of time.

Lisa Sivitilli, 10 Fayette Drive, stated the 5011 building has always been a mixed use which she feels has enhanced the Town. She added that she called Atty Boose, the Town Atty, who drafted the original ordinance who advised that the ordinance was meant for motels and Busch's restaurant and not the 5011 building. She added that the original vote was 2 to 1 with 2 members absent but she understands that it can't be overturned now. She commented that they have followed the rules of the agreement and that the Commission actually reopened the issue of continuing its operation to which they were happy to revisit it. She stated that they have not complained about the costs incurred by them and compared the proposed funding with the funding spent on noseem spraying that does not benefit all of the residents. She also stated that she felt the Commission was now changing from the position they had a few months ago.

Comm Allison stated she disagreed with Comm Hennigan and stated she would like to see it remain as a mixed use, citing she was afraid to see what would end up there. Comm Brookes stated that it may have been a question in 1969 with a 2 to 1 vote but the ordinance has been upheld since (ie Busch's suit) and he still questioned the cost.

Mayor Pugh stated that the discussions were actually reopened because the current agreement was going to lapse and the Sivitilli's requested an extension that was granted until June of 2014. He added that a Comp Plan change would only benefit one property and he agreed that the Town should not pay the expenses for one property. He still questioned what changes would be made to the building to which Ms. Sivitilli advised that the changes would be cosmetic because the footprint could not altered.

Atty Spillias commented that there are large and small scale comprehensive plan amendments and the Commission decided that they did not want Urban Design to conduct the study for a larger area but an applicant can seek an individual request at their cost. Ms. Sivitilli commented that she had hoped to keep the property in its existing mixed use because she feels there would be a void if it changed to strictly residential.

Stella Kolb, 205 Beachway Drive, commented that the building did not bother her but she also felt the Town has already worked with them when they asked for an extension.

Sandy Foster, 5900 Old Ocean Blvd., stated that she was also a realtor in the area and she didn't feel a strictly residential property would attract many considering there is a gas station across the street. She felt the Commission should be more open about sprucing up a commercial area.

Gerry Magruder, 9 Ridge Blvd., stated they knew the owners of Busch's when they lost their suit and appeal and all of the residents were heartbroken. She added that the 5011 building was already given a 10 year extension but acknowledged that things change, even for the south end and Briny Breezes will change also.

Betty Bingham, 1 Ocean Ave., advised that she was a Commissioner when the extension request was granted and she thought they promised to improve the building, which has not been done. She also realizes that it would probably be difficult to build anything there.

Comm Brookes questioned what would happen regarding the aesthetics once a Comp Plan change took place. Atty Spillias advised that the Comp Plan would need to be amended first through a land use change and then a zoning amendment would occur at which time certain criteria could be established. He added that an amortization period, similar to the 1969 ordinance, would allow an existing use time to convert. He added that this property has no zoning vested rights and that once the ordinance was adopted they would have approximately 1-2 years to change.

Mayor Pugh outlined the possibilities: let the extension expire, amend the Comp Plan and zoning code to allow the owner something they can do with the building, and also the issue of who would fund the changes. Atty Spillias stated that this was a small scale amendment and an owner usually contracts with a land use planner and formally applies. He stated if the Commission was leaning towards that direction the owner could petition the Town for the change. He added that if they wanted to hire Urban Design Studios a Waiver of Conflict approval be necessary.

The consensus of the Commission was for the property owners to formally petition the Town for a small scale comprehensive plan amendment to be funded by the applicant.

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13. Discuss the Options for the ROW Abutting the Four Old Ocean Blvd. Properties South of Beachway Drive

Town Manager Schenck advised that staff has reviewed the properties with the attorney and it was determined that the property has been dedicated to public use which is sufficient to abandon the property if the Commission so chooses. He provided a drawing reflecting that the ROW is 60' wide and the distance in this area from the edge of the road to the private property is about 40' and the center line of the ROW is about 30' from the private property. Because of a water line about 8' west of the center line of the ROW the Town would need to retain an easement of 15'. The Commission could abandon 30' of the property adjacent to the property owners with the Town retaining a 15' easement. The property would be maintained by the property owners including the removal of the Scavola. The estimated legal and surveying costs to complete the transaction would be less than \$5,000 per property which would be passed onto the owners.

Once it was clarified that only one property had been contacted, the Commission directed the Town Manager to contact all four owners and have them formally petition the Town for the abandonment at their cost.

14. Discuss/Authorize Changing the December Regular Town Commission Meeting Date from Dec. 2nd to Dec. 9, 2013

The Commission all agreed to change the December meeting date to December 9, 2013.

15. Request by PBC Dept. of Environmental Resource Management to Permit Extended Work Hours for the Beach Renourishment Project Beginning on November 20, 2013

The Commission approved a request from DERM to continue the beach renourishment project over a 24/7 period which should take approximately a month to complete.

16. Authorize the Purchase of Alarm Notice Signs at a cost of \$2,500 from the Contingency Account

Town Manager Schenck advised that the cost for 300 Alarm Notice Signs would be \$2,409.36 and staff was requesting the funding amount of \$2,500 to be taken from the Contingency Account.

Jerry Lower, 2 Harbour Drive No., commented that residents may request more than one and the staff may want to order more than 300. It was briefly discussed to provide the first sign for free and the second at the Town's cost.

Comm Allison moved to approve purchasing the signs at a cost of \$2,500 from the Contingency Account. Comm Aaskov seconded the motion.

Motion carried – Yea (5).

Meeting adjourned at 8:10 pm.

Attest By:

Town Clerk

Mayor Pugh

Commissioner Aaskov

Commissioner Allison

Commissioner Brookes

Commissioner Hennigan