

## REGULAR TOWN COMMISSION MEETING HELD MAY 6, 2014

Special Town Commission Meeting of the Town of Ocean Ridge held on Tuesday, May 6, 2014, at 4:00PM 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 Bonfiglio  
Commissioner Allison                      Commissioner Lucibella  
Mayor Pugh

Pledge of Allegiance

DISCUSS ASPECTS RELATING TO ALL OF THE PUBLIC ACCESS BEACH CROSSOVERS; SUCH AS LIABILITIES, LEGAL RAMIFICATIONS, RESIDENT CONCERNS, AND ENFORCEMENT ISSUES

Mayor Pugh welcomed the large audience and advised that the format for the meeting included: Legal Comments by the Town Attorney, Proposed Access Signage by the Town Manager, Police Statistics by the Police Chief, Public Comments and then Comments/Conclusions from the Commissioners.

Atty Spillias began to summarize his memo by stating that this topic began when residents raised concerns regarding the increased utilization and behavior of beachgoers near the Beachway Drive public beach access. Suggestions were made from both residents that wanted to restrict and also not restrict the beach accesses. He advised that he would attempt to explain the private vs public rights issues and what can and cannot be done, and where the ambiguities exist that the Commission should be aware of in deciding on ultimate policy and legislative actions.

The main legal principles in the State of Florida include: the State owns the beach below the average Mean High Water Line (MHWL) or “wet beach” area and holds the land in trust for the public, Publicly funded re-nourished beaches utilize the Erosion Control Line (ECL) as the dividing line between private and public ownership of the beach notwithstanding the location of the MHWL, private landowners may own beach-front land landward of the MHWL known as “dry sand” area and these landowners have special littoral rights that include access and use to the water and the right to an unobstructed view of the water, the rights of the upland landowners are not superior to the public and their rights cannot be exercised in a fashion as to injure others, the public’s right to be on the dry sand area can be secured by custom, dedication or prescriptive easement (fact intensive inquiries to determine whether, as a legal matter, historic and ancient use of the dry sand area has regularly been made by the public), an Attorney General Opinion 2002-38 was provided that advises a municipality can implement and enforce laws for both parts of the beach and private property owners may utilize local law enforcement for reporting trespassing incidents, neither the town nor private owners may give police officers blanket authority to ask people to leave the private property area, pursuant to Section 380.270(6) governmental agencies have sovereign immunity for any drowning or injury that occurs by the beach conditions, and lastly the Town’s Comprehensive Plan provides that it is an objective and policy of the Town to preserve both resident and general public access to the beach by maintaining access points at the end of the street rights-of-way (pursuant to FSS 163.3177(6)(1)).

Permissible Town Actions include: enact regulations governing all Town beach areas (to the extent necessary to protect the public safety, health and welfare), determine where it will and will not enforce trespass laws, enforce trespass laws on private beach property conditional upon the absence of the public’s right to use the private beach on the basis of dedication, prescriptive easement or custom, or that all enforcement prerequisites for trespassing generally having been met, increase the level of enforcement through all of the relevant laws, develop strategies to encourage greater use of the parks and publicly owned beaches in the Town.

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Impermissible Town Actions include: arbitrarily restrict or abrogate constitutionally recognized and protected “trust doctrine” rights, enact town-wide beach regulations which are arbitrary, capricious or have no rational relation to accomplish a purpose necessary for the protection of the public, enforce trespass laws seaward of the MHWL or the ECL where re-nourishment has occurred, or act inconsistently with its own Comprehensive Plan or the State Comprehensive Plan.

In conclusion Atty Spillias advised that there is not a great deal of case law on these issues, most likely due to the complexity of same, all of which could make litigation extremely expensive. He mentioned the City of Destin has developed a policy (not an ordinance) through their Sheriff’s Office to deal with the issue of trespass by advising personnel that from the point of 20’ from the water’s edge landward they may exercise their discretion in enforcing trespass laws, however they may not physically arrest anyone. He added that a Notice to Appear can be issued to a person remaining in such area after being requested to leave, but only if the owner of the property is present to sign an affidavit of complaint. He ended by stating that once the Commission has made policy decisions he will make every effort to develop a legally defensible approach to enact and implement the policies.

Town Manager Schenck advised that the Town’s Comprehensive Plan provides that we supply public crossovers to the beach of which the Town currently has 8. He advised that of the 8 accesses, 5 of the signs display “Public Beach Access”, 2 do not, and the farthest south access does not have a sign. He provided a proposed sign for all of the accesses that would display “Beach Access” with No Parking, No Lifeguard Present, No Vehicles Beyond this Point, No Trespass on Dunes or Private Property, No Dogs on Beach, No Glass on Beach, Deposit Trash in Receptacles, all per Town Ordinance Strictly Enforced by the Ocean Ridge Police Department. He felt the proposed sign covered most of the concerns. He added that the sign at Woolbright and A1A has been replaced with two signs directing traffic to the north or south for public beach parking.

Chief Yannuzzi presented two reports that depicted a summary of calls completed by the police officers. The first covered the period of Sept. 1 – Dec. 31, 2013 and showed 9,750 district checks (all part of their random patrol) and 236 beach patrol checks (includes where the officers physically get out and also the ATV patrols). The other report covered Jan. 1 – April 9, 2014 and showed 9,549 district checks and 1,021 beach patrols (includes the physical and ATV check on all crossovers but primarily focused on Beachway). He also mentioned that the new ATV has been delivered and the officers are currently being trained on same. He also wished to clarify a statement he previously made at a prior meeting where he said that other areas in Town were at a detriment due to the increased Beachway patrols. He meant that the Beachway patrols increased from 97 to 881 in response to issues raised by the residents, however; they have not found many issues involving violent crime. He concluded by stating that if the Town wanted to follow the City of Destin’s model a definition of the beach needs to be provided to the officers.

### Public Comments

Peter Burling, 7 Osprey Drive, read a prepared statement comprised by some of the residents. He stated that new and future development to the west will bring damage to the dunes, safety concerns, and crowding and attendant disorder that will reduce the quality of life for Ocean Ridge residents. He added that it will also impose significant costs and burdens to the residents who own fee title in the dunes and dry sand portions of the beach. These owners are and will continue to be essential participants in the process of protecting the beach. The beachfront owners are demanding a start to serious discussion about the ever-greater unregulated pressure on the beach and presented the following ideas: at the May 6 meeting future agendas and meeting dates should be established, the agenda should include discussions on the current facts such as passenger unloading, trash, overabundance of bicycles/pedestrians, future population estimates from neighboring Boynton Beach, possible solutions and costs involved, and also

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the hiring of a qualified planner to report on the future of beach use and access for Ocean Ridge and also to identify auto/pedestrian access routes that could be modified to help matters.

Mr. Burling concluded by stating this discussion must be considered on a long term basis and although regulation backed with meaningful enforcement will help limit damaging behavior, it will not answer the question whether one can legally limit the number of people given access to the public beach. He added that an effort needed to be made to determine what private rights can be protected and what police policies will be adopted.

Earl Jones, 14 Sailfish Lane, commented that the property owners on Sailfish Lane and a couple of other streets had private easements for beach access and questioned whether the other accesses could also be made to be exclusive. He was advised that what he described was specific easements for those residents and the public accesses were extensions to our platted streets.

Gerry Magruder, 9 Ridge Blvd., suggesting adding "No Facilities" to the signage. She also suggested speaking with the other governmental agencies regarding reconfiguring the parking plans at the parks to gain additional spaces.

Bob Merkel, 118 Marlin Drive, commented that his firm has represented various police departments throughout the State and he felt it could potentially cost the Town a lot of money to defend and probably lose cases brought about regarding restricting the beach. He added that increased public relations through police patrol can go a long way.

Tom Warnke, 2780 Worcester Road, stated that he has been a local beachgoer in this area for many years and reiterated that the Atty General Opinion included that the beach was open to the public below the MHWL and that people also had a right to get to this area. He felt the Town was enabling the intimidation to the public attempting to use the public beach by allowing the 2 No Trespass signs facing west at the Beachway crossover. He felt at a minimum the direction of the signs should be changed. He also questioned why the "Public Access" portion of the sign at that location was removed.

Dan Spotts, 1 Sailfish Lane, agreed with the 2 No Trespass signs as being intimidating and stated while they may not need a permit they still needed approval from the Town. He added that any regulations should sway towards the public not the private owners and the police should be given clear direction on where the public vs private property begins.

Rachel Walker, 5900 Old Ocean Blvd., commented that the beaches should be open to the public but it may be helpful to provide a picture with dimensions for the benefit of the public. She also clarified that only minor code violations have been observed by the police department.

Betty Bingham, 1 Ocean Ave., commented that the Town should provide a list of prohibitions and fine any violators accordingly.

Mary-Lou Schillinger, 1 Beachway Drive, stated she resides right at the corner of Beachway/A1A and does not believe the 2 No Trespass signs were intimidating because she has not seen any change in the number of people that pass to go to the beach. She added that she wonders how some of the beachgoers stay all day when there are no facilities.

Steve Coz, 2 Osprey Court, agreed with a prior comment that the public vs private areas should be made available to the public so individuals can differentiate these areas when proceeding on the beach. He felt a long range plan was necessary.

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Christine Schulte, 5 Osprey Court, commented that the issues/concerns at the Beachway crossover have been occurring a long time and she too felt the 2 No Trespass signs have not deterred anyone from entering the beach. She mentioned that increased costs for the Boynton Oceanfront Park have possibly caused additional traffic at the crossovers because it might be a financial difficulty for some. She commented that Manalapan and Gulfstream did not have 8 crossovers like Ocean Ridge.

Terry Brown, Harbour Drive South, provided some history by stating that the public crossovers exist because years ago there was parking along Old Ocean Blvd. and once that became prohibited the Town erected the signs. He stated the Town is slowly trying to suppress the use. He stated the word "Public" was removed from the Beachway sign in 2006 after discussion at a Commission meeting. He added that the Town needed to do the right thing by adding the word "Public" to the signs, have the 2 No Trespass signs removed, and place the ordinance numbers on the signs so they can be enforced.

Karlyn Kamm, 6110 N Ocean Blvd., stated that she felt the signs should also have a statement for individuals to clean up after their pet.

David Gury, 6885 N Ocean Blvd., stated that he was concerned with the entrance to the beaches on the north end and felt the regulations needed to be properly posted and enforced. He added that the Commission needed to look at reducing, eliminating, and/or controlling the amount of people coming and using the beach.

Kristine de Haseth, 29 Sabal Island Dr., stated that as part of the Florida Coalition she attends many meetings and this issue is not unique to Ocean Ridge. She felt the Town needed to look at the issue town wide, enforce the regulations, and really think about the comment about expanded parking because you must be careful what you wish for.

At this point the public comment was concluded.

Atty Spillias stated that regarding the No Trespass Signs the staff did look at whether it violated any rules. He commented that it did not violate any DEP rules and from the Town's standpoint it met the size and was located on private property. The property owners were also advised that because it did not meet the State Statutes it could not be enforced. He added the comment about the signs giving an improper impression did not violate any ordinances. He suggested the creation of a Comprehensive Beach Ordinance that would encompass all aspects possible and locate them all in one section of the code.

Comm Bonfiglio stated that based on the suggestion by Atty Spillias the Commission should direct the P & Z to research and make recommendations on a comprehensive ordinance to be effective community wide.

Comm Allison agreed but felt that immediate actions were needed; such as determining whether the 2 No Trespass signs were legal, immediate increase in patrols, and more friendly interaction with the police.

Comm Lucibella agreed that the P & Z Commission should review and consider the beach issues entirely. He agreed that probably nothing could be done about the accesses but the Town is dealing with a change in population size and behaviors and the priority should be for the residents of Ocean Ridge and the private landowners. He stated that the discussion needed to include defining a boundary for public vs private, traffic quieting, alcohol on the beach, etc. He agreed that defining the boundary lines and signage would assist in the short term, however; long term goals needed to be addressed.

Comm Aaskov stated that she learned a lot from this meeting and felt another workshop needed to be scheduled in order to narrow down additional ideas and comments.

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Mayor Pugh commented that the beaches and accesses have been public since he was a young boy, although he agreed that much has changed since then, especially the amount of people using the beach. He stated that the only way to change is to change peoples' behavior through signage and enforcement which may entail additional police presence. He also mentioned traffic calming and possibly the addition of kiosks. He added that it may not be necessary for the Commission to direct the work to P & Z. Comm Bonfiglio suggested directing staff to provide costs to increase beach patrols to take effect immediately, however; he was reluctant to change the signs until it is determined what is legal. Mayor Pugh suggested that the Town Manager develop signage that would cover all of the concerns raised tonight, even if it meant small kiosks. He added that this will come with an additional cost factor considering the signs and providing an increased police presence on the beach without affecting the rest of the Town.

Comm Lucibella disagreed that P & Z would not be necessary. He felt the issue was being over simplified and it needed more thorough research and answers. He then questioned whether there was uniform police training regarding how to handle the various situations on the beach after he cited a recent event whereby residents observed individuals having sex and urinating in the dune and no arrest or citations had resulted. Chief Yannuzzi advised that officers could not issue citations if the violation did not occur in their presence. Comm Lucibella concluded by stating that he did not agree with the kiosk concept because it may appear too much like a tourist area but he did agree that staff needed to determine the absolute necessary verbiage that should be place on the signs. He also felt the "Beach Access" was not necessary on the signs.

Penny Kosinski, 6000 Old Ocean Blvd., stated that unfortunately she was at jury duty and was not here to speak earlier and was thankful for being given the opportunity to speak. She stated that she had a private property issue that involved someone sleeping on her beach and when the police were called the officer advised that nothing could be done. She stated the police should be educated on a uniform basis as to where the MHWL would be determined.

The consensus of the Commission was to direct that the police be trained so as to provide uniform behavior regarding the beach issues, develop new draft uniform signage, and schedule another meeting which will include direction for the P & Z Commission. The Commission also requested updates prior to the meeting. The Town Clerk will poll the Commission to schedule the meeting date.

Meeting Adjourned at 6:35 pm.

Attest By:

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Town Clerk

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Mayor Pugh

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Commissioner Aaskov

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Commissioner Allison

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Commissioner Bonfiglio

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Commissioner Lucibella