

REGULAR TOWN COMMISSION MEETING HELD AUGUST 11, 2014

Regular Town Commission Meeting of the Town of Ocean Ridge held on Monday, August 11, 2014, 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 Bonfiglio
Commissioner Lucibella Commissioner Allison
Mayor Pugh

Pledge of Allegiance

ADDITIONS, DELETIONS, MODIFICATIONS, AND APPROVAL OF AGENDA

Clerk Hancsak advised that the three resolutions adopted at the July 7, 2014 meeting each contained a typographical error and that the numbering should actually be 2014-07, 08 and 09 and not 2014-04, 05, and 06. Atty Spillias pointed out the correct spelling for Seth Behn.

CONSENT AGENDA

1. Minutes of Regular Town Commission Meeting of July 7, 2014
2. Minutes of Special Town Commission Meeting of July 23, 2014
3. Approval of Annual Floodplain Management Report for FY 2013/14

Comm. Bonfiglio motioned to approve the Agenda as amended. Comm. Aaskov seconded the motion.

Motion Carried – yea (5).

ANNOUNCEMENTS AND PROCLAMATIONS

4. The Administrative Office will be closed on Monday, Sept. 1, 2014 for the Official Holiday
5. The Tentative Budget Adoption and Regular Town Commission Meeting will be held on Tuesday, Sept. 9, 2014 at 5:01 PM – Regular Meeting Immediately to Follow Budget Hearing and the Final budget Adoption Meeting will be held on Tuesday, Sept. 16, 2014 at 5:01 PM
6. Proclamation for “Florida Water Professionals Month”

PUBLIC COMMENT

Betty Bingham, 1 Ocean Ave., commented that the Town should be leery of purchasing Chevrolet products at this time. She also commented that crime would reduce greatly if individuals were fined for a first violation.

Dr. Ritota, 4 Hudson Ave., clarified that grading the alleyway between Hudson and Ocean Ave. was in the upcoming budget.

Kristine de Haseth, 29 Sabal Island Dr., commented that she felt the three controversial ordinances was too excessive for one agenda.

Joe Belmonte, 5600 N Ocean Blvd., stated that because the beach renourishment opens the beach to the public and has a positive natural drift he believed that the private land to the south also becomes public. Comm Lucibella stated that the public area is the Erosion Control Line (ECL) not the Mean High Water Line (MHWL). Mr. Belmonte advised that anyone can see new sand in the south as well as the north and he felt it was a moral issue.

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Terry Brown, Harbour Dr So, commented that he felt the issue regarding the beach and sand will ultimately be decided in the court system. He also stated that he agreed with earlier comments made by Comm Lucibella that someone other than the Chief should review the police structure in general because something is not working right. He referred to a recent incident that occurred on Harbour Dr that he did not believe was handled properly. Mayor Pugh reminded Mr. Brown that this should actually be the Town Manager's job to which Mr. Brown stated that someone needed to look at the politics inside and that some changes were necessary.

Nancy Hogan, 37 Hibiscus Way, reminded everyone in attendance that the monthly Bookmobile was a test program that would be ending in October if a sufficient increase in participation did not occur. She suggested that individuals take advantage of this benefit.

Zoanne Hennigan, 91 Island Dr So, commented that the Rental Registration ordinance was originally adopted citing a public safety issue and if the registration reverts to annual it wouldn't meet the requirements for safety. She agreed with the Chief that the ordinance should remain as is.

Joan Curran, 27 Harbour Dr So, mentioned that the street sign for Harbour Dr possibly needed to have additional illumination.

Connie Many, 19 Harbour Dr No, stated while she felt the Town had a good police department she felt it was mismanaged due to the utilization of services. She felt the Town would be better served through patrols and not issuing hurricane preparedness letters.

PUBLIC HEARINGS

None

REPORTS

6. Town Manager

Manager Schenck reported the following: 1) Inlet Cay Island – The red valve replacement on Bimini Cove Dr has been ordered and should be installed in early August. The Eleuthera Dr Repaving commenced Aug. 4 and should take approximately 2 months to complete. 2) FEMA Flood Maps – FEMA has accepted our map revisions and will include them in their evaluations. However since they're revising the overall rates, it's impossible to tell what the final results will be. FEMA maps are expected by the end of summer. 3) Old Ocean Right of Way – The signed documents have been received and will be recorded with the County. 4) Beach Crossovers – a draft ordinance is on the agenda 5) Town Hall Utility and Access Easement – Mr. Swaim is still working with the regulatory agencies. 6) PBA Contract Negotiations – staff met the PBA and local representatives on July 31st and presented our latest proposal to which they have a counter offer and will present it shortly.

7. Town Attorney

Atty. Spillias advised that the Office of Inspector General litigation has been scheduled for 8/18/14, however; it is 6th on the docket for that day. He also mentioned that he was preparing a letter from the Town in response to a request for a duplex to have two separate parcel numbers with the County. He advised that there is nothing that should prevent this provided they do not try to divide the property itself.

Atty Spillias advised that he was asked to review a recently adopted Gulfstream ordinance, similar to one adopted in Boca Raton, regarding reasonable accommodation proceedings for the Affordable Health Care Act. for Sober Houses. He stated that he concentrated on Boca's ordinance because it was challenged in court, revised, and then approved by a judge with the Injunction being lifted. He had several concerns he would like to review on the Town's behalf. The consensus of the Commission was to review the two municipality's ordinances and then discuss whether they wanted a similar type of ordinance drafted.

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Comm Bonfiglio asked if a written report regarding the change of use for the 5011 building was completed. Atty Spillias advised that he did not recall that the research be written, however; some research was done and would be discussed during the item on proposed ordinance #607.

9. Police Chief

In summarizing his report, Chief Yannuzzi pointed out that of the 4,550+ CAD events 2,588 were district patrols and 800+ were house checks. He mentioned that a new dispatcher will start employment tomorrow pending confirmation later in the agenda, and background checks were currently being completed for another dispatcher/clerk and police officer position (also on the agenda). He also summarized some of the reimbursements the Town receives such as: 911 call taker and equipment funds, body armor funds, and misc grants totaling approximately \$32,000 thus far.

Chief Yannuzzi summarized the Uniformed Crime Report (UCR) by stating that his police officers were doing an outstanding job and there was a 48% decrease in burglaries from the prior year. He mentioned that there were 35 in 2012 and 13 last year. He stated that perception is reality and unfortunately there has been crime in the homes but not on the beach. He stated that there has been a 71% decrease in burglaries from 2013 to the first six months of 2014, however; one bad week changes those statistics. The positive note is that an individual was arrested for several of incidents that occurred in the last few weeks. He also commended the citizen involvement and response to the email blasts which resulted in the arrest. Concerning the incident of the suspicious vehicle/persons on Harbour Drive, Chief Yannuzzi advised that although the police saw the vehicle that actually drove around the police vehicle no pursuit took place because his officers do not pursue for a property crime, citing safety concerns to the communities during the early evening hours. Lt. Hutchins commented that the two license plate numbers provided proved to be incorrect numbers. He reminded the Commission and public that distributing flyers regarding safety issues for the hurricane season was also part of their duties and added that the officers are obviously patrolling during this time. Comm Lucibella thanked Officers Kurz and Savino and Manalapan for the handling of the burglary suspect arrest. Mayor Pugh also mentioned the resident's diligence as a whole and felt that while these incidents are unfortunate it does bring the community together and provide a feeling of looking out for each other.

Chief Yannuzzi announced the "9/11 Remembrance Ceremony" that would take place on Thursday, Sept. 11, 2014 at 7 PM at Christ Fellowship Church in Palm Beach Gardens.

10. Town Engineer

Engineer Tropepe was absent with notice.

ACTION ITEMS

11. Confirm the Hiring of Dispatcher/Clerk Courtney Hammond

Chief Yannuzzi summarized Ms. Hammond's credentials and advised that the Commission gave tentative approval at the July meeting.

Comm Allison moved to confirm Courtney Hammond as a Dispatcher/Clerk, seconded by Comm Aaskov.

Ms. Hammond was introduced in the audience and was given a warm welcome.

Motion Carried – yea (5).

12. Authorize the Temporary Hiring of One Dispatcher/Clerk to Fill the Vacant Position to be Confirmed at the Sept. 9th Meeting

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Manager Schenck stated that Chief Yannuzzi is requesting permission to hire a dispatcher to fill the vacancy. They have reviewed the applicants and selected one to fill the position. She is going through the final clearances. However the results will not be available until shortly after the meeting. Should everything come out as expected he's requesting approval to hire her in August rather than wait until September.

Comm. Lucibella motioned to authorize the temporary hiring of one Dispatcher/Clerk to fill the vacant position, and to be confirmed at the Sept. 9th, 2014 meeting. Seconded by Comm. Bonfiglio.

Motion Carried – yea (5).

13. Authorize the Temporary Hiring of One Police Officer to Fill the Vacant Position to be Confirmed at the Sept. 9th Meeting

Manager Schenck stated that Chief Yannuzzi is requesting permission to hire a police officer to fill the vacancy. They have reviewed the applicants and are completing the background on two of the applicants to fill the one position. They are going through the final clearances. However the results will not be available until shortly after the meeting. Should everything come out as expected he's requesting approval to hire one of them in August rather than wait until September.

Comm. Lucibella motioned to authorize the temporary hiring of one Police Officer to fill the vacant position, and to be confirmed at the Sept. 9th, 2014 meeting. Seconded by Comm. Allison.

Motion Carried – yea (5).

14. Authorize the Renewal of Annual NoSeeum Spraying Contract with Clarke Environmental Mosquito Management, Inc. at a Cost of \$49,972 from Budgeted Funds in the Proposed 2014/15 Budget

Manager Schenck summarized his memorandum by stating that the 16% increase was due to additional areas being sprayed – not an increase in fees. He checked with 2 other companies, one of which advised they could not meet Clarke's bid price and the other is lower in cost but he had serious concerns on the chemicals being used and whether it could actually be done at the quoted cost. There is no licensed sprayers in the 2nd company for this type of work nor is the company licensed for this type of work. He recommended renewing the contract.

Comm. Bonfiglio motioned to authorize the renewal of the Annual NoSeeum Spraying Contract with Clarke Environmental Mosquito Management, Inc. at a cost of \$49,972 from Budgeted Funds. Comm Lucibella seconded the motion.

Terry Brown, Harbour Dr So, stated that the Town should not spend \$50,000 on a problem that will not go away. He also felt this was being slipped in before the budget cycle to which he was advised that the costs are included in the proposed budget.

Mayor Pugh commented his concern on the effectiveness of the spraying this year and he felt that our maintenance personnel should follow up to ensure that they are properly spraying all included areas.

Connie Many, 19 Harbour Dr No, felt the spraying was not a comfort issue but a health issue and felt it was definitely less effective and the workers should be monitored more closely.

Motion Carried – yea (5).

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15. Request to Clear a Portion of the Thompson Street Right-of-Way Along the South Border to the Southwest Corner of the property Located Immediately Adjacent to the ROW at No Cost to the Town

Town Manager Schenck summarized his memorandum by stating that William Swaim is looking to purchase the area north of the Thompson St easement to the Corrine St nature trail walkway which would result in a benefit to the Town. In order to survey the area they are requesting to clear the overgrown 20' easement described above of only exotic vegetation. He stated there are no mangroves and most of the vegetation is Brazilian Pepper trees. He added that there would be no adverse impact to the Town because we do not utilize this ROW. He supplied aerials from 2007 and present which reflect that the area was relatively clear and has now grown over. He recommended approval of the removal of exotic vegetation in the ROW in order to survey the property.

Mayor Pugh questioned who will supervise the clearing to ensure only exotics are removed. Manager Schenck advised that the Town's landscaping company could oversee the work. Comm Bonfiglio questioned if the Town could be held liable if they trimmed any mangroves to which Atty Spillias advised that an Indemnification Agreement could be signed.

Gary Kosinski, 6000 Old Ocean Blvd. stated he was speaking in order to protect the mangroves and residents of Ocean Ridge and not the non-resident developers. He advised that he spoke with DEP earlier today who allegedly advised that his attempts to develop sensitive areas through exemptions were ludicrous and that he has already been turned down once on a property in Boynton Beach, which he is appealing. He questioned why he was pursuing these environmentally sensitive areas. He was concerned that the Town Manager was recommending approval and felt an Environmental Civil Engineer should be hired to determine if there are non-exotic plants there. Manager Schenck commented that the proposed areas to be developed were zoned Residential.

Mr. Erickson, 5931 N Ocean Blvd., commented that he was concerned with this request, citing that is easier to ask for forgiveness afterwards and this request should not be trusted. He felt the mangroves and the wildlife habitat should be preserved.

Terry Brown, Harbour Dr So., stated that any permitting would be far into the future and questioned why the Town would participate in helping him with this quest.

Betty Bingham, 1 Ocean Ave., questioned whether this area was owned by the County to which Town Clerk Hancsak explained and pointed out the various owners and zoning of the surrounding area on the aerial.

Kristine de Haseth, 29 Sabal Island Dr, stated she was opposed to using the Town's land and permission should not be granted.

William Swaim, commented that he was acting as agent for the property owner (Kerrigan Trust), and the reason for the request was to determine the actual property lines of the parcel on the four corners. He stated he was coming before the Commission so everyone would be aware what actual work was taking place. Regarding the ludicrous exemption requests, he stated that there are exemptions to the State law. He advised that this property was once farm land and the mangroves infiltrated the area when the County put in the mosquito ditches and could therefore not be considered wetlands for preservation purposes. He added that the property owner has the right to take advantage of these exemptions considering it is zoned Residential. Comm Bonfiglio questioned whether he was actually their agent through Power of Attorney to which Mr. Swaim said that he would have the documentation within the next week, however; he has a letter from the property owner.

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Comm Lucibella moved to respectfully decline the offer of clearing the Town's property in the ROW, seconded by Comm Allison.

Motion carried – yea (5)

15a. Approval of Employee Health Insurance to Become Effective Oct. 1, 2014

Town Manager Schenck advised that the renewal rate for the same coverage reflects a 8.7% decrease. He also provided additional quotes that were all higher than the existing plan. He stated that the rates for the Short Term and Long Term Disability and Life & AD/D also decreased through changing companies.

Comm Allison moved to authorize the renewal of the Employee Health Insurance effective Oct. 1, 2014, seconded by Comm Aaskov.

Motion carried – yea (5)

RESOLUTIONS

None

ORDINANCES

16. Ordinance No. 607; Amending its Code of Ordinances, at Chapter 63, General and Administrative Provisions, by Amending Article VII, Nonconforming and Grandfathered Uses Section 63-117, Grandfathered Uses, Lots, and Structures, to permit the Continuation of Existing Non-Residential Uses and Section 63-118, Nonconforming Signs and Uses, to Strike the Expired Provisions Concerning Amortization of Non-Residential Uses; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; and Providing for an Effective Date

Atty Spillias reiterated the events that led up to the drafting of this ordinance. He stated that through the years various Commissions and residents have changed their opinions on whether to consider permission for this parcel to continue its mixed use or not and the method to accomplish same. He stated that through a settlement agreement the property was permitted to continue the mixed use (residential on the 2nd story and commercial on the 1st story). The settlement was extended for a one year period and upon its expiration was granted an additional 3 month extension to provide time for the filing of a Comprehensive Plan and Land Use Amendment. The Sivitilli family did make application on June 17th, however; there were questions regarding precedence being set because they already do not meet some of the proposed changes. Atty Spillias then stated that at the July 7th meeting he advised that there was possibly a mechanism by which the existing grandfathering ordinance could be amended to allow continuation of the existing use with provisions.

Atty Spillias advised that the proposed ordinance revises the section implementing total residential zoning, grandfathering and amortization. He added that this proposed ordinance actually addresses the two grandfathering properties – 5011 building and the Sun Dek. He stated that because this ordinance provides for downward zoning it could therefore be implemented. He advised that if the properties did not comply with the provisions of the grandfathering then the Town could pursue sun setting the use.

Regarding the question raised whether the other prior commercial properties could litigate, Atty Spillias advised that he has consistently said that those properties had opportunities during the last 20-40 years (depending on the amortization schedule) to gain back their investments. Seth Behn mentioned two cases that he discovered whereby the properties did not prevail because there was no realization of value, or no proof of an arbitrary act by the municipality. He added that the Town provided a generous amortization schedule which has already been upheld in the court system. Atty Spillias mentioned another case and

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likened it to a Police Officer having discretion on whether to enforce or not and the municipality has the executive function on whether to enforce or not.

Atty Spillias concluded his summary by stating the Commission had the decision of not doing anything thereby requiring the property use to cease, or approving a way to accomplish it either through this proposed ordinance or through a Comp Plan amendment. He added that on the Town's perspective the property needs to be cleaned up a bit and the Commission must decide if their commitment is true and what the timing issue would be. He stated that if the Commission was inclined to approve this ordinance they could delay either first or second reading until the Sivitilli's improve the property or adopt on first reading and then wait for the improvements. He stated that Lisa Sivitilli has presented a one page rendering and letter outlining the proposed improvements which included: refaced 2nd story, custom awnings, additional landscaping, window/door replacement, exterior painting, butterfly garden, paved parking area and relocating the a/c units where practical. He also stated that if the ordinance is adopted through both readings and no work is completed the property would be considered grandfathered as is.

Lisa Sivitilli, representing her parents, stated that this property has always been unique to the Town in that it has maintained a lot of the same tenants for many years unlike some of the short term rentals. She then introduced Randall Stofft, architect for the proposed improvements.

Mr. Stofft stated that he was also a resident at 6665 N Ocean Blvd. He reiterated the description of the proposed improvements. Comm Lucibella clarified that both the electrical and plumbing would also be brought up to code.

Mayor Pugh asked Mr. Miner, Urban Design Kilday Studios, the highest and best use of the property. Mr. Miner advised the size, location, and adjacent communities create a unique situation for this property. He stated that he felt a mixed or small commercial use was the best use.

Comm Bonfiglio summarized the timetable and events leading up to this meeting and stated that the Town has spent a lot of money trying to accommodate this property, even drafting this ordinance. He felt the submittal was totally inadequate. He concluded by stating that he can't justify either changing the policy or allowing them to continue.

The majority of the Commission expressed their disappointment with the lack of a more detailed improvement submittal supplied by Ms. Sivitilli. Ms. Sivitilli commented that it was difficult for the architect to design the improvements without knowing what will be done and added that they have already spent approximately \$10,000.

The following individuals spoke to oppose the proposed ordinance citing legal and economic risks, enormous costs to the Town, other commercial properties already phased out, and broken promises of converting to Townhouse units: Gary Kosinski, Gerry and Don Magruder, Terry Brown, Bruce Gimmy, and Kristine de Haseth.

Sandy Foster, 5900 N Ocean Blvd., stated that she has handled real estate in this area for a long time and she felt no one would invest in Townhouse property across from a gas station. She also stated that there is currently commercial property in this area and that no comparison could be made between the property where Busch's restaurant once stood and the 5011 building is now.

Comm Bonfiglio moved to table Ordinance #607 which he quickly withdrew.

Comm Bonfiglio moved to reject Ordinance #607, seconded by Comm Lucibella.

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Comm Aaskov recused herself from the vote because she currently rents office space at this building. She advised that she would complete the Voter Conflict form.

Motion carried – yea (4)

Mayor Pugh questioned the future of the building. Atty Spillias advised that once the extension for the Settlement Agreement is expired there would be improper use of the property and it could be brought before code enforcement.

17. Ordinance No. 608; Amending its Code of Ordinances, at Chapter Thirty, Licenses and Business Regulations, by Amending Article VII, Business Permit Section 30-157, Residential Rental Registration, to Alter the Reporting Requirements Contained Therein, and Section 30-158, Fee, To Establish a New Fee Schedule; Providing for Severability, Providing for Repeal of Ordinances in Conflict; Providing for Codification; and Providing for an Effective Date

Atty Spillias summarized the proposed amendments to the existing Rental Registration code. These included one registration on an annual basis for all properties owned by one owner, removal of the renter's information, and a reduction of the fee from \$50 per lease to \$35 annually.

Comm Allison stated that when this ordinance was originally adopted the objective was safety not revenue and she questioned why even have an ordinance if it was not intended for the original goal. Chief Yannuzzi commented that while the form requested renter information no background checks are performed, however; the document does become part of the public record.

Comm Lucibella and Comm Bonfiglio both agreed that this ordinance does accomplish the goal for registering property.

Don Magruder, 9 Ridge Blvd., stated that he believed that this ordinance was originally in place because of the concern of single family home rentals. He felt the Town should not impose the ordinance on multi-family buildings where an owner actually resides as they already meet County and State guidelines. Comm Lucibella advised that it would be hard to determine these live-in owners and the fee would probably need to increase to cover the administrative costs involved.

Zoanne Hennigan, 91 Island Dr So, stated she agreed with Comm Allison that the ordinance was adopted for safety reasons. She added that it was originally designed for only single family homes but changed so as not to be discriminatory. She felt this ordinance was a compromise but the intent was to be informed of who was residing in the units.

Kristine de Haseth, 29 Sabal Island Dr, stated she had a renter for 2 months who was satisfied in supplying this information which would aid in any possibly police matter. She suggested including the renter information as optional on the form.

Comm Bonfiglio moved to adopt Ordinance #608 on first reading, seconded by Comm Aaskov.

Motion carried – yea (5)

18. Ordinance 609; Amending Chapter 1, Section 1-3 of the Code of Ordinances to Provide Revised Definitions of Vehicle and Motor Vehicle; Amending Chapter 62, Article II, Sections 62-26 Through 62-29 and 62-31 Through 62-33 of the Code of Ordinances to Provide for Regulations on Beaches Within the Municipal Limits; Providing for Severability; Providing for the Repeal of All Ordinances in conflict; Providing for Codification; and Providing for an Effective Date

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Atty Spillias advised that he was asked to draft a comprehensive ordinance encompassing the rules and regulations on the beaches within the Town. Since writing the original ordinance he has made a few revisions. This new ordinance incorporates several items into one document such as: disturbing the peace, animals on public and private property, littering for public and private property, glass, intoxication, and lewd and lascivious behavior. He summarized the ordinance.

Atty Spillias recommended not including a section on the demarcation of the beach stating that by doing so the Town may be giving or taking property away. This would also remove police discretion. An Internal Directive would probably be the best mechanism for enforcement. Comm Lucibella said enforcement would be difficult without a specific demarcation line. He also asked if DEP would permit markers on the beach for the residents. Atty Spillias advised they may permit them if requested by the Town to which Comm Lucibella advised that he believed the residents would pay for them.

Several concerns were raised within the ordinance including: no intoxicating beverages on any beach, the enforcement of the noise and language section, defecation on the beach, and the separation of public vs private on enforcement.

Terry Brown, Harbour Dr So, stated that he felt this ordinance complicates the enforcement even more for the police department. He stated that DEP won't allow anything that would impede the water flow or the turtles on the beach. He added that there are differentiated property lines for all the beachfront owners and the Town is looking for a lawsuit. He concluded by stating that he was concerned with the enforcement of dogs on the private beach and also with having alcohol on a private deck or dune.

Gary Kosinski, 6000 Old Ocean Blvd., suggested using the Rack Line as the demarcation line because it would coincide with the Army Corp of Engineers. He added that a property owner would need to make a complaint to have it enforced.

Mayor Pugh questioned whether a BEACH definition should be adopted. Atty Spillias mentioned that there is no simple answer on this definition and that it comes down to what each community wants for their beach.

Kristine de Haseth, 29 Sabal Island Dr, questioned addressing the rules for trespass and dune regulations in the ordinance. Atty Spillias commented that the State already regulates this.

Comm Lucibella stated that the beachfront owners want assurances that some of the behavior can be controlled and/or enforced on the beach, especially their private portion. He also stated that he was not opposed to the leash regulation being applied for private owners. He did not agree with the glass regulation.

Comm Bonfiglio moved to adopt Ordinance #609 on first reading with minor revisions to remove the intoxication section and expanding on Section 62-33(b). Comm Allison seconded the motion.

Motion carried – yea (5)

Meeting Adjourned at 9:55 pm.

Mayor Pugh

Commissioner Aaskov

Commissioner Allison

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Attest By:

Town Clerk

Commissioner Bonfiglio

Commissioner Lucibella