

REGULAR TOWN COMMISSION MEETING HELD OCTOBER 6, 2014

Regular Town Commission Meeting of the Town of Ocean Ridge held on Monday, October 6, 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 Allison Commissioner Lucibella
Mayor Pugh

Pledge of Allegiance

ADDITIONS, DELETIONS, MODIFICATIONS, AND APPROVAL OF AGENDA

There were no additions or changes to the agenda.

CONSENT AGENDA

1. Minutes of Tentative Budget Adoption/Regular Town Commission Meeting of September 9, 2014
2. Minutes of Final Budget Adoption Meeting of September 16, 2014
3. Authorized the Mayor and Town Clerk to Execute and Record Delinquent Garbage/Trash and Alarm Monitoring Liens for FY 2013/14

Comm. Bonfiglio motioned to approve the Consent Agenda and Agenda as presented. Comm. Allison seconded the motion.

Motion Carried – yea (5).

ANNOUNCEMENTS AND PROCLAMATIONS

3. Proclamation for “Domestic Violence Awareness Month”

PUBLIC COMMENT

Dr. Ted Ritota, 4 Hudson Ave., questioned whether there was a pending application to rezone the end of Hudson Ave. as multi-family. He was advised that the Commission was opposed when unofficially asked at the last meeting. He was also told that any actual application requests before the P & Z or Town Commission would be advertised and noticed to the residents within 300 feet.

Bob Weisblut, 5001 Old Ocean Blvd., reminded the public that the first lecture series about Human Evolution through the Study of DNA will be held on Oct. 9, 2014 and encouraged the public to attend.

Terry Brown, Harbour Dr So, reiterated his previous comments regarding his concern with the code concerning the tree trimming violations. He felt the trimming in the utility lines was not the responsibility of the private property owner. He mentioned a recent case that was dropped because the trimming was FPL’s responsibility. Mayor Pugh advised that the Town Manager would look at the code and enforcement of same.

Charles Kitlar, 38 Hersey Drive, commented that there are areas in need of code enforcement and he would like to see the trees trimmed and everyone should cooperate to make the Town look better.

Kristine de Haseth, 29 Sabal Island Drive, advised that refurbishing the 5011 Building would be in conflict with the Town’s Comprehensive Plan and should be phased out as provided for in the code. She read a section that stated that commercial would be incompatible with the Town’s existing and future residential character.

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PUBLIC HEARINGS

None

REPORTS

4. Town Manager

Manager Schenck reported the following: 1) Inlet Cay Island – The red valve will be installed once the current high tides recede. Eleuthera Dr repaving has started. It was also mentioned that a problem with a few drainage pipes has been discovered on a property under construction and additional information will be forthcoming 2) FEMA Flood Maps – FEMA is still reviewing our maps. 3) Old Ocean Right of Way – The signed documents are being recorded at the County 4) Beach Crossovers – the beach usage and signage will be discussed later in the agenda 5) Town Hall Utility and Access Easement – Mr. Swaim is still working with the regulatory agencies. 6) Recovery Houses – Representative Hager held a meeting and distributed a question/answer flyer to the public which has been provided to the Commission tonight 7) PBA Contract Negotiations – staff met with the PBA and the representatives have declined the Commission's latest proposal and have chosen to go to Impasse. We are in the process of picking a mediator.

5. Town Attorney

Atty. Spillias had nothing to report.

6. Police Chief

Chief Yannuzzi summarized the contents of his report and the Commission did not have any questions.

7. Town Engineer

Engineer Tropepe was absent with notice.

ACTION ITEMS

10. Request for a Unity of Title for 3 Beachway North and Beach Parcel for the Purpose of Utilizing 1,000 sq ft of Beach Parcel for Lot area for the New Single Family Home and also Constructing a Dune Crossover By: CDS Beachway LLC, 3 Beachway North

Town Clerk Hancsak summarized the request presented by Randall Stofft Architects. She stated the calculations for the proposed new home include utilizing 1,000 sq ft of the eastern lot area (as permitted by Section 64-1) in addition to Lot 9 Beachway North Subdivision. A future dune crossover is also planned. Section 63-5 of the Town Code requires a Unity of Title Covenant in which the Town shall be a party to the recorded document, which shall run with the land. Any permit submittals will need to go through the normal zoning and building process. Staff recommended granting the Unity of Title.

Jessica Carpenito, Randall Stofft Architects, agreed with the summary provided and advised that the 1,000 sq ft equates to approximately 320 sq ft of additional structure.

Terry Brown, Harbour Dr So, questioned whether 2 separate parcels could be joined if they had two different parcel numbers. Town Clerk Hancsak clarified that two lots separated by a street could be joined by Unity of Title.

Comm Lucibella moved to approve the Unity of Title as proposed, seconded by Comm Allison.

Motion carried – yea (5).

11. Request to Obstruct the Right-of-Way on Ridge Blvd. (12' +/-) and also on Midlane Road (9' +/-) with Various Plantings (After the Fact) By: Richard and Carmen Sasso, 18 Ridge Blvd.

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Mayor Pugh advised that the Mr. and Mrs. Sasso are clients of his company and therefore recused himself and stated he would file the Voter Conflict Form.

Town Clerk Hancsak summarized the request by stating the Town Code requires Commission approval for residents to obstruct the ROW. Evidently during a pool relocation revision the contractor shifted the proposed landscaping that was approved in the initial landscaping plan into the ROW along both Midlane Rd and Ridge Blvd. This was discovered during their first final drainage inspection and it was also discovered that additional landscaping was planted between the first and second final drainage inspection. The contractor was advised that the owners must appear before the Commission and request to keep the landscaping through a ROW Obstruction Agreement.

Town Clerk Hancsak advised the Commission that their options included: allowing the landscaping to remain as is, permit with modifications, remove the mulch and replace with sod, or require a drainage plan for the ROW area; or require removal of all vegetation except the sod.

Mr. Sasso, 18 Ridge Blvd., stated that they liked Ocean Ridge, purchased the property, demolished the old structure that evidently had issues, and built back a beautiful home. He mentioned that their landscaping contractor planted in areas they should not have but they have spent a lot of money to beautify the corner. He respectfully requested that the Commission approve the ROW Obstruction Agreement.

Comm Aaskov, Gerry Magruder (9 Ridge Blvd), and Terry Brown (Harbour Dr So) all spoke in favor of the landscaping. Comm Aaskov commented that she lives across the street and she has not noticed any water coming down the slope during the heavy rains. Mr. Brown did question whether this type of landscaping is permitted since it is in the Town's ROW and is not native vegetation.

Comm Aaskov moved to approve the ROW obstruction subject to entering into the ROW Obstruction Agreement. There was no second to the motion.

Comm Lucibella moved to approve the ROW Obstruction Agreement subject to a drainage plan submittal for the ROW and approval by the Town Engineer. Comm Aaskov seconded the motion.

Motion carried – year (4).

12. Discuss Proposed Improvements for 5011 North Ocean Blvd. By: Rob Sivitilli, representing the owners

Town Manager Schenck advised that Rob Sivitilli was present to discuss and present the plans for the rehabilitation of the 5011 Building and request to maintain the mixed use. They would like the Commission to reconsider Ordinance 607 which would allow grandfathering of the mixed use at this location.

Comm Aaskov recused herself from the discussion (she is currently a tenant at the 5011 Building) and advised that she would complete the Voter Conflict Form.

Rob Sivitilli, son of the owner of the 5011 Building, thanked the Commission for the opportunity to hear their presentation again. He advised that they have distributed a complete set of plans for the proposed renovations prior to the meeting. He reiterated that they have looked very carefully into converting to residential for the character of the Town. He stated that a tear down is not feasible citing the resale of the property, the land is too small, and they are located across from the Texaco station. He stated the best use

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of the property is to retain the mixed use. He added that a representative from Randall Stofft Architects and Tim Galloway, a Landscape Architect were present to answer any questions. He concluded by stating that the renovation cost would be \$250,000+ and he requests the Commission reconsider the ordinance to grandfather the mixed use.

Don Durante, Randall Stofft Architects, described the improvements which included: a building that will look brand new, new pavers, new windows/doors, a new deck and landing, painting, reinforcing the 2nd story, replacing the A/C systems, etc.

Tim Galloway, Landscape Architect, summarized the landscape plan which included: placing potted Palm trees in the front to bring the scale of the building down, which will also break up the parking, hardscape and foundation side; plantings to soften the stairwell; and additional hedging on the east side. The goal was to bring the building back to a residential feel.

Sandy Foster (5900 N Ocean Blvd.), Bernd Schulte (5 Osprey Ct.), and John Ross (prior resident representing his parents who still reside in Town), spoke in favor of maintaining the current mixed use, citing the possible future commercial development in Briny Breezes, best possible use for the area, and retaining the current character of the Town.

The following individuals spoke in opposition of continuing the mixed use: Gerry Magruder (9 Ridge Blvd.), Zoanne Hennigan (91 Island Dr So), Kristine de Haseth (29 Sabal Island Dr), Terry Brown (Harbour Dr So), and Don Magruder (9 Ridge Blvd.), citing conflicts with the Comprehensive Plan, prior history of not complying with the Settlement Agreement, the appropriateness of commercial in the Town, and future possible ramifications of adopting an ordinance without fully vetting it. It was suggested that all monies spent on this project should be reimbursed and if the Commission did consider a grandfathering ordinance it should be clear that the work needs to be done within a time certain.

Mr. Sivitilli stated that he appreciated all of the comments and if the ordinance is adopted he offered to reimburse the Town for all associated costs for the last 15 years, place \$250,000 in an escrow account and if not spent in the timeline approved the Town could keep the excess proceeds.

Atty Spillias commented that the most effective way to allow the continued mixed use is to amend the Comp Plan for a Mixed Use District, which was the original approach submitted by Urban Design & Kilday Assoc. However, upon reviewing the application it was determined that a precedent could be set and there may be more requests in the future and the 5011 Building would actually not meet a lot of the criteria proposed, thereby still grandfathering it. He stated that when it has been discussed in the past the majority of the Commission were in favor of the continued mixed use and he was asked to research another mechanism to accomplish it, thereby drafting an amendment to the grandfathered section of the code.

Atty Spillias also stated that the original ordinance was adopted prior the development of the Comp Plan, which did not happen until sometime in the 1970's, however the zoning code provided for an amortization period. He added that the ordinance would amend the portion of the code that already existed. He felt comfortable with an ordinance to amend the code but also stated he could not guarantee that if challenged the Town would prevail.

Mayor Pugh commented that the Commission needed to decide whether to bring back proposed Ordinance 607 or remain status quo.

Comm Bonfiglio cited several sections of the Settlement Agreement that included the Sivitillis' being prohibited from requesting a continued use and also that they would incur the costs if such a request was

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made. He summarized the events leading up to this meeting which included: 2 lawsuits, reaching a Settlement Agreement providing an additional 10 year period, receiving a variance for 3 townhouse units, receiving a one year extension to the agreement in order to change to residential, and then requests to retain the current use through either the Comp Plan amendment or the drafting of the proposed ordinance. He stated that he was opposed to the continuance of mixed use. He also stated that he was concerned with some of the motels that converted to apartments coming back to bring suit to the Town. Atty Spillias stated he did not believe this was a problem because they were already residential.

Comm Allison stated that converting the building into townhouse units was not commercially viable and keeping the current use will not change the Town. She agreed that the building needed improvements and also that timelines and fines should be imposed. She stated she would vote for the continued use.

Comm Lucibella commented that the economic benefit of the Sivitillis was not the Town's problem and if they had approached the Town 2 years ago regarding the continued use there would have been less contentious discussions. He did agree that the residential alternative would not be a high value and this presented a law of unintended consequences because it was an exceptional property. He added that he was comfortable with the proposed ordinance approach to continue the mixed use. He stated a severe performance bond (possibly \$75,000) should be required and added that he was not inclined to require them to pay back the Town.

Mayor Pugh asked Rob Sivitilli the time frame for completing the improvements to which he advised he could commit to 90 days. Mr. Sivitilli commented that the property has never been listed for sale and his concern was a possible change in Commission prior to the 90 days. Mayor Pugh advised there was risk on both sides.

Mayor Pugh stated that he was concerned what would happen to the building if the Commission did not approve the continued mixed use. He commented that some of the surrounding property owners may want to combine the properties to build something else. He added that the proposed ordinance included a clause that if the property were to be abandoned for a certain time it would lose the grandfathering. He stated that technically the residential portion was code compliant at the present time. He commented that he understood the history but he also felt that a few shops for the residents will not negatively affect the character of the Town. He was in favor of the ordinance provided that it somehow ties in to the improvements being completed in a certain time frame.

Comm Allison moved for the Town Attorney to develop an ordinance for 1st reading in November either as previously presented or with some sort of repealer that would allow the 5011 Building to pull building permits until the ordinance is passed, but would also protect the Town in the event they do not bring the property up to standards. Comm Lucibella seconded the motion.

Ken Kaleel, 86 Island Dr So, stated he felt the Commission was proceeding down a dangerous path to concentrate special exceptions for one property and added that he felt it would be thrown out in court. He suggested creating a commercial or mixed use area and make it a broader range through a Comp Plan amendment. He added that merely adopting a grandfathering ordinance does not set perimeters for the type of commercial that will be permitted. Comm Bonfiglio commented that the P & Z and Commission already discussed a commercial area and they were not in favor of creating one. Mr. Kaleel urged the Commission to reconsider the motion.

Gary Kosinski, 6000 Old Ocean Blvd., stated that there should be clarification on who pays for any lawsuits related to this one property that may result.

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Motion carried – yea (Allison, Pugh, Lucibella)
Nay (Bonfiglio)

13. Approve Delineation of Boundary of Public vs Private on Beaches Within Ocean Ridge and also Approval of Beach Access Signage

Atty Spillias commented that the staff developed a Guidance for Enforcing Ordinances and Trespass Violations on Beaches document. He advised that the Agenda Item title may be a little misleading because the Town can't actually have a definite line of demarcation, but can reflect a seaward and landward measurement line to assist the police in enforcing the ordinances. They utilized Destin as the model. He stated that in addition to the document providing for certain rules for private portions of the beach it also addresses three areas: Erosion Control Line areas – Corrine St. to the northern limits (25' east of the eastern edge of the dune and extending eastward to the ocean, notwithstanding claims of private ownership); Corrine St. south to the Beachway Dr Crossover (20' landward from the wet sand area of the beach, notwithstanding claims of private ownership); and the Beachway Dr Crossover to the southern limits (30' landward from the wet sand area of the beach, notwithstanding claims of private ownership). He added that each community was different and therefore may also enforce differently.

Chief Yannuzzi commented that the document provided general guidelines and obviously enforcement can depend on the circumstances. He added that staff was not suggesting that the Commission take a vote on approving the document but it could be used as a guide, so it would not be construed as a possible claim of taking property. The police department would use discretion in various situations.

Comm Lucibella questioned how many dune trespass complaints the police have received over the past 3-4 months to which he was advised not many. He stated that he felt these guidelines were developed to accommodate the public and their right to enjoy the beach rather than protect the private property owners. He stated that according to Mr. O'Brien, of O'Brien, Suiter, and O'Brien, the boundary line is the Erosion Control Line. He then distributed a map from LABINS which reflected two Erosion Control Lines and he stated that the ECL should be used as the demarcation line. He stated that the guidelines presented were on the right tract, however; he was concerned with the language in item #4 and also #6. He felt the document will not mean anything for enforcement and that the staff received clear direction that they did not follow. He concluded by stating that the burden of proof should not be on the property owner and the guidelines should be revised to support the landowners and not reflect a bias. He added that Manalapan and Boca Raton actually move people east when observed. Mayor Pugh suggested removing Item #6.

Atty Spillias commented that he did not disagree with some of Comm Lucibella's comments; however, he did research the ECL and read a definition from the South Florida Survey which essentially stated that the Mean High Water Line is the average boundary line.

Gary Kosinski, 6000 Old Ocean Blvd., stated that his legal description shows that his property extends to the MHWL and his boundary did not change with the beach renourishment and he wanted to protect his property rights. He felt the 25' proposed is a taking from the property owner and requested it be changed to 10', which is enforceable.

Terry Brown, Harbour Dr So, stated that the police must be given notice of trespass prior to taking action. He also stated that all of the private signs located on the beach actually are not enforceable. He stated that he felt the staff was taking a reasonable approach with these guidelines.

Charles Kitlar, 35 Hersey Dr, stated that the education and enforcement was necessary.

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Don and Gerry Magruder, 9 Ridge Blvd., inquired as to how many beach crossover checks were completed in a month to which he was advised approximately 206. They requested additional beach patrols.

Arthur Ziff, 9 Osprey Dr, stated that he felt sympathy for the police in their position of confronting someone. He added that obviously if someone is breaking the law it should be enforced but he did not feel the line demarcation was right.

The consensus of the Commission was for staff to provide clearer guidance.

Comm Lucibella moved to table discussion of the beach signage and further discussion on the guidelines until the November 3rd meeting. Comm Aaskov seconded the motion.

Motion carried – yea (5).

Meeting Adjourned at 8:35 pm.

Attest By:

Town Clerk

Mayor Pugh

Commissioner Aaskov

Commissioner Allison

Commissioner Bonfiglio

Commissioner Lucibella