

TOWN OF OCEAN RIDGE

AGENDA



November 3, 2014

6:00 P.M.

TOWN HALL – MEETING CHAMBERS

TOWN COMMISSION

Mayor Geoffrey A. Pugh

Commissioner Gail Adams Aaskov

Commissioner Lynn A. Allison

Commissioner James A. Bonfiglio

Commissioner Richard J. Lucibella

ADMINISTRATION

Town Manager Kenneth N. Schenck, Jr.

Town Attorney Kenneth G. Spillias

Town Clerk Karen E. Hancsak

Police Chief Chris Yannuzzi

RULES FOR PUBLIC PARTICIPATION

1. **PUBLIC COMMENT:** The public is encouraged to offer comments with the order of presentation being as follows: Town Staff, public comments, Commission discussion and official action. Town Commission meetings are business meetings and the right to limit discussion rests with the Commission. **Generally, remarks by an individual will be limited to three minutes or less.** The Mayor or presiding officer has discretion to adjust the amount of time allocated.
 - A. Public Hearings: Any citizen is entitled to speak on items under this section.
 - B. Public Comments: Any citizen is entitled to be heard concerning any matter within the scope of jurisdiction of the commission under this section. The Commission may withhold comment or direct the Town Manager to take action on requests or comments. The Commission meetings are held for the purpose of discussing and establishing policy and to review such other issues that affect the general welfare of the Town and its residents. Where possible individual grievances should first be taken up with the Town Staff.
 - C. Regular Agenda and First Reading Items: When extraordinary circumstances or reasons exist and at the discretion of the Commission, citizens may speak on any official agenda item under these sections.
2. **ADDRESSING THE COMMISSION:** At the appropriate time, please step up to the podium and state your name and address for the record. All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Commission shall be barred by the presiding officer from speaking further, unless permission to continue or again address the Commission is granted by a majority vote of the Commission members present.

APPELLATE PROCEDURES

Please be advised that if a person decides to appeal any decision made by the Town Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record includes the testimony and evidence upon which the appeal is based. The Town neither provides nor prepares such record.

Persons who need an accommodation in order to attend or participate in this meeting should contact the Town Clerk at 732-2635 at least 2 days prior to the meeting in order to request such assistance.

ROLL CALL

PLEDGE OF ALLEGIANCE

ADDITIONS, DELETIONS, MODIFICATIONS, AND APPROVAL OF AGENDA

CONSENT AGENDA

1. **Minutes of Regular Town Commission Meeting of October 6, 2014**

MOTION	SECOND	DISCUSSION	VOTE
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ANNOUNCEMENTS AND PROCLAMATIONS

2. **The Administrative Offices will be closed on Tuesday, November 11, 2014 and Thursday, Nov. 27th and Friday, Nov. 28th, 2014 for the Official Holidays**
3. **The Annual "Holiday Celebration" date (from 5:30 PM to 7:30 PM) - will be selected at this meeting. Light Snacks and Beverages will be served and Children can expect a visit from Santa and some added fun**

PUBLIC COMMENT – (15 minute maximum with 3 minute individual limit)

PUBLIC HEARINGS

None

REGULAR AGENDA

(Items Which Require Town Commission Action That Must Be Filed With Town Clerk 1 Week prior to Meeting – Public comment Permitted)

REPORTS

4. **Town Manager**
5. **Town Attorney**
6. **Police Chief**
7. **Town Engineer**

ACTION ITEMS

8. **Continued Discussion on Document Titled Guidance for Enforcing Ordinances and Trespass Violations on Beaches Within the Town of Ocean Ridge and also Approval of Beach Access Signage By: Kenneth Schenck, Town Manager**
9. **Authorize Budget Amendment to the FY 2013/14 Budget By: Kenneth Schenck, Town Manager**

RESOLUTIONS

10. **Resolution No. 2014-13; Strongly Objecting to Recent Action Taken by the Palm Beach County Board of County Commissioners to Withdraw Palm Beach County from the Treasure Coast Regional Planning Council and the Request Membership in the South Florida Regional Planning Council Instead; and Strongly Supporting the County's Continued Membership in the Treasure Coast Regional Planning Council**

FIRST READING OF ORDINANCES

11. **Ordinance No. 610; 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**

SECOND READING AND ADOPTION OF ORDINANCES

None

TOWN COMMISSION ITEMS

(Information Items Only – 3 minute limit per item)

ADJOURNMENT

**NEXT SCHEDULED TOWN MEETING(S):
REGULAR TOWN COMMISSION MEETING DEC. 1, 2014 AT 6:00 PM**

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.

REGULAR TOWN COMMISSION MEETING HELD OCTOBER 6, 2014

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

REGULAR TOWN COMMISSION MEETING HELD OCTOBER 6, 2014

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.

REGULAR TOWN COMMISSION MEETING HELD OCTOBER 6, 2014

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

Light-the-Light

DATE TO BE DETERMINED

5:30pm—7:30pm

*Beverages & Light snacks

*Bounce House
& Face Painter

*Santa

*and more!



Annual Function for Ocean Ridge Residents

Memorandum

Date: October 28, 2014
To: Mayor & Commissioners
From: Ken Schenck, Town Manager
Re: Town Update, November, 2014

I am providing you with brief updates on some of the Town's continuing projects and events.

Inlet Cay Island

We have the red valve replacement for Bimini Cove which we're trying to schedule.

The work on Eleuthera Dr. has started. We run into several problems in the cul-de-sac with lines being higher than they're supposed to be which held up the construction until we could get them moved.

FEMA Flood Maps

We've met with FEMA and are still reviewing their maps.

Old Ocean Blvd. Right of Way

We've received the signed documents and they are presently being recorded at the County.

Beach Crossovers

The proposed Town stance on the beach usage and beach signs will be discussed later in the meeting.

Town Hall Utility and Access Easement

Mr. Swaim is still working with the regulatory agencies.

PBA Contract Negotiations

We had a meeting with the PBA regarding the police contract. The union has declined the Commission's latest proposal and have chosen to go to Impasse. We are in the process of picking a mediator.

Calendar of Events

Commission Meeting-----December 1, 2014 @ 6:00 PM

Code Enforcement Meeting-----December 2, 2014 @ 10:00 AM

cc: Chris Yannuzzi, Police Chief
 Karen Hancsak, Town Clerk
 Town Employees

Agenda: Nov. 3, 2014

Memo: Item # 6

**Town of Ocean Ridge, Florida
Agenda Memorandum**

Office of Police Chief Christopher T. Yannuzzi

- Subject:**
- 1. Monthly Activity Report (September 2014)**
 - 2. Monthly Boynton Beach Fire/EMS Activity Report**
 - 3. Three separate incidents resulted in Commendations for the Officers involved.**
 - 4. Memo - Automated License Plate Recognition Camera Project.**
 - 5. Ebola Update**

Mayor and Town Commissioners:

Attached please find the September 2014 Monthly Activity Report; including the monthly Boynton Beach Fire/EMS Activity Report and other attachments. All of which are on the Town's website under Police Department/Monthly Reports.

I'm available to answer any questions either prior to or at the meeting.

Memorandum

Date: October 27, 2014
To: Mayor & Commissioners
From: Ken Schenck, Town Manager
Re: Guidance for Police on Beaches and Signage

Attached is a draft guidance for the Police Officers when patrolling the Town's beaches. If the Commission approves we will use this as a guide. Any modifications the Commission desires can be included. There are two major changes in this guidance over the one reviewed at the last meeting. The concept that the Officer has to consider successful prosecution has been removed. The beach has been divided into two areas rather than three as before and the distances from the MHWMM remain constant south of Corrine.

Also attached is a proposed sign for the crossovers. This too can be modified as the Commission desires. We will need 8 signs. Based on the cost of the previous signs we estimate the cost between \$2,500 and \$3,000. The signs could be paid out of the budget's Contingency Account.

**Guidance for Enforcing Ordinances and Trespass Violations
on Beaches Within the Town of Ocean Ridge**

The purpose of this document is to provide guidance to the Police Officers of the Town of Ocean Ridge when confronted with issues of State, County, and Town violations on the beaches within the boundaries of the Town of Ocean Ridge. In all cases, Officers are encouraged to use their discretion in conjunction with these guidelines, especially when determining probable cause.

- (1) In determining whether to cite or arrest an individual for violating a State, County, or Local law or ordinance, the first action by the Officer should be to identify the location of the violation and attempt to determine whether it is public or private property. Field use of informational maps found via the Palm Beach County Property Appraiser's Office may be used as a general guide along with this guidance.
- (2) Among other factors an Officer may consider relevant and appropriate under the circumstances, an Officer must consider whether probable cause can be established before taking enforcement action.
- (3) Because preservation of the dunes is critical to public safety, Officers will investigate all alleged violations that take place on the dunes and take enforcement action in accordance with Paragraph (2), above.
- (4) Except in those areas of the beach clearly determined to be public or a public park, the following general boundary lines should be used for the purposes of enforcement of all alleged violations, including trespassing:

- a. Beginning at Corrine Street and continuing northward to the northern Town boundary where beach renourishment has occurred, the Erosion Control Line ("ECL") as established by DEP is deemed to constitute the dividing line between public and private beach ownership. For enforcement purposes, where it is unclear to the Officer where the precise location of the ECL is in a particular location, north of Corrine Street, within the area beginning twenty-five feet (25') east of the eastern edge of the dune and extending eastward towards the water, Officers should not issue citations or arrest persons for trespass, or other actions allowed on public beaches, notwithstanding claims of private ownership.

Similarly, within areas less than twenty-five feet (25') from the dune to the east, Officers should not issue citations to or arrest beachfront private property owners (and their guests and invitees) for violating laws or ordinances that permit activities on private beachfront property that are otherwise prohibited on public beaches.

- b. For areas south of Corrine Street, the average mean high water line ("MHWL") is considered the dividing line between the public and private beach. Here again, for enforcement purposes, where it is unclear to the Officer where the precise location of the

MHWL is in a particular location, unless and until the wet sand or water line encroaches on the dune, Officers should not issue citations or arrest persons for trespass, or other actions allowed on public beaches, within the area beginning at the water's edge and extending twenty-five feet (25') landward from the wet sand area of the beach, notwithstanding claims of private ownership.

Similarly, within areas more than twenty-five feet (25') west of the wet sand, Officers should not issue citations to or arrest beachfront private property owners (and their guests and invitees) for violating laws or ordinances that permit activities on private beachfront property that are otherwise prohibited on public beaches.

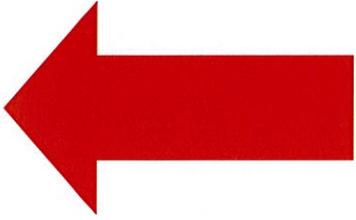
- (5) The crime of trespass requires that the alleged trespasser be warned that they are trespassing, and then refuse to leave. Mere presence on property belonging to another does not constitute trespassing. The warning may come from a statutorily correct posting, the owner of the premises, or an authorized person. The owner of the property may authorize police officers to warn alleged trespassers on their behalf, but under these circumstances, the police officers are acting as the owner's agent, and may not detain the alleged trespasser if he attempts to leave or require that the person identify himself.
- (6) For the purposes of this paragraph, the term "owner" may also mean the tenant of a property, and "person" refers to the purported trespasser.

Complaints of trespassing must come from the property owner or an authorized agent of the owner for the private land on which the alleged trespassing is purported to be taking place. On unposted property, in order for trespassing to take place, the owner or an authorized agent of the owner must warn the person to leave, and then the person must refuse to do so. When the land is not posted, the warning must come from the owner or the owner's authorized agent. The owner or tenant may authorize an Officer to warn the person on their behalf, but while doing so, the Officer is acting as an owner's agent (not an Officer) and may not detain the person if the person attempts to leave or require that the person identify himself.

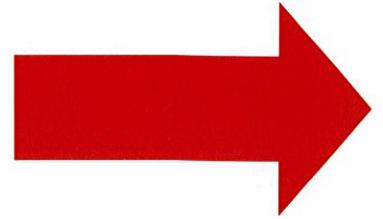
If the complaint of trespassing comes from any party other than the property owner or authorized agent, no enforcement action will be taken, unless and until the owner of the private property or authorized agent of the owner becomes involved and indicates to the Officer or to the person that they would like the person to move off of their private property and that warning is communicated to the person. If the person refuses to leave the property, then the Officer may take enforcement action because now the person is committing trespass.

Because Officers may not take enforcement action for trespassing until a person has refused to leave the property, in response to a trespassing complaint on unposted property Officers are encouraged, when they deem it appropriate under the circumstances, to request that the person move onto areas within which Officers should not issue citations or arrests for trespass under this guidance.

BEACH ACCESS



No Parking
No Stopping
No Unloading



No Lifeguard Present

Swim At Your Own Risk

No Trespassing on Dunes or Private Property

No Vehicles

No Dogs on Beach

No Glass on Beach

No Littering



TOWN, COUNTY, AND STATE ORDINANCES
STRICTLY ENFORCED

Agenda: Nov. 3, 2014
Memo: Item # 9

Town of Ocean Ridge, Florida

Agenda Memorandum

Office of the Town Clerk

Subject: Suggested Budget Amendment to FY 2013/14

Mayor and Town Commissioners:

During the process of FY 2013/14 Year End closing a very preliminary review of the various departments within the General Fund reflected that there will be two (3) departments that will be over budget.

The Inspection Department had an original total budget (\$112,500.00). In November 2013 the Commission approved a Budget Amendment to add \$36,774 for a Building Permit Refund. The additional funding came from utilizing \$20,999 in the Restricted Fund Balance for anticipated inspections related to this building permit fee collected and the remaining \$15,775 from the Unassigned Fund Balance. In addition to the budget amendment this department was over budget. This department is offset by the revenue generated for building permits. In other words we generated more building permit revenue (\$231,000+ vs. the \$120,000 budgeted or 192%) which in turn generated additional inspections and review by our contractor, Hybyrd Inspections Inc. The total year end budget is approximately \$27,000 over budget. This department has exceeded the budget in prior years for this very valid reason but was still noted in the affected audits with an explanation of the revenue compared to the expenditures.

Another department that exceeded the total budget of \$217,300 is the Other Physical Environment, specifically in the Town Engineer and the Other Contractual Services accounts. The Town Engineer account had an original budget amount of \$56,000 but at year end \$85,795+/- was expended (\$29,795+/-). The primary reasons will be explained by the Town Manager through a separate memorandum.

The other department that had exceeded the total original budgeted amount of \$110,000 was the Legal Department, specifically over in both the Professional Services and the Special Counsel account. The Professional Services account had an original budget of \$80,000 but at year end \$86,520 was expended (\$6,520 over) and the Special Counsel account had an

original budget of \$25,000 but at year end \$35,274 was expended (\$10,724 over). The Town Manager will justify the reason in his memo.

Florida State Statute at Section 166.241 (4) permits municipal governments to amend their budget any time during the fiscal year or within 60 days following the end of the fiscal year provided the amendment is for appropriations for expenditures within the same fund and is completed by motion and the fund is not changed. Seeking a budget amendment will make these three departments within the General Fund under budget.

We have remaining funds in the Contingency Account (\$19,000) and the Law Enforcement Regular Salary Account (\$25,000) and request that those funds be transferred to the Inspection Professional Services Account (\$27,000), Physical Environment Town Engineer Account (\$4,000), and the Legal Professional Services Account (\$7,000) and the Special Counsel Account(\$6,000) as budget amendments. Transfers would be strictly internal and not affect the overall budget. These amendments will total \$44,000. There may be other accounts within these three departments that were under budget thus explaining why the exact amounts are not necessary. The audit reflects only the total expenditures for each department.

Memorandum

Date: October 24, 2014
To: Mayor & Commissioners
From: Ken Schenck, Town Manager
Re: Budget Adjustment for FY2013/2014

The following is an explanation for the overages in two categories of the FY13/14 budget.

The Legal Department is over budget in two categories. The Professional Services is over by \$6,520. The excess is related to plan reviews which totaled \$8,919. The reviews had to do with development in the Town which exceeded our expectations. This was reimbursed by the excess funds we received in permit fees. The Special Counsel is over by \$10,724. There were several projects we had throughout the year that weren't anticipated. The two major ones were the Malchuski dog violation which was \$6,466 and the Sivitilli building which was \$6,372. The Malchuski case was a violation of an unleashed dog that the owner decided to go to court rather than pay the fine. It hasn't been decided by the court to date. The Sivitilli situation you're familiar with and this will be addressed during the meeting. Mr. Sivitilli indicated he would reimburse the Town if requested to do so. Another cost in this category was the right of way abandonment on Old Ocean which was \$4,136. This cost is being reimbursed to the Town by the property owners.

The other category that exceeded the budget was Physical Environment which is the Town Engineer and their services. The budget was \$56,000. Of this \$45,000 was allocated to general engineering, \$1,000 to GIS and \$10,000 to site plan review. The total expenses were about \$85,795 or \$29,795 over the estimate. Of the engineering and GIS budget of \$46,000 the expenses were about \$42,000 or \$4,000 under budget. The site plan review was where the budget overrun occurred. We had allocated \$10,000 for reviews but the expenses were \$43,320. This was due to the property reviews associated with building permits. We had over 100 more permits this year than last year. These costs are covered by the building permits which also exceeded our estimate.

Memorandum

Date: October 27, 2014
To: Mayor & Commissioners
From: Ken Schenck, Town Manager
Re: Regional Planning Council Recommendation

The County has voted to leave the Treasure Coast Regional Planning Council and join the South Florida Regional Planning Council. The Palm Beach County League of Cities is opposed to this change as they believe we have more in common with the Treasure Coast than we do with Miami and Broward County. Richard Radcliffe's memo explains it a little more. The league has requested the Municipalities adopt a resolution opposing the change. The attached resolution is the one they request the Municipalities adopt.

Kenneth Schenck

From: Richard Radcliffe C. <RRadcliffe@pbcgov.org>
Sent: Friday, October 24, 2014 12:55 PM
To: Jeriise Hansen
Subject: IMPORTANT Resolution Request
Attachments: Res 2014-02-Treasure Coast Regional Planning-Board Support.pdf

Importance: High

Dear Managers,

On October 7th, on a four to three vote, the Palm Beach County Board of County Commissioners (BOCC) directed staff to research the steps necessary to move Palm Beach County (County) to the South Florida Regional Planning Council (SFRPC) and to delete the County's membership in the Treasure Coast Regional Planning Council (TCRPC). By way of background information, the BOCC voted to have the County made a part of the TCRPC in 1976, over thirty-five years ago. This was a move away from the SFRPC at that time. Now, apparently the BOCC is considering a move to go back to SFRPC.

On October 22, after much discussion, the Palm Beach County League of Cities Board of Directors (the League Board) approved the attached resolution requesting the BOCC to make sure the County remains with the TCRPC. The resolution attached sets forth the reasons for the action taken by the League Board.

We are asking that every municipality pass a resolution similar to the one attached in support of the League Board's position. We are also asking that you reach out to your County Commissioner personally, especially if they were on the prevailing side (Vana, Taylor, Abrams, or Berger) and ask them to reconsider and reverse their decision.

Please thank the Commissioners that supported our position (Burdick, Valeche, and Santamaria) and ask them to remain vigilant since this is such an important issue to the municipalities and all of Palm Beach County.

Mike Busha, the League Board staff, and I will make ourselves available to assist with meetings and information. You may want have your planning staff meet with you and your Commissioner so they understand the ramifications of their actions and the commitment of every municipality. Please send the League copies of adopted resolutions and your correspondence.

Thank you for your support.

Richard

Richard C. Radcliffe
Executive Director
rradcliffe@pbcgov.org
The Palm Beach County League of Cities, Inc.
P.O. Box 1989, Governmental Center
West Palm Beach, Florida 33402
Tel. 561-355-4484; Fax 355-6545
www.leagueofcities.org

RESOLUTION 2014-13

A RESOLUTION OF THE TOWN OF OCEAN RIDGE, FLORIDA, STRONGLY OBJECTING TO RECENT ACTION TAKEN BY THE PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS TO WITHDRAW PALM BEACH COUNTY FROM THE TREASURE COAST REGIONAL PLANNING COUNCIL AND TO REQUEST MEMBERSHIP IN THE SOUTH FLORIDA REGIONAL PLANNING COUNCIL INSTEAD; AND STRONGLY SUPPORTING THE COUNTY'S CONTINUED MEMBERSHIP IN THE TREASURE COAST REGIONAL PLANNING COUNCIL; PROVIDING FOR DISTRIBUTION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Palm Beach County Board of County Commissioners ("BOCC") recently took action by means of a 4-3 vote on October 7, 2014 authorizing its staff to research all necessary steps to withdraw Palm Beach County (the "County") from the Treasure Coast Regional Planning Council ("TCRPC") and to request membership in the South Florida Regional Planning Council ("SFRPC") in spite of opposition expressed at the meeting by municipal representatives and others; and

WHEREAS, the County has been a member of the TCRPC for more than thirty-five (35) years, since 1976; and

WHEREAS, during that lengthy tenure, the staff at the TCRPC has become acutely aware of the issues and concerns of the County as well as of the thirty-eight (38) Municipalities located therein as they relate to the growth management, transportation demands, water concerns and general land use planning; and

WHEREAS, there is little, if any, evidence that the SFRPC has the same depth of understanding of the issues that the County and its municipalities are facing; and

WHEREAS, the strategic policies found in the TCRPC Regional Policy Plan differ greatly from those found in the SFRPC Regional Policy Plan; and

WHEREAS, the County and the Municipalities have incorporated many of the TCRPC policies into their comprehensive plans which guide their growth patterns; and which would require revision if the change to the SFRPC is achieved; and

WHEREAS, many municipalities located in Palm Beach County are involved in long term planning activities with the TCRPC which would be rendered meaningless if this change were to occur; and

WHEREAS, the minimal reasons supporting change found in the back-up documentation for the agenda item and the discussions at the October 7, 2014 meeting centered around saving money in the form of reduced membership fees to be paid to the SFRPC as opposed to the TCRPC; and the diverse interests of the counties comprising the TCRPC; and

WHEREAS, since County ad valorem tax dollars are used to pay for the membership in the TCRPC and are derived from all those persons and entities owning property in the County, each property owner is paying for this membership and deserves a voice in this abrupt move taken by the County with

very little, if any, sound reasoning as to why such a move would benefit all local governments located in the County; and

WHEREAS, long term relationships forged through more than thirty-five (35) years of working with the TCRPC and the in-depth understanding the TCRPC staff has of the County's and the thirty-eight (38) municipalities' land use issues should not be discarded without substantial and powerful reasons, which have not been clearly articulated by the members of the BOCC, to date.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE TOWN OF OCEAN RIDGE, FLORIDA as follows:

Section 1. The Town Commission of the Town of Ocean Ridge, FL strongly objects to recent action taken by the Palm Beach County Board of County Commissioners to withdraw Palm Beach County from the Treasure Coast Regional Planning Council and to request membership in the South Florida Regional Planning Council; and strongly supports the County's continued membership in the TCRPC; providing for distribution; providing an effective date; and for other purposes.

Section 2. The Town Commission hereby requests that this resolution be sent directly to the Palm Beach County Board of County Commissioners, the Treasure Coast Regional Planning Council and all municipalities in Palm Beach County.

Section 3. This Resolution shall take effect immediately upon execution by the Mayor of the Town of Ocean Ridge, Florida at their Nov. 3rd, 2014 meeting.

The passage of this Resolution was moved by _____, seconded by Commissioner _____.

The Mayor thereupon declared this Resolution duly passed and adopted on this 3rd day of November, 2014.

TOWN OF OCEAN RIDGE

By: _____
GEOFFREY A. PUGH, Mayor

ATTEST:

KAREN HANCSAK, Town Clerk

Memorandum

Date: October 27, 2014
To: Mayor & Commissioners
From: Ken Schenck, Town Manager
Re: 5011 Property Discussion

The attached memo from Mr. Spillias outlines the options for the 5011 building. The associated revised Ordinance is the one referred to in the memo as an option for the building. The Ordinance was discussed at a previous Commission meeting but not approved. Should the Commission decide to approve the Ordinance and allow the continued mixed use, a Development Order or something similar would be appropriate to restrict the ultimate uses of the building. I believe the Sivillias are amenable to agreeing to such an agreement. The restrictions could limit the occupancy to prevent any high traffic uses, such as a convenience store, that would be detrimental to the neighborhood. Another restriction could be the sale of medical marijuana, should it become legal. It could also set a timetable for the construction improvements proposed by the owners. The plans for the improvements have been submitted to the Town for a building permit. The agreement could be drafted by the Attorney prior to the second reading of the Ordinance.

There are 2 corrections to the memo. The memo indicated a site plan was done for four townhomes on the property. The site plan was for three townhomes. On page two the discussion regarding extensions used the date of June but was unclear as to why June was used. June was used as that was the month the settlement agreement was recorded.



Reply to: West Palm Beach

MEMORANDUM

TO: Kenneth Schenck
FROM: Kenneth G. Spillias 
DATE: October 23, 2014
SUBJECT: Options as to 5011 Ocean

By request of the Sivitillis the Town Commission has continued to discuss the potential for retaining the commercial use at their property located at 5011 North Ocean Boulevard. In light of this discussion several issues and questions have been raised concerning the process for allowing them to stay, as well as the potential for other property owners to seek either similar uses, or challenge the prior amortization of their use.

The intent of this memo is to briefly describe the history of the issue, outline the current legal status, and to address the relevant legal questions. Finally the memo will conclude with the various courses of action that the Town may take, and the potential ramifications of each action.

HISTORY

In 1969 The Town adopted Ordinance 229 which eliminated all commercial use of property in the municipality, but allowed for existing commercial properties to continue to operate for a set period of time. This amortization period was defined as either forty years from the date of

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315 South Calhoun Street
Suite 830
Tallahassee, Florida 32301

p | 850-222-5702 • f | 850-224-9242

WEST PALM BEACH
515 North Flagler Drive
Suite 1500
West Palm Beach, Florida 33401

p | 561-640-0820 • f | 561-640-8202

construction or 20 years from the date the use became nonconforming by the passage of the ordinance.¹

A challenge to the amortization requirement was brought in Circuit Court by “Lambros, Inc.” which had purchased the business known as “Busch’s Restaurant.” The Circuit Court upheld the Town’s regulations. On appeal, the 4th District Court of Appeals held that Lambroses failed to meet their burden of showing that the regulations were in fact unconstitutional, and thus the ruling of the Circuit Court was upheld in favor of the Town.²

In October of 2000, another challenge was brought as to the validity of the amortization regulations of the Town. The action was brought by the Sivitillis, the owners of 5011 North Ocean Boulevard. A settlement agreement was entered into between the Sivitillis and the Town to avoid further litigation (“Agreement”). In this Agreement the Sivitillis were granted the right to continue the “present use” of the property for up to ten years from the date on which the agreement was executed. During or at the conclusion of that period, the Sivitillis agreed to terminate the commercial uses at the property and convert it to exclusively residential use.

A “Conversion Plan” was approved by the Town for the Sivitilli property, and following the execution of the Agreement, the Sivitillis were to pursue all necessary variances and permits for the conversion to exclusive residential use. However, failure to secure the necessary permits did not modify the Sivitilli’s responsibility to eliminate the commercial use per the terms of the Agreement. The Agreement does contain a clause that to the extent that the Town creates any commercial zoning in the Town limits, that they would consider the Sivitilli property for inclusion in this zone if the Sivitilli property has not already completed its conversion to exclusively residential use. The Agreement provided that following receipt of the necessary variances a Voluntary Dismissal with Prejudice was to be filed with the Circuit Court. The Sivitillis did, in fact, develop a site plan for the construction of four townhouses, received necessary variances and obtained site plan approval from the Town.

The Agreement reads as to expire in February 2013. Subsequent discussions before the Town Commission regarding extensions refer to a June expiration date, but it is unclear as to why that was. At the May 5, 2014 meeting a three month extension was granted. The intent at that meeting was to grant an additional time period for the Sivitillis to prepare and return with a revised plan for their property, arguably understood to be until September 2014. While there is

¹ In 1976 Ordinance 335 was adopted eliminating the need for commercial uses to be discontinued after the amortization period. Subsequently Ordinance 337 was adopted, repealing Ordinance 335, thus returning the commercial businesses to the prior status quo of requiring complete cessation of operation following the amortization period.

² Lambros, Inc. v. Town of Ocean Ridge, Fla., 392 So.2d 993 (Fla. 4th DCA, 1981).

an argument that the extension of three months would have run from February until May, in any case, the Agreement has expired by the date of this memo.

NON-CONFORMING CODES AND AMORTIZATION PERIODS GENERALLY

Non-conforming codes have developed in support of the belief that when a zoning code is adopted, it would be unduly burdensome and an injustice to force existing property owners to immediately cease or eliminate uses or structures that were lawfully established but are not in conformance with the new code.³

Significant case law exists on whether or not a non-conforming use can be resumed if it ceases voluntarily, involuntarily due to government action or act of god, or for reasons unknown. However, much of this discussion centers around the intent of the owners of the non-conformity to “abandon” the use or structure. In the case under discussion here, the commercial use of the property has not ceased or been abandoned, and thus there is no question of resumption.

However, for a non-conforming status to be granted to a property it must have been lawfully established and operated.⁴ Thus a building constructed in contravention of the existing building codes, or a business established contrary to zoning regulations, will not be protected by grandfathering or vested rights.⁵ Again, the strict application of this principle to facts of this case don’t fit perfectly. It is undisputed that the Sivitilli property was initially constructed and commenced operation legally. It is only by the subsequent lapse of the amortization period that the property was rendered out of conformance with the current laws.

Amortization is a technique several jurisdictions have adopted to accomplish the eventual elimination of non-conforming uses, while avoiding issues concerning unconstitutional taking of property. Florida courts have expressly upheld this approach, provided that the amortization period is reasonable to provide the owners their investment expectations.⁶

Florida courts have also held that a municipality has the right to enforce its zoning code as it sees fit, and cannot be compelled by a third party to bring an action against a property owner for violations.⁷ The reasoning behind this ruling is that enforcement is a function of the executive powers, subject to discretionary decisions, and shall not be impinged upon by the court absent a constitutional violation.

³ Fla. Jur. 2d; Building Zoning and Land Controls, §226

⁴ Daytona Grand, Inc. v. City of Daytona Beach, Fla, 490 F.3d 860 (11th Cir. 2007), (applying Florida law).

⁵ Id., at 873.

⁶ Lamar Advertising Assocs. of East Fla., Ltd. v. City of Daytona Beach, 450 So.2d 1145, 1150 (Fla. 5th DCA, 1984).

⁷ Detournay v. City of Coral Gables, 127 So.3d 869, 874 (Fla. 3d DCA, 2013).

CURRENT STATUS OF SIVITILLI PROPERTY

As the date of the settlement agreement and any subsequent extensions have now passed, the Sivitillis' commercial use is in direct violation of the agreement. The Town may petition the Circuit Court for injunctive relief and specific performance under the terms of the agreement, and would be entitled to its attorneys' fees and costs if it prevailed.

The commercial use of the property is also currently in violation of the amortization period in the Ordinance. The zoning code remains binding and enforceable against the property, and thus a code enforcement action could also be initiated. As noted above though, enforcement actions are executive functions, and the Town could decide not to take any action regarding the code violations if it so chose.

OPTIONS TO PERMIT THE COMMERCIAL USE TO REMAIN

There are three methods that could be employed to permit the Sivitillis to continue their commercial use of the property, discussed below.

1. Status Quo

As discussed above, the Town has the option to permit the Sivitillis to continue to operate in violation of the zoning code, without bringing an enforcement action. This however would prove to be a disincentive to the Sivitillis to make any sort of investment in improving the property, and would likely make it difficult, if not impossible, for them to adequately lease out the property. It would also raise a question as to whether the Town could renew the business tax license for the property in direct contradiction of the code. Finally, it would raise serious questions regarding what the Town should or could do if another property began to operate in violation of the Town's residential zoning requirements.

2. Amend the Non-Conforming Codes

The Town, under the same authority it has to draft and amend zoning regulations, may modify the non-conforming codes in such a way as to eliminate the amortization requirements for any existing commercial uses.

A draft of this language was previously prepared for the Commission's consideration, but additional review and modifications would be required. The intent of the language change would be to eliminate the amortization language, make it explicit that the non-conforming provisions only apply to those businesses and structures that were legally established and are operating as of the date of the new ordinance, and provide a mechanism by which the type and

nature of the businesses in the development could be reviewed and controlled by the Town to prevent an increase in the intensity of the use.

The advantages to this approach is that it would allow greater certainty for the Sivitillis that their use will not be eliminated, and thus create an incentive for the improvement of their property. Futhermore, this approach would recognize only those existing commercial uses, eliminating a potential for setting a precedent that other properties could petition for.

There have been concerns raised regarding this approach, in light of the fact that several businesses have been required to amortize and eliminate their commercial use. While the Town would not be immune from this type of attack, amortization periods have been upheld as a valid exercise of the police powers. There is nothing that would prevent the Town from amending its code to create a new non-conforming regulation that is applicable only to existing non-conforming uses and structures. The relevant language in the Ordinance noting both the changed conditions from when the amortization regulations were originally adopted, and the nature of the Town as it exists today, would certainly support an amendment to the code.

The argument could also be raised that the non-conforming code change is merely a veiled attempt at “spot zoning” the property. Spot zoning is an illegal method of granting a single property a zoning designation at the expense of the overall zoning scheme. However several of the factors for spot zoning are not relevant to the Sivitilli property. First, the site has been shown to be compatible with the surrounding uses, including the storage area and gas station to the west, as well as with the multifamily uses adjacent to it. Second, the use as it exists has not been shown to be a detriment to the immediate neighborhood.⁸

3. Create a Commercial Land Use and Zoning District

The third approach that could be used for the establishment of the Sivitillis’ commercial use would be to amend the Comprehensive Plan and Zoning code to create a commercial district which would encompass the Sivitilli site, and potentially others. This approach would allow for the creation of standards that would make the Sivitilli use conforming, while it’s remaining structural non-conformities could continue under the structural non-conforming code which is not subject to the amortization requirements.

Amending the zoning code would be the most legally rigorous approach, this process would require a significantly greater amount of work than the previous methods, as the Comprehensive Plan amendment process is regulated by State Statutes, and has significant lead times and public

⁸ Bird-Kendall Homeowners Ass’n v. Metropolitan Dade County Bd. of County Com’rs, 695 So.2d 908 (Fla. 3d DCA 1997); *See also* Fla. Jur. 2d; Building Zoning and Land Controls, §188.

hearing requirements. Similarly the zoning regulations would need to be developed and adopted, which would require significant expense and time.

The greatest risk from creating a commercial district, is other locations in the Town could petition to have their property rezoned to allow commercial. This of course would be at the discretion of the Town Commission, and the Town's long standing preference for being predominately residential would justify the denial of these requests. However all zoning determinations are subject to judicial review.

OTHER CONSIDERATIONS

A variety of ancillary questions have been raised as to the effect of permitting the commercial use to remain, regardless of the method employed. A brief summary of those questions and some avenues of resolution are provided here.

- Handicap accessibility standards
 - A handicap parking space is currently provided on the property. If modifications to the structure are required, the Florida Building Code provides the requirements to which existing buildings must maintain to permit structural renovations.
- Can the Town make improvements to the property mandatory, or require a bond
 - If the Town amends the non-conforming code to eliminate the amortization requirement, it would be difficult to make improvements to the property mandatory, as this would represent a form of contract zoning that is generally not permitted. An approach that could be considered would be to enter into a development agreement with the Sivitillis after first reading of the amended non-conforming code and have it be effective if, and only if, the ordinance passes on second reading with the language of the agreement making it clear that by entering into the conditional agreement, it was not binding itself to pass the ordinance on second reading.
 - If the zoning code is amended to permit commercial uses, regulations and the ability to permit conditions on the property to permit the use could be imposed, as well as architectural standards.
- Can the Town limit type of uses?
 - Language in the modification of the non-conforming code would allow the Town a mechanism to ensure that any new tenant will be no more intense then the current and historic uses in terms of traffic generation and parking demands. This process would be a form of administrative review, with appeal to the Commission if a use is denied, allowing the Commission to determine if the use is permissible

and consistent with the historic uses of the site. This would limit it to very low intensity uses. No convenience stores, no gas stations.

- If a new commercial zoning regulation is created, this zone could explicitly provide for the type of uses permitted.
- Business Tax
 - Town has existing operative business tax ordinance. (Sec. 30-26 and subsequent).
- Costs to Town to amend code or regulate business.
 - It is difficult to determine the costs, but a fee schedule for applying for a change of tenant, or for the amendment of the zoning, could assist in offsetting the costs.
- Failure of building to meet current code requirement standards.
 - The Florida Building Code has specific regulations applicable to existing structures, which regulate the redevelopment of these structures. Any changes would need to comply with these regulations, reviewed by the Town's building official.
- Signage
 - Non-conforming signs have been amortized. The code provides for very limited signage on the property, that could remain, or be amended to create new standards.
- Hours and days of permitted uses
 - If the non-conforming code is changed, an agreement as to the use and intensity could be discussed. Similarly business regulations could be put in place limiting hours of operation, without amending the zoning code.
 - If a new zoning code district is created, the permissible hours of use could be explicitly provided for.

CONCLUSION

There is an inherent conflict between the interests of individual property rights and the interests of the public good in any zoning question, and this is especially true when dealing with non-conforming uses. Accordingly, difficult decisions often have to be made pitting these competing interests against one another. In dealing with the Sivitillis' property, the Town has previously provided a valid amortization scheme, which was then extended by mutual agreement, and thus the Town has every right to insist upon the cessation of the commercial use of the property. Yet at the same time, the Town is equally vested with the power to make the determination that changed conditions, the nature and location of the Sivitilli property, and the demonstration of the compatibility of the use justify a mechanism to permit the use to continue.

In sum, I believe that the Town has three viable options in dealing with the issues raised by the use of the Sivitilli property—each with its own potential legal outcomes. I would summarize them and their legal implications as follows:

1. Enforce the Town's codes as they presently exist and prohibit any further commercial uses on the property. The Town's legal position in taking this approach would be very strong inasmuch as the Town has enforced the ordinance against others and has survived all legal challenges.
2. Approve an ordinance, as previously presented, amending the non-conforming use ordinance to allow the property to continue in its present use, with any conditions sought to be imposed regarding the improvements to be made to be included in a developer's agreement that would take effect if, and only if, the ordinance is passed on second reading. We believe this approach has a legal basis and can be defended if challenged by someone who can establish the proper standing. There is, however, no case law we have found that addresses this specific fact pattern. Thus, the outcome of a legal challenge is more uncertain.
3. Approve a comprehensive plan and land use change which would encompass the Sivitilli property and some adjoining properties sufficient to allow for a mixed use zoning category that meets appropriate development standards (setbacks, parking, drainage, etc.). This approach would involve a change in the Town's long-standing position that the Town should remain a totally residential community. If, however, the Town chooses to make such a change, we are confident it could be done so as to withstand any legal challenges.