

## REGULAR TOWN COMMISSION MEETING HELD DECEMBER 1, 2014

Regular Town Commission Meeting of the Town of Ocean Ridge held on Monday, December 1, 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

Atty. Spillias requested to add 2 items: Item 6a. - Discussion/Direction regarding Class Action Law Suit of Municipal Derivatives and Swap Interest Rates. Item 6b. - Discussion/Direction regarding Class Action Law Suit of Sabon vs Aqua Logic Inc.

### CONSENT AGENDA

1. Minutes of Regular Town Commission Meeting of November 3, 2014
2. Ocean Ridge Resolution No. 2014-16; Authorizing the Town to Approve and Adopt the 2015 Revised Palm Beach County Local Mitigation Strategy Plan

Comm. Bonfiglio motioned to approve the Agenda and Amended Agenda. Comm. Allison seconded the motion.

Motion Carried – yea (5).

### ANNOUNCEMENTS AND PROCLAMATIONS

3. The Administrative Offices will be closed on Thursday, Dec. 25<sup>th</sup>, 2014 (and Friday, Dec. 26<sup>th</sup> if approved tonight) and Thursday, Jan 1, 2015 (and Friday, Jan 2<sup>nd</sup> if approved) for the Official Holidays.
4. The Annual “Holiday Celebration” date (from 5:30 PM to 7:30 PM) - will be held on Friday, Dec 12<sup>th</sup>, 2014 from 5:30 PM – 7:30 PM. Light Snacks and Beverages will be served and Children can expect a visit from Santa and some added fun

Clerk Hanscak stated that Boynton Beach recently rescheduled their Boat Parade from Saturday, Dec 13<sup>th</sup> to Friday, Dec 12<sup>th</sup>. She asked if the Commission would want to change our date as it would now conflict with the Boat Parade. There was a consensus made by the Commission to reschedule the Annual “Holiday Celebration” date to Wednesday December 10<sup>th</sup>, 2014 from 5:30 PM to 7:30 PM.

### PUBLIC COMMENT

Stella Kolb, 204 Beachway Drive asked the staff if they could get the Christmas Tree later this week, to allow the Garden Club time to decorate before Wednesday, December 10<sup>th</sup>, 2014. Clerk Hanscak stated that it could be done.

Terry Brown, Harbour Drive, asked the Town to enforce the Code regarding the allowable trimming height of the dunes. He was concerned that if cut too low, it would result in damage to our dunes, and become costly to repair. He asked that Ocean Ridge send out a letter to the residents informing them of the allowable height. In regards to the possible purchase of new cameras in Ocean Ridge, he asked if the Commission would be preparing a policy regarding the cameras, and a budget for their maintenance. Mayor Pugh stated that the cost/maintenance would be discussed at the workshop.

## REGULAR TOWN COMMISSION MEETING HELD DECEMBER 1, 2014

Bob Weisblut 5001 Old Ocean Blvd reported that the next lecture series would be January 8, 2015 from 7-8pm. Dr. Erick Vandernook, FAU, would be speaking on the Solar Systems. He announced that it was open to the Public and encouraged the residents to attend.

### PUBLIC HEARINGS

None

### REPORTS

#### 5. Town Manager

Manager Schenck reported the following: 1) Inlet Cay Island – The red valve has been installed and seems to be working well. Eleuthera Drive drainage improvements are in progress, and several problems have arisen with the lines in the cul-de-sac being higher than were supposed to be. The road has been raised and repaved. Matching the road with the driveways and lawns is requiring more fill. There will be a change order for the additional expenses of about \$15,000 but the total job cost is still lower than the other bids. It is expected to be complete before Christmas. 2) FEMA Flood Maps – FEMA is still reviewing our maps. 3) Old Ocean Right of Way – The signed documents were 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) PBA Contract Negotiations – A mediator has been selected and the meeting is scheduled for January 15, 2014 to discuss the PBA contract.

It was also announced that Chief Licata, Lighthouse Point, will make a presentation on December 16<sup>th</sup>, 2014 for our residents regarding the proposed camera system.

#### 6. Town Attorney

##### a) Class Action Lawsuit regarding Municipal Derivatives and Swap Interest Rates

Atty Spillias stated that this involved a number of financial institutions that did not provide full disclosure to the municipalities. We may not have received full benefits of the swap interest rates. A settlement is proposed for \$37million. He recommended that we submit our proof of claim, then we could be a recipient of some of the settlement. Comm. Bonfiglio stated that he was knowledgeable of the lawsuit and asked for information regarding it.

Comm. Lucibella motioned to approve Atty. Spillias to file the claim form for the Class Action Suit concerning Municipal Derivatives and Swap Interest Rates/Costs and that Comm Bonfiglio be provided with the information for review. Seconded by Comm. Allison.

Motion Carried – yea (5).

##### b) Class Action Lawsuit – Savon Vs Aqualogic.

Atty. Spillias stated that this lawsuit was regarding unsolicited ads for business that were sent by fax. The court has a list of businesses that received these faxes and the settlement is for \$500. Comm. Bonfiglio stated the he believed that this case was removed by Circuit Court and that the time to file had expired. This item was deferred until further investigation could be done for more information.

#### 7. Police Chief

Chief Yannuzzi summarized the contents of his report and reported that 2 officers had received letters of commendations. Officer Savino observed/apprehended 2 young men for trespassing in the Ocean Ridge Yacht Club. Officer Giardino assisted in the recovering of 2 dogs who were found crossing A1A. Comm. Aaskov stated that they were her dogs, and she was grateful that they were found and returned unharmed.

## REGULAR TOWN COMMISSION MEETING HELD DECEMBER 1, 2014

### 8. Town Engineer

Engineer Tropepe was absent with notice.

### 9. 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

Manager Schenck presented to the Commission a map of Ocean Ridge provided by Engenuity showing the Erosion Control Line (ECL) and the Mean High Water Marks (MHWM). It is recommended that the ECL be used as a guide for the police officers when patrolling the Town's beaches. There are 2 separate ECL's, the line north of Anna St was established in 1997 and the line south of Anna St was established in 1978. The southern line was the same as the MHWL, however the MHWL is not permanent whereas the ECL is. This map also shows that the private property lines are not uniform in their eastern boundaries and vary considerably. He encouraged the residents to contact the police department immediately regarding any bad behavior or those trespassing/violating the dunes or private property. There is also a proposed sign for the crossovers. Eight signs would be needed, at a cost between \$2500 and \$3000.

It was suggested to possibly send it to P&Z however the Commission was close to making a final decision and the majority felt it was not necessary. It was also discussed that the police need to know property lines to determine if the public were violating private property. This map is to be used as a guide, to which the Commission concurred.

Atty Spillias stated that this map is an attempt to identify an approach for enforcement in case of a lawsuit. In some states the use of the beach is customary, however in Florida the determination is done by each area. This guide is to balance public and private rights to the beach in Ocean Ridge.

Terry Brown, Harbour Dr South, stated that the public is paying for the sand transfer and felt that the beaches should stay public. Terry Brown stated that the current signs have 3 "NO's", and the proposed signage has 9 "NO's", and felt it was too negative.

Stella Kolb, 204 Beachway, stated that this issue started with the bad behavior of the public on private lands. She asked the Commission to simplify it and put more emphasis on the bad behavior - like cooking on the beach, leaving diapers/waste in the dunes, and keeping pets off of the beach.

Comm. Allison, in regards to the proposed beach signs, said she was not in favor of "No Unloading". While she understood that there is excessive abuse, there is no parking available at all on Old Ocean. Comm. Aaskov agreed with Commissioner Allison and was in favor of removing "No Unloading" while keeping "No Stopping" on the proposed signs.

Steve Coz, was in favor of the Planning & Zoning Commission reviewing this, and stated that since 2006 there has been major growth in Ocean Ridge and Boynton Beach. The next step for some of the Boynton apartments/condos is to provide transportation to the beach. He was in favor of keeping "No UnLoading" and to remove the large top arrows on the Beach Signs. He asked that the Commission consider the residents first, as there are 5 other public beaches in the area with better facilities and parking for the public.

George Elder, 205 Beachway, stated that the Mean High Water Mark doesn't change - it's a State Law. He asked that if the new signs state "No Trespassing on Private Property or Dunes" could the police department then enforce a violation without the owner's presence.

Comm. Lucibella motioned to approve the Proposed Beach Signs with the following amendments: Removal the "Beach Access" at the top and replace with "Town of Ocean Ridge", removal of the arrows

## REGULAR TOWN COMMISSION MEETING HELD DECEMBER 1, 2014

at the top, removing the “No Life Guard and Swimming at Own Risk”, removing the “No Unloading” and adding “On Beach” to the “No Vehicles”. Seconded by Comm. Aaskov.

Merilee Lundquist, 6275 N Ocean Blvd, distributed her warranty deed and survey to the Town Manager & Town Attorney. Clerk Hancsak put her survey on the overhead for the public. It showed the property lines and the MHW and ECCL. She was concerned about adverse possession issues. She stated that she has had intrusive behavior on her land, and stated that there are other parks in the area for the public. While she appreciated the Beach Renourishment, she did not feel it was a great solution of helping the beaches to the south. She felt that Manalapan should be required to have quarterly reports of the sand transfer. Manager Schenck stated that Manalapan does have quarterly reports and he would forward the reports to her.

Peter Burling, 7 Osprey Court, stated that instead of all the No’s, some of them could be combined on one line, and instead of “No” to say “Prohibited” to make it less negative. He was in favor of “No Unloading” staying on the sign as he has observed large and multiple vehicles loading/unloading on Old Ocean, but that “No Stopping” be removed. He feels the public should park over the bridge and walk to the beach.

Jerry Lower, 2 Harbour Drive North, stated that he does stop to unload his kayak at the beach, and then return on foot. He was concerned that we may be showing partiality to residents only. Comm. Lucibella stated that police can always use discretion when giving warnings or ticketing.

Motion Carried – yea (4). Comm. Bonfiglio – nae (1).

10. Authorize Closing the Administrative Office on Friday, Dec. 26, 2014 and Friday, Jan. 2, 2015 with Staff Utilizing a Vacation Day for Each.

Comm. Allison motioned to authorize closing the Administrative Office on Friday, Dec. 26, 2014 and Friday, Jan. 2, 2015 with Staff Utilizing a Vacation Day for Each. Seconded by Comm. Lucibella.

Motion Carried – yea (5).

### RESOLUTIONS

11. Resolution No. 2014-14; Designating the Supervisor of Elections and the Town Clerk as the Canvassing Board, to be in Attendance for the Testing of the Computer Electronic Systems Tabulating Equipment to be Used for the General Election Scheduled for March 11, 2014 and to Canvass Returns of Such Election Including the Absentee Ballots; Assigning Supervisor of Elections to handle the Absentee Ballots

Atty Spillias advised that he represented the SOE but he did not prepare the resolutions or agreement.

Town Clerk Read the Title for Resolution No. 2014-14

Comm. Allison motioned to approve Resolution #2014-14. Seconded by Comm. Bonfiglio

Motion Carried – yea (5).

12. Resolution No. 2014-15; Authorizing the Mayor and Town Clerk to Execute the Agreement for vote Processing Equipment Use and Election Services by and Between the Palm Beach County Supervisor of Elections (SOE) and the Town of Ocean Ridge.

Clerk Hancsak read the title for Resolution No. 2014-15.

## REGULAR TOWN COMMISSION MEETING HELD DECEMBER 1, 2014

Comm. Bonfiglio motioned to approve Resolution No. 2014-15. Seconded by Comm. Allison.

Motion Carried – yea (5).

### FIRST READING OF ORDINANCES

13. 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

Mayor Pugh read the Title of the Ordinance. 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. It was open for Public Comment.

Manager Schenck summarized that this was a result of the Sivitilli's request to the Commission to allow them to continue the mixed use of the 5011 Building. Once adopted, this Ordinance would modify the existing grandfather code. A development agreement regarding restriction of use and a time frame to complete the needed modifications of the property could be completed separately and executed prior to the 2<sup>nd</sup> reading and adoption.

Rob Sivitilli, 10 Fayette, stated that he is prepared to set up an Indemnification for Ocean Ridge to cover any potential legal expenses.

The following individuals were in favor of continuing the mixed use: Donna Tardiff (8 Fayette Dr), Sandy Foster (5900 Old Ocean), citing that it should be kept as part of the Town History and was unsure if anyone had standing for a lawsuit.

The following individuals spoke in opposition of continuing the mixed use: Terry Brown (Harbour Dr), Gary Kosinski (6000 Old Ocean Blvd), Don Magruder (9 Ridge Blvd), Gerry Magruder (9 Ridge Blvd), citing a concern for exposing the Town to potential lawsuits for extending the agreement that had expired, exhausting the Town's resources and time over the many years, and the appearance of spot zoning, and if approved they felt the Sivitilli's should reimburse the Town for past expenses and prepare a significant bond for contingent liability.

Steve Goindoo, Henri's Apts, 1 Tropical Drive, summarized the Town Atty Memo regarding this Ordinance, and was uncertain of potential law suit as no case law had been found. He would be in favor, however; of developing a commercial zone area for a larger area in the south end of Ocean Ridge. There was already commercial use in the properties across the street in the county pocket and Briny Breezes.

Public Comment was closed.

Comm. Bonfiglio stated that while he was on the P & Z Commercial they had struggled over what to do with the RMM Zone. He saw no problem however with them revisiting a possible commercial area in a few years but was not in favor of Spot Zoning. If the residents of Ocean Ridge wanted to see a change to the Town's current zoning, he would prefer a Comprehensive Plan Change through an application process in lieu of Spot Zoning. He noted that there were already 2 empty bank buildings across from the 5011 Building, and there seemed to be little interest for businesses along A1A in that area.

REGULAR TOWN COMMISSION MEETING HELD DECEMBER 1, 2014

Comm. Allison stated that when she purchased her home no promise was given to her that Ocean Ridge would be strictly residential with no commercial use. The Sivitilli's made promises for building improvements and an indemnity bond for potential legal fees. She was in favor of an Agreement that would hold them to a deadline, and she wanted the improvements to make a big difference. She would vote for the continued use.

Comm. Lucibella was very concerned with potential legal challenges that the Town would face if the mixed use continued. He felt this is a selective choice for just one property. He asked if the Town Attorney could guarantee success if Ocean Ridge was sued. He was also concerned if this agreement would be transferrable to the next owner, and how it would limit the use of the property.

Atty. Spillias stated that this Ordinance was not "Spot Zoning" because it was adjacent to other Commercial properties. The time period for continued mixed use in the settlement agreement had expired but not the current residential use of the property. He stated that besides adopting this Ordinance there would be an agreement with the Sivitillis' to provide stipulations, required improvements and a financial commitment to Ocean Ridge. He also advised that anyone suing the Town would have to show special injury. Instead of this Ordinance, the Town would be more protected through a new Comprehensive Plan Amendment that allowed Commercial use. He also stated that any indemnity bond should be for 5 years and 6 figures. The grandfathering status applied to the use. Nothing would be allowed beyond the nature of what is there now at the 5011 Building.

Rob Sivitilli stated that he had submitted to Town Hall a permit for the proposed improvements to the 5011 Building. He also noted that a FDOT permit was required for their parking lot, and was informed by FDOT that a lease agreement would be required for the use of the ROW so they revised the plan so none of the parking spaces encroached into the ROW.

Comm Allison moved to approve Ordinance No. 610 on first reading. There was no second. Mayor Pugh passed the gavel to Vice Mayor Allison. Mayor Pugh seconded the motion. Comm. Bonfiglio objected to the action of passing the gavel.

Motion Died – yea (2); Comm. Bonfiglio, Comm. Lucibella – nae (2)

Rob Sivitilli stated that he was disappointed with the decision, and he requested that the Commission then consider them for deannexion from the Town of Ocean Ridge.

Atty. Spillias advised that there was a formal application process to de-annex. It involves Palm Beach County and a new Comprehensive Plan, and that the Commission should wait until a proper application was received before discussion.

Meeting Adjourned at 8:05 pm.

Attest By:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor Pugh

\_\_\_\_\_  
Commissioner Aaskov

\_\_\_\_\_  
Commissioner Allison

\_\_\_\_\_  
Commissioner Bonfiglio

\_\_\_\_\_  
Commissioner Lucibella