

## REGULAR TOWN COMMISSION MEETING HELD JANUARY 12, 2015

Regular Town Commission Meeting of the Town of Ocean Ridge held on Monday, January 12, 2015, 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

Town Manager Schenck stated, in light of the long agenda, Merilee Lundquist would defer her Item (#10) until the February 2, 2015 Regular Meeting. The Commission concurred.

### CONSENT AGENDA

1. Minutes of Regular Town Commission Meeting of December 1, 2014

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

Motion Carried – yea (5).

### ANNOUNCEMENTS AND PROCLAMATIONS

2. The Administrative Offices will be closed on Monday, Jan 19<sup>th</sup>, 2014 for the Official Holiday.
3. 2015 Municipal Election/Eleccion Municipal 2015
  - a. Proclamation for Election Held on March 10, 2015/Proclamacion para eleccion sostenida el 10 de marzo de 2015
  - b. Two Commission Seats Open for a Three Year Term/Comision dos puesto para tres anos cada
  - c. Candidate Filing Dates run noon January 27, 2015 through noon on February 10, 2015/Las fechas de la clasificacion del candidatos recorren mediodia 27 de enero de 2015 de mediodia del 10 de febrero de 2015
4. Proclamation for “National Stalking Awareness Month” in January

### PUBLIC COMMENT

Dr. Jim Weege, 19 Sabal Island Drive, provided a brief update on the status of the Koi pond account. He advised that there is currently \$1,205.53 in the account and annual expenses usually average between \$300-500. He also thanked the staff for their assistance and also read the names of several of the major donors, including the Garden Club.

Terry Brown, Harbour Drive, commented that there is a wide area of ROW by Ocean Walk and Portofino (5800 blk SR A1A) that entice trucks to constantly use as a turnaround area and consequently tear up the grass. He suggested that brick pavers be placed in this area.

Joe Belmonte, 5600 N Ocean Blvd., commented that protecting the mangrove trees actually harms the habitat and cause silt collection.

### PUBLIC HEARINGS

None

### REPORTS

5. Town Manager

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Manager Schenck reported the following: 1) Police Chief Leaving Town's Employ – Over the past few weeks there has developed a contentious situation between the Police Chief and one of the Commissioners that is creating problems with the daily duties that unfortunately he does not see ending. Another conflict is the tension between the Officers and the Chief creating uneasiness with the Officers that trickles down to their work ethic and interaction with the residents. He felt both need to be corrected and the only way to correct both issues is to replace the Police Chief as he is heavily involved in both issues. He gave the Police Chief the option of retiring or being terminated, of which he chose not to retire. His last day of employment will be Jan. 16, 2015. He believed this would be in the best interest of the Town.

Manager Schenck commented that this was not an easy decision or one that he took lightly. He stated the initial reason was related to Comm Lucibella finding a credit card which was addressed improperly, whereby outside agencies were involved and it was determined that it was not a problem. This has caused problems and coupled with the low morale of the Police Officers, because of his strict style of management, he felt the only way to correct both was to terminate the Police Chief.

Manager Schenck also mentioned that the recent article in the Coastal Star contained two quotes that were incorrect. He stated he did not believe that he ever said that Comm Lucibella has lined up other votes to dismiss the Chief. He also stated that Comm Lucibella did not contact other Commissioners or ask for votes and added that he has barely spoken with Comm Lucibella.

Mayor Pugh asked Atty Spillias to explain the legal ramifications regarding this item. Atty Spillias stated that the item before the Commission was actually action taken by the Town Manager per the Charter at Section 4.04. The Charter lays out the authority to confirm a hiring by the Commission, however; suspending or terminating a position is solely the decision of the Town Manager. The item is on the agenda for Commission review. He added that in the Code of Ordinances, Section 2-26 provides a mechanism for the Commission to discharge an employee for cause thereby usurping the general authority of the Town Manager. He concluded by stating that no formal action is necessary by the Commission unless the majority of the Commission do not feel the action is just. He stated the Commission can direct the Town Manager to reverse his decision but the Commission is not required to do so.

Atty Spillias advised that the Town has received 2 letters from the Chief's counsel. The first letter asked to meet with the Town Manager and Town Atty prior to the Commission discussing this item (meeting prior to the Jan 12 meeting was not possible). The Town Manager felt postponing the item until the February 2<sup>nd</sup> meeting was not in the best interest of the Town. The Town received another letter today that he felt his counsel has not interpreted the Town's codes correctly. He stated that both indicate a potential for civil litigation for wrongful termination. He also cautioned all present that everything said in this meeting was public record and could be used as evidence at a later time.

Mayor Pugh reiterated that the first letter asked for the Town Manager to seek a possible reasonable resolution to both sides, and for the Town Manager to suspend any action until after they met and prior to the item being placed on a Commission agenda. He stated that delaying it another month would leave the Chief and Officers in limbo. The second letter presents the possibility of litigation. Mayor Pugh suggested that the action not be suspended, however; if the Town Manager and Town Atty can meet with the Chief and his counsel on Thursday then a Special Meeting could be scheduled for Friday, adding this does not meet the guidelines for a shade meeting because no litigation has been filed as of yet. The purpose of the Special Meeting would be for staff to present the meeting results and/or recommendations and then the Commission would need to take action. Atty Spillias advised that the meeting would need to be scheduled no later than Friday because Jan 16<sup>th</sup> is the last day of employment.

Comm Bonfiglio moved to direct staff to schedule a meeting with the Chief and his counsel for Jan. 15<sup>th</sup> to discuss the letters and a reasonable resolution and that a Special Meeting be scheduled for Jan. 15<sup>th</sup> at 6 PM to discuss the results. Comm Aaskov seconded the motion.

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Comm. Lucibella questioned what type of issues would be discussed to which he was advised possibly severance, nature of termination, referrals, etc.

At this point the meeting was opened to the Public.

Peter Burling, 7 Osprey Drive, thanked the Town Manager and Town Attorney for the proposed meeting and possibly reaching a settlement.

Bob Merkel, 118 Marlin Drive, commented that he has been a defense attorney for over 40 years and has handled many of these types of cases and knows this area of the law. He stated that the cost for litigation could well exceed six figures and will result in a complete disaster. He agreed with the Mayor's suggestion to negotiate to settle the case, adding that all parties may be satisfied.

Due to the amount of public comment the following is a list of those individuals speaking in support of retaining the Police Chief:

Gilbert Panzer, 6810 N Ocean Blvd.; Betty Bingham, 1 Ocean Ave.; Roger Bennett, former Mayor and resident of Briny Breezes; Barbara Molina, current Alderwoman and Briny Breezes resident; Haley Joyce, 133 Island Drive; Robert Sloat, 6550 N Ocean Blvd; Dana Beach, 6766 N Ocean Blvd.; Edward Brookes, 15 Ocean Ave.; Kristine de Haseth, 29 Sabal Island Drive; Jerry Lower, 2 Harbour Dr No; Albert Naar, 6103 N Ocean Blvd.; Donna Tardiff, 8 Fayette Drive; Roger Crane, former Police Chief of South Palm Beach; Tom Perry, 19 Harbour Drive So; Joe Belmonte, 5600 N Ocean Blvd.; Dale Sugarman, Town Manager of Lake Park and prior co-worker of the Chief when employed in Boynton Beach; Jim McAndrews, 131 Island Drive; Sandy Foster, 5900 Old Ocean Blvd.; Ed Bresnihan, 5600 N Ocean Blvd.; Joe Koyner, resident of Briny Breezes; Terry Brown, Harbour Dr So; and Fred Joyce, 131 Island Drive.

Some of the comments by those listed above include: the Chief was an outstanding professional public servant, takes his duties very seriously, they felt very safe and satisfied under his command, lack of any type of negative review performance or evaluation and his salary was actually increased last year to become more in line with other Police Chiefs, and they cited that they felt he had expertise in his field. Several additional comments also included; the recording released to the press was embarrassing and disgusting, Comm Lucibella and/or the Town Manager should resign or be removed from office because they felt it was apparent that there was personal animosity towards the Chief; this may be a ploy to begin discussions again regarding switching to PBSO; and also that the Town Manager should have provided more guidance or at the least progressive discipline if necessary.

Kimberlee Marshall, 5905 N Ocean Blvd., stated that she supported Comm Lucibella, has known the Town Manager and is happy with the Chief and felt that they all should work out their differences.

Daniel Spotts, 1 Sailfish Lane, stated that he thought the whole beach issue was solved several months ago, but he is dismayed that enforcement is now subject to the police department discretion because this is an undue pressure on them. He further stated that he doesn't care for the Chief, citing previous problems in the past, but in all fairness to him the Town Manager makes the decisions and if the Commission is not satisfied in the manner the Town is run they should look higher.

Tina Gray, Harbour Drive North, questioned who released the recording to the press and recorded Comm Lucibella without his knowledge. She stated that not all residents are in favor of the Chief.

Public Comment was now concluded.

Chief Yannuzzi introduced his sons, Christopher and Michael, adding that one of them was representing him tonight. He stated that he cancelled attending a conference to attend the rescheduled meeting tonight. Chief Yannuzzi requested to play the recording in its entirety to which Mayor Pugh advised that it would not be played, however; it was public record if anyone wished to listen to it a later time. He agreed that it

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was egregious but it would not be played at this meeting. Comm Lucibella clarified that since he was the subject of the recording he wanted the opportunity to respond.

Chief Yannuzzi summarized his 41+ years involved in law enforcement which included: Dispatcher, NJ Police Officer, Retired Lt. with Boynton Beach, and current Ocean Ridge employee since 2006. He was hired in Ocean Ridge as an investigator under then Chief Hillery, promoted to Lt. (also working as administrative asst. during the new Town Hall construction), and to Police Chief in 2010. He stated that the statements made by the Town Manager were not correct and were lies. He proceeded to read an email to the Town Manager dated 1/7/15 which provided a synopsis of their meeting regarding resigning, his lack of an evaluation, a 21% increase in 2013, the Charter requiring termination "for cause" and the "cause" according to the Town Manager would be the reporting of Comm Lucibella's potential violations to several agencies, and the fact that he contacted the Town Manager, the Town Attorney, and Mayor regarding the suspected violations prior to contacting the agencies. The report was then distributed to the Mayor and Commissioners. He concluded that his email and expressed that he would like to continue serving as Police Chief. Chief Yannuzzi then read the Town Manager's reply email that stated his last evaluations were good but the latest confrontation has pitted some of the Commissioners against each other and the staff creating a bad situation. He also mentioned the tension that exists within the police department which affects the Officer's work and attitude with the residents. The Town Manager concluded the email by stating that he believed it was in the best interest of the Town for the Chief to end is employment with the Town and either way his final day would be Jan. 16, 2015.

Chief Yannuzzi concluded his comments by stating that he questioned the tensions between the Police Officers because production has increased and crime has decreased, even with being short staffed. He stated that he has attempted to work with the PBA on the proposed contract and obtaining definite increases over the next 3 years.

Comm Lucibella stated that he was aware that it wasn't required for him to respond, however; more than one half the comments involved him. He clarified for the record that he was opposed to contracting with PBSO. He stated that while he enjoyed a relationship with the previous chief he has had difficulties with Chief Yannuzzi prior to running for Commissioner and also since but wished him no ill will. He commented that the majority of the public hearing the recording only heard 15 seconds of an 8 minutes tape. He added that transparency is both ways and that the public should read the 6 page narrative prepared by Chief Yannuzzi. Comm Lucibella clarified with the Town Manager that the Manager was never pressured by him regarding how the beach enforcement should be handled, nor did Comm Lucibella ever use the term termination or firing because he expected the Town Manager to manage the Town. He added that when the Town Manager polled the Commissioners regarding the turmoil in the police department he was not even contacted. He commented that he felt the Chief needed to be brought under control.

Comm Lucibella read from the 6 page narrative prepared by Chief Yannuzzi that he found a credit card, contacted the owner, and asked an Officer a hypothetical question regarding turning over the card and said he would give it to the Chief. He stated that he forgot about the card and that the Chief decided it was a possible criminal offense and questioned whether there was a credit card at all. He stated that the law allows wire taps for several types of investigations but an 8 minute recording for a hypothetical concerning a credit card was not one of them. He felt the Chief was attempting to intimidate him by forwarding information regarding a possible felony charge to various agencies. He felt the whole situation was scripted and that under the color of law the police are not permitted to intimidate individuals.

Comm Aaskov mentioned the potential for lawsuits, citing that his last evaluation was done in 2012 and was outstanding and there has been nothing negative since. She added that he should have been counseled by his supervisor if it was warranted. She felt the situation was an embarrassment to the Town.

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Comm Allison stated that an embarrassment was understated but she was also glad to hear all of the residents' comments. She stated she was offended by the Town Manager's action, citing that the Chief has no grievances in his file, his last evaluation in 2012 was outstanding, and he was given a 21% salary raise. She understood that not all of the department was happy but stated there should have been team building. She was ashamed of the recording and felt the Town Manager was bullied into his decision. She felt no meetings were necessary because the Chief should not be terminated.

Comm Bonfiglio stated that he has listened to the recording, reviewed the report, reviewed the Charter and Code of Ordinances, and spoke with residents, the majority of whom relayed not many positive results. He stated there was obviously discord in the department, citing the turnover over the last few years. He reviewed the information from the standpoint of what was legal/illegal and it was determined that Comm Lucibella did nothing illegal, while the Chief's recording was illegal. He spoke with both the Town Manager and Town Attorney and felt this "was the straw that broke the camel's back". He felt the decision by the Town Manager was justified and added that the Town cannot fire all of the officers to solve the issues but should fire the Chief (using a baseball team/manager as an example). He concluded by stating that he agreed with the Town Atty interpretation of the Charter in that the Town Commission does not have the authority but felt it would be a good idea for the parties to meet to try to resolve the situation. The Town needs to face the possibility of potential litigation from both the Chief and Comm Lucibella.

Mayor Pugh asked for everyone to step back from their emotions and look at the facts. Comm. Lucibella found a credit card on his property, after discovering it was stolen he reported it to the Broward Police Department. Comm. Lucibella was recorded by Chief Yannuzzi without his knowledge. Chief Yannuzzi aggressively pursued to inform the State Attorney's office and the Inspector General without consulting management. In the past Chief Yannuzzi had always been very professional and detailed and was surprised that he allowed this incident to make him act unprofessional to a Commissioner. The Town Manager's position is responsible for hiring/firing of personnel. He was in favor of scheduling a special meeting.

Motion Carried – yea (5)

Mayor Pugh allowed for a recess at 8:09pm.

Meeting resumed at 8:20pm.

Mayor Pugh stated that due to time constraints he was in favor of tabling Items #14 to the February 2<sup>nd</sup> meeting, and Item #15 to January 15<sup>th</sup> meeting. The Commission concurred.

Comm. Allison motioned to table Item #14 to the February 2<sup>nd</sup> meeting, and to table Item #15 to the January 15<sup>th</sup>, 2015 meeting. Seconded by Comm. Aaskov.

Motion Carried – yea (5)

### 5. Manager Report

Manager Schenck resumed his Manager's Report: 2) Eleuthera Drive Drainage Improvements - the drainage improvements are almost complete, there have been problems 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. 3) Spanish River Drive – water is ponding, and we have also discovered a broken storm pipe. We are analyzing the best way to solve the problem. 4) FEMA Flood Maps – FEMA is still reviewing our maps. 5) Old Ocean Right of Way – The signed documents have been recorded at the County and sent to the property owners. The residents have refunded the Town the expenses. 6) Town Hall Utility and Access Easement – Mr. Swaim is still working with the regulatory agencies. 7) PBA Contract Negotiations – A mediator has been selected and the meeting that was scheduled for January 15, 2014 to discuss the PBA contract will be rescheduled at a later time. 8) LPR

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Cameras – The workshop was held on December 16<sup>th</sup>, and about 15 residents attended along with 10 officers from other communities. It was an excellent presentation. We’re considering that Delray Beach house all the equipment, however we will wait for their new City Manager to determine his interest in the camera system. 9) FDOT Bridge Inspections – They performed inspections of the Inlet Cay and Sabal Island Bridges. Both bridges are in good condition however they did point out potential structural problems. Copies of these reports have been forwarded to Bridge Design Assoc. Inc. for their evaluation and cost of any needed repairs. They also will be looking at the associated seawalls for any necessary erosion repairs. 10) Woolbright Detention Pond – the pond is about 10 years old and in need of maintenance to keep it operating properly. At the February Meeting, Aquagenix will submit a proposal of their recommendations for any repairs. 11) Sand Transfer Station – it was questioned regarding the volume of sand transferred to Ocean Ridge from Manalapan. The County oversees the station and its operation, and submits a monthly report. The volumes vary depending on the erosion and sand flow south along Manalapan, and there is no way to enhance or delete the volume available.

6. Town Attorney

- a. Update on Class Action Suits for the Municipal Derivatives and Aqualogic, Inc. Settlement

Atty Spillias stated that a claim had been filed, and they were awaiting a court decision.

7. Police Chief

Chief Yannuzzi summarized his report. Last week was Law Enforcement Appreciation week, and Officer Jones had received a commendation for assistance with a car crash.

8. Town Engineer

Engineer Tropepe was absent with notice.

### ACTION ITEMS

9. Request to Discuss Possible De-Annexation of 5011 North Ocean Blvd. By: Rob Sivitilli, representing property owner

Comm. Aaskov asked if she had to recuse herself. Atty. Spillias stated in this instance it was not necessary.

Rob Sivitilli, owner of 5011 N Ocean Blvd, presented Michael Weiner, PA. Atty. Weiner gave a summary of the property which was built in 1969 with the intent of a mixed use property and actually annexed into the Town. The Commission’s decision to change to all residential was to improve the Town’s public health, safety, and morale values. He asked the Commission to remove the uncertainty of their property and allow them to de-annex from Ocean Ridge to Briny Breezes. It would require a Resolution from Ocean Ridge and Briny Breezes to submit to the State legislation. He asked the Commission to assist in the best purpose for both Ocean Ridge and the 5011 property. Mr. Weiner stated that they were trying to be added to the Briny Breezes agenda for the January meeting.

Comm. Bonfiglio stated that the Representative Hager and Senator Sachs would not approve the bill without local approval. It could take 18 months for a bill presented to legislation, and he felt that is a long time for the property to not be in compliance.

Atty. Spillias recommended that the Commission table a decision to allow Commission time to review and submit any questions regarding the de-annexation. State legislation does have the power to change boundaries of municipalities. He would be surprised if the State legislation did not approve something that both municipalities were already in favor of or vice versa.

There was a consensus to table this item to the February meeting.

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11. Request for Possible Zoning Changes Related to Setbacks and Garages

Jeff Lee, 15 Sabal Island Dr, requested that there be minor changes to the setbacks and garages in the Zoning Code. Many new built homes are impacted by water or road frontages along with the new septic and drain field requirements. He estimated that there were 90 older homes in Ocean Ridge that may be rebuilt.

Comm. Bonfiglio motioned to direct Planning & Zoning to examine these proposed changes at their next available meeting. Seconded by Comm. Lucibella.

Motion Carried – yea (5).

Don Magruder, 9 Ridge Blvd, stated his drainage concern for the new townhouse units on Adams Road. They were installing a brick driveway instead of open pavers.

Terry Brown, 23 Harbour Drive South, stated that the town should be proud that this project was utilizing gray water filtered through the entire property, it should not affect any drainage issues.

12. Approval of an Amount Not To Exceed \$2,000 from the Contingency Account for the Purchase of the Beach Crossover Signs

Manager Schenck presented 2 versions of the beach crossover sign approved at the last meeting. The cost would be \$1680 for the eight signs. We request approval of \$2000 from contingency in case we run into any installation problems.

There was a discussion to remove “Stopping” from the sign.

Comm. Bonfiglio motioned the approval of an amount not to exceed \$2000 from the Contingency Account for the Purchase of the Beach Crossover Signs, 18 X 24, changing the word “NO” to red large print, and with the word “Stopping” removed from the sign. Seconded by Comm. Allison.

Motion approved – yea (5).

13. Authorize Staff to Pursue Notice of Intent to Demolish the Unsafe Structure at 110 Bonito Drive Demolition and Special Assess if Necessary.

Manager Schenck reported that the house at 110 Bonito Drive has been vacant for several years and has accrued about \$195,000 in code enforcement fines. It has been a constant eyesore and a blight to the neighborhood. It is difficult to find the proper owner as Mr. Wismer claims to have given it back to the bank, but they haven't foreclosed. The Town passed an Ordinance allowing us to condemn a building, tear it down and lien the property for the expenses if it is deemed unsafe by the Building Official. This is the type of property and problem it was designed to correct. Staff is asking permission to pursue the Notice of Intent to demolish this unsafe structure.

Comm. Bonfiglio motioned to authorize staff to pursue Notice of Intent to Demolish the Unsafe Structure at 110 Bonito Drive Demolition and Special Assess if Necessary. Seconded by Comm. Aaskov.

Clerk Hancsak advised that this would be the first property for a Special Assessment.

Motion Carried – yea (5).

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Meeting Adjourned at 9:02. pm.

Attest By:

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Town Clerk

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Mayor Pugh

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Commissioner Aaskov

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Commissioner Allison

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Commissioner Bonfiglio

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Commissioner Lucibella