

TOWN OF OCEAN RIDGE

AGENDA



July 6, 2015

6:00 P.M.

TOWN HALL – MEETING CHAMBERS

TOWN COMMISSION

Mayor Geoffrey A. Pugh

Commissioner Gail Adams Aaskov

Commissioner Lynn L. 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 Hal Hutchins

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 June 1, 2015**

MOTION	SECOND	DISCUSSION	VOTE
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ANNOUNCEMENTS AND PROCLAMATIONS

2. **The Administrative Offices will be closed on Friday, July 3, 2015 for the Official Holiday**
3. **The FY 2015/16 Budget Presentation/Adopt Proposed Millage Meeting and Special Meeting will be held on Tuesday, July 21, 2015 at 8:30 AM**

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

PUBLIC HEARINGS

4. **An Application Submitted by Mark Timothy, Inc. 41 SE 5th Street, Boca Raton FL 33432, representing the owner, 6125 N Ocean Blvd. LLC, Mark T. Pulte, Member, 41 SE 5th Street, Boca Raton FL 33432, Requesting a Land Development Permit from the Provisions of the Land Development Code, Article 2; COASTAL CONSTRUCTION, Section 67-17; Coastal Construction and Excavation Setback Line; Sub-Paragraph (a); Setback Line Established; and Sub-Paragraph (h) Existing Structures to permit the construction of a new single family residence with 4 car garage with a maximum finished floor elevation of 20.31' NGVD (same as structure to be demolished) which would extend a maximum of 128.40' (+/-) east of the Coastal Construction Control Line (CCCL) and also a new deck, pool, spa, and fire pit that will extend a maximum of 164.66' (+/-) east of the CCCL, and also repairing the existing dune crossover located at 6125 N Ocean Blvd. (corner of Anna St. and SR A1A) or legally described as Amended Plat of Boyntons Sub sly 21.72' of Lot 10 and Lots 11 & 12, Blk 3 & the pt of Block 10 lying west of & adjacent to abandoned Ocean Blvd. (exact description available for review in the Clerk's Office)**

REGULAR AGENDA

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

REPORTS

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

ACTION ITEMS

9. **Request for Lien Reductions and Associated Fees for 40 Hibiscus Way By: Stellar Alon VP, LLC**
10. **Approve and Confirm the Hiring of Two Police Officers (Richard Ermeri and Jimmy Pilon) By: Kenneth Schenck, Town Manager**

11. **Authorize an Amount Not to Exceed \$25,000 from the Contingency Account to Fund the Demolition of 110 Bonito Drive as Authorized by Ordinance 592**
By: Kenneth Schenck, Town Manager

RESOLUTIONS

12. **Resolution No. 2015-04; Amending the 2014/15 Budget to Include a Transfer from the Unassigned Fund Balance to the General Fund Operating Budget (for the purpose of reimbursement of legal fees to Commissioner Lucibella)**

FIRST READING OF ORDINANCES

None

SECOND READING AND ADOPTION OF ORDINANCES

13. **Ordinance #611; Providing for the Date of the Annual Town Election in March, 2016, to Coincide with the presidential Primary; Establishing the Proposed Qualifying Period for Candidates; Providing for Supremacy of This Ordinance Over All Ordinances Inconsistent with or in Conflict with Ordinance**

TOWN COMMISSION ITEMS

(Information Items Only – 3 minute limit per item)

ADJOURNMENT

**NEXT SCHEDULED TOWN MEETING(S):
PROPOSED BUDGET/SPECIAL MEETING ON JULY 21, 2015 AT 8:30 AM
REGULAR TOWN COMMISSION MEETING ON AUG 3, 2015 AT 6 PM**

REGULAR TOWN COMMISSION MEETING HELD JUNE 1, 2015

Regular Town Commission Meeting of the Town of Ocean Ridge held on Monday, June 1, 2015, at 6:00 PM 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 Clerk Hancsak distributed proposed advertisements for both the Town Manager and Town Clerk and asked whether to discuss the item on this agenda. The consensus was that the Commission would review the ads, provide comments, and staff should advertise prior to the next Commission meeting.

CONSENT AGENDA

1. Minutes of Regular Town Commission Meeting of May 4, 2015
2. Minutes of Workshop Commission Meeting of May 27, 2015

Comm. Allison motioned to approve the Consent Agenda/Agenda. Comm. Aaskov seconded the motion.

Motion Carried – yea (5).

ANNOUNCEMENTS AND PROCLAMATIONS

3. The Administrative Offices will be closed on Friday, July 3, 2015 for the Official Holiday

PUBLIC COMMENT

Steve Coz, 2 Osprey Court, thanked the Chief for the police patrols in his vicinity.

PUBLIC HEARINGS

None

REGULAR AGENDA

REPORTS

4. Town Manager

Manager Schenck reported the following: 1) Spanish River Drive – water is ponding, staff is analyzing the best way to solve the concentration problems in the driveway. 2) FEMA Flood Maps – FEMA is still reviewing our maps, however; the Town is requesting that they remove an additional 80 properties from the flood zone. They have agreed to look at it for their major study but staff would prefer them to make the changes in the present study. 3) LPR Cameras – FDOT has a present ban on the addition of new cameras in their right of way. Three of our four entrances are affected by this. The Police Chief's Association is looking to address this in the legislature next year. 4) FDOT Bridge Inspection – The approved bridge repairs have started. 5) Home Alarm Monitoring System – The new receiver/software has been installed and is working properly. 6) Adams Road – The repaving of the road is complete. 7) Wastewater Proposal – Staff was approached by several people involved with the wastewater plant at Crown Colony that currently serves 3 condos. They wanted to look into sending their wastewater to Boynton and abandoning their plant, thereby eliminating their package plant. Other condominium buildings are also possibly interested. These plants are old and expensive to repair/operate properly. Boynton Beach is also enthused about treating the wastewater and suggested a route for the piping. Staff is looking into the preliminary cost of the project to see if the residents want to continue with the project. At present it appears favorable. 8) All Aboard Florida – A hearing was held in Tallahassee to consider the issuance of bonds for the project. The Board that is to make this decision was not present but they sent

REGULAR TOWN COMMISSION MEETING HELD JUNE 1, 2015

their staff. He will keep the Commission updated. 9) Spanish River, Swaim Project – The SFWMD and Mr. Swaim went to court to determine if he can complete his project, which includes mangrove removal and filling in an existing waterway, without the normal permits. The judge is reviewing the case and according to the SFWMD it may take a couple of months to reach a decision. He will keep the Commission advised.

Manager Schenck also reminded the Commission of the upcoming Ethics Training at Palm Beach State College on June 17th. Comm Lucibella clarified that they had until the end of the year for compliance. Atty Spillias commented that he would be a presenter regarding public records.

Manager Schenck also mentioned to anticipate a Change Order for the Inlet Cay Bridge Repairs because a chunk of concrete fell out during the repairs.

5. Town Attorney

a. Update on Municipal Recall Lawsuit

Atty. Spillias updated the Commission. He stated that both parties presented their cases before Judge Keyser on May 6th. At the end of the hearing the Judge indicated that after review he would notify the appropriate party for a proposed draft order. He has since requested that Atty Calloway prepare a proposed order, which was submitted today. He added that Mrs. Joyce could also ask to consider her requested findings. Atty Spillias also stated that the May 29th date to submit the filing of the Recall Defense has passed so there will be no recall election. The Judge could decide that the case is moot, however; he did not feel he will, and from the Town's standpoint a ruling should be made on whether they could file the same repeat violation. He felt the ruling would be received before the next meeting.

b. Update on Inspector General Lawsuit

Atty Spillias advised that both the County and Municipalities have filed appeal notices before the 4th District Court of Appeals. He added that the Town should budget for the current and back payments to the Inspector General.

6. Police Chief

Chief Hutchins advised that his report was distributed and there were no questions.

7. Town Engineer

Engineer Tropepe was absent with notice.

ACTION ITEMS

8. Request for Matching Funds to Beautify the Patio Area of Town Hall for the FY 2015/16 Budget By: Kristine de Haseth, President of the Ocean Ridge Garden Club

Kristine de Haseth, commented that the Garden Club was established in 1966 and they have completed many Town beautification projects. She stated that they are interested in taking an active role for beautification for the Town Hall. She commented that the original Town Hall renderings included a patio pergola. The Garden Club would like to see the patio area developed as an outdoor community gathering space, possibly including a pergola, benches, and also a butterfly garden. She requested the Town set aside \$5,000 for the FY 2015/16 budget and they would match the funding and also seek donations.

Betty Bingham, 1 Ocean Ave., stated she was concerned with beautifying the patio area citing; noseums, projectiles from storms, and butterfly gardens usually have invasive plants that will spread. She advised that the Garden Club has not voted on this proposed project yet and felt the Town should look at other ways to utilize the beautification fund.

REGULAR TOWN COMMISSION MEETING HELD JUNE 1, 2015

Comm Aaskov felt that before funds are allocated the staff and Commission should offer suggestions for the patio area. She felt butterfly gardens were not attractive and agreed that the invasive plants will spread. She agreed, though, that the area should be enjoyed.

9. Appoint Open Position to the P & Z Commission (Deferred from the May 4, 2015 Meeting)
Town Clerk Hancsak commented that there was still an Alternate Planning & Commission vacancy that was advertised in the Tidings. Staff had received two resumes; David Hutchins and Robert Sloat.

Comm Allison nominated Robert Sloat stating that he attends Town meetings and serves on other boards.

Mayor Pugh commented that David Hutchins was a 24 year resident who recently retired and has volunteered his time.

Comm Allison moved to appoint Robert Sloat as the alternate member to the P & Z Commission. There was no second to the motion.

Comm Aaskov moved to appoint David Hutchins as the alternate member to the P & Z Commission. Comm Lucibella seconded the motion.

Motion carried – yea (5).

10. Approval of Building/Zoning Duties and Inspections Contract with Hy-Byrd Inc for a Three-Year Period Covering Period of August 1, 2015 – July 31, 2018 Without Changes to Existing Fees and Providing an Option for Additional One Year Extensions

Town Manager Schenck advised the current contract for both zoning and building will be expiring July 31st. The Town has experienced a good working relationship with Hy-Byrd and they are proposing another 3 year contract without increasing the rates. The only change to the contract would be the option for one year extensions after the three year term. He recommended approval of the contract with Hy-Byrd Inc. for plan reviews, zoning assistance, building official duties and building inspections.

Comm Aaskov moved to approve the three-year contract as proposed with Hy-Byrd Inc. Comm Lucibella seconded the motion.

Motion carried – yea (5).

11. Authorize Renewal of Annual Landscaping Maintenance Contract (minus any special projects) with Chris Wayne and Associates in the Amount of \$43,008 to be Budgeted for FY 2015/16

Town Manager Schenck advised that the current contract will expire on Sept. 30th and Chris Wayne and Assoc. has offered to renew without any increase. They have been providing these services since 2008 and continue to do a good job. The last time the Town went out to bid only one was received, which was 4 times higher. Staff recommended renewal of the contract.

Comm Aaskov moved to renew the One-Year Contract with Chris Wayne and Assoc. in the amount of \$43,008 (excluding special projects) effective Oct. 1, 2015. Comm Allison seconded the motion.

Betty Bingham complimented the contractor but added that maintenance should also be considered when contemplating new plants.

Motion carried – yea (5).

12. Authorize Renewal of the NoSeeum Annual Contract with Clarke Environmental Mosquito Management, Inc. at a Cost Not to Exceed \$65,000 from the Proposed FY 15/16 Budgeted Funds

REGULAR TOWN COMMISSION MEETING HELD JUNE 1, 2015

Town Manager Schenck commented that the contract with Clarke will expire on Sept. 30th and staff recommended renewing the contract. He advised that there is only one other company with this type of experience and when contacted they advised they weren't interested in bidding. The current year budget includes \$50,000 for spraying, however; there has been increased mileage, additional single family and multi-family areas now being sprayed that will increase the cost and may possibly cause this account to be over budget. He added that the problem seems to be worse this year. The cost of spraying is calculated by the mile (currently \$165 per mile per week). Last year it was based on 5.8 miles of vegetation and now has increased to 7.6 miles. Even though the distance increased to 7.54 miles they reduced the cost per mile to \$158.

The Commission agreed that the majority of the residents favor the spraying. Comm Lucibella added that it appeared that the noseums have now become problematic everywhere.

Comm Lucibella moved to approve the NoSeeum Annual Contract with Clarke Environmental Mosquito Management, Inc. at a cost not to exceed \$65,000 from FY 15/16 budgeted funds. Comm Allison seconded the motion.

Steve Coz, 2 Osprey Court, asked if the method or product being sprayed has changed to which he was advised that it has not. He clarified that the spraying may be harmful to butterflies.

Betty Bingham, 1 Ocean Ave., commented that limiting a wall or hedge height to 4' would increase the breezes which would keep the noseums moving or away.

Motion carried – yea (5).

FIRST READING OF ORDINANCES

13. Ordinance #611; Providing for the Date of the Annual Town Election in March 2016, to Coincide with the Presidential Primary; Establishing the Proposed Qualifying Period for Candidates; Providing for Supremacy of this Ordinance Over All Ordinances Inconsistent with or in Conflict with Ordinance

Mayor Pugh read the Ordinance by title only. Town Clerk Hancsak explained that the Town must change the Municipal Election to coincide with the Presidential Primary to be held on March 15, 2016. This will require a change in the qualifying dates to a much earlier period in order to meet the required state and federal laws for overseas and military absentee ballots to be mailed 45 days prior to said election. The qualifying dates will begin at noon, Nov. 24, 2015 and run through noon, Dec. 8, 2015.

Comm Bonfiglio moved to adopt Ordinance #611 on first reading, seconded by Comm Aaskov.

There was no public comment.

Motion carried – yea (5).

Mayor Pugh

Commissioner Aaskov

Meeting Adjourned at 8:20 PM.

Commissioner Allison

Attest by:

Commissioner Bonfiglio

Town Clerk

Commissioner Lucibella

Agenda: July 6, 2015
Memo: Item #4

Town of Ocean Ridge, Florida

Commission Agenda Memorandum
Office of the Town Clerk

Subject: 6125 North Ocean Blvd. – Request for a Land Development Permit for Construction of a new 2 story, 4 car garage with guest area above, new pool/spa/deck and fire pit East of the CCCL

Request:

This request is to raze the existing single family structure & detached guest house, pool/deck and construct a new 2 story single family residence and attached 4 car garage/guest quarters above that will extend 128.40' (+/-) east of the Coastal Construction Control Line (CCCL) along with a new pool/spa/deck and fire pit that that will extend a maximum of 164.66' (+/-) east of the CCCL at 6125 North Ocean Blvd. The structure is located east of the CCCL with an exception of a portion of the garage/guest quarters.

Background:

The Town Code of Ordinances at Section 67-17 requires a Land Development Permit for any construction east of the CCCL. The code also requires that a public hearing be held for any work that requires submittal to DEP for formal permitting. This is not a variance request.

Discussion of Proposal:

The applicant has provided draft site plans. The property is located within the RSE – Residential Estate District, which based on the size of the lot will meet the code requirements. Upon preliminary review of the plans it appears that all of the zoning requirements have been met. The applicant plans on utilizing the same finished floor elevation as the existing structure (20.31' NGVD) and therefore does not need to seek a zoning variance before the Board of Adjustment. Section 64-2(e)(3) of the Town Code permits a height is 36' from the first floor finished elevation.

Potential Solutions:

The Commission may address this issue in a number of ways:

1. Approve the request contingent on DEP approval once it is verified that it meets all of the zoning regulations
2. Deny it if it does not meet all our land development regulations

Legal Issues:

There are no legal issues in approving the request.

Staff Recommendation:

Staff recommends approval of the applicant's request for 6125 North Ocean Blvd. contingent on DEP approval and meeting all of the zoning and building requirements upon actual building permit submittal and review.

PLEASE REMEMBER TO BRING YOUR PACKETS WITH YOU.

PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Town Commission of the Town of Ocean Ridge, Florida will hold a public hearing on Monday, the 6th day of July, 2015 at a Commission Meeting at 6:00 P.M. in the Commission Chambers of the Town Hall, Ocean Ridge, Florida to consider the following:

1. An application submitted by Mark Timothy, Inc., 41 SE 5th Street, Boca Raton FL 33432, representing the owner, 6125 N Ocean Blvd LLC, Mark T. Pulte, Member, 41 SE 5th Street, Boca Raton FL 33432, requesting a Land Development Permit from the provisions of the Land Development Code, Article 2; COASTAL CONSTRUCTION, Section 67-17; Coastal Construction and Excavation Setback Line; Sub-Paragraph (a); Setback Line Established; and Sub-Paragraph (h) Existing Structures to permit the construction of a new single family residence with 4 car garage with a maximum finished floor elevation of 20.31' NGVD (same as structure to be demolished) which would extend a maximum of 128.40'(+/-) east of the Coastal Construction Control Line (CCCL) and also a new deck, pool, spa and fire pit that will extend a maximum of 164.66'(+/-) east of the CCCL, and also repairing the existing dune crossover located at 6125 North Ocean Blvd. (corner of Anna St. and SR A1A) or legally described as Amended Plat of Boyntons Sub sly 21.72' of Lot 10 & Lots 11 & 12, Blk 3 & the pt of Block 10 lying west of & adjacent to abandoned Ocean Blvd (exact description available for review in the Clerk's Office)

ALL PERSONS INTERESTED in these matters may appear before the Town Commission at the time and place aforesaid and be heard. Prior to the hearing the application may be reviewed at the Clerk's Office.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. PERSONS WHO NEED AN ACCOMMODATION IN ORDER TO ATTEND OR PARTICIPATE IN THIS MEETING SHOULD CONTACT TOWN HALL AT 732-2635 AT LEAST 2 DAYS PRIOR TO THE MEETING IN ORDER TO REQUEST SUCH ASSISTANCE.

Dated: June 4, 2015

TOWN OF OCEAN RIDGE, FLORIDA

Publish: Palm Beach Post-Times

1st Publication: June 22, 2015

2nd Publication: July 01, 2015

Karen E. Hancsak

Karen E. Hancsak, Town Clerk

THIS NOTICE IS PUBLISHED PURSUANT TO THE TOWN OF OCEAN RIDGE CODE OF LAWS AND ORDINANCES AND THE FLORIDA STATUTES AND IS POSTED IN FOUR CONSPICUOUS PLACES WITHIN THE TOWN OF OCEAN RIDGE, FLORIDA.

Town of Ocean Ridge

6450 N. Ocean Blvd. Ocean Ridge, FL 33435
(561) 732-2635

Development Action Form

All information must be printed or typed. The completed application must be filed at least thirty (30) days prior to the date of the Town Commission meeting at which the application is to be considered.

Application No.:

Submittal Date:

Property Owner(s) 6125 North Ocean Blvd	Applicant Mark Timothy Inc.
Name: Mark T. Pulte, Member	Name: Mark T. Pulte, President
Address: 41 S.E. 5th Street Boca Raton, FL 33432	Address: 41 S.E. 5th Street Boca Raton, FL 33432
Phone: 561-272-6852	Phone: 561-272-6852

Proof of ownership, along with agent's authorization letter if Application is being submitted by anyone other than the Owner(s), must be submitted with Application along with a property owner list and labels of all residents within three hundred (300) feet and corresponding circumference map from the Tax Collectors Office is to be provided. Must be submitted a minimum of 28 days in advance of hearing.

9 copies of all plans, plats, surveys, including application forms etc. must be submitted with Application. (Further plans, etc. may be required.)

Check Applicable Approvals Being Requested

(Fees per current Town Code (see attached) must be submitted with application.)

Application Appeal		Rezoning	
Annexation		Site Plan Review	
Architectural Review		Special Exception	
Comprehensive Plan Amendment		Plat or Replat	
Planned Residential Development (PRD)		PRD Amendment	
		Construction East of CCCL	x

Departmental Use Only Do Not Write Below This Line

Accepted For Review

Town Official: _____ Date: _____ Fee Paid: _____

Traffic concurrency letter included? Yes No

Approval

Town Commission/Architectural Commission/Building Board of Adjustment and Appeals: _____ Date: _____

Conditions of Approval: _____

General Data

Project Name: 6125 North Ocean Boulevard

Project Location (Address and property control no.): 6125 North Ocean Boulevard, Ocean Ridge, FL

Existing Zoning: RSE (Single Family Residential District)

Proposed Zoning: RSE (Single Family Residential District)

Existing Comprehensive Plan Designation: Single Family

Proposed Comprehensive Plan Designation: Single Family

Existing Land Use: Single Family

Proposed Land Use: Single Family

Total Site Area: _____ Sq. Ft.: 48,855.7 Acres: 1.12

Flood Zone Category: Flood Zones "AE-5", "B" & "C"

Is site currently served by public water? Yes No

Is site currently served by public sewer? Yes No

Residential

Total Number of Dwelling Units: 1 Density (Units per acre): 1

Commercial

Total Square Footage: N/A Number of Buildings: N/A

Describe briefly the nature of any improvements presently located on the subject property:

N/A

Describe type of operation or business proposed; or the proposed construction:

N/A

State the reasons or basis for the Approval request, and explain why this request is consistent with good planning and zoning practice, will not be contrary to the Town's Comprehensive Plan and will not be detrimental to the promotion of public appearance, comfort, convenience, general welfare, good order, health, morals, prosperity, and safety of the Town. Additionally, all standards set forth in the Town Code of Ordinances for Special Exceptions, Variances, Administrative Appeals, etc. must be addressed. (Attach a separate Justification Statement if insufficient space.)
 See Attached Sheet "Exhibit A"

Has any previous Application been filed within the last year in connection with the subject property?
 Yes No If Yes, briefly describe the nature of the Application.

Has a site plan been previously approved by the Town Commission for this property? Yes No
 If Yes, please note date of previous approval.

Exact Legal Description of Property

(Attach if insufficient space)

Provided-see page 4.

Give the name, address, and telephone number for the following persons or firms involved in this development:

Agent (if different from Owner):	Developer: Mark Timothy Inc.
Name: Mark T. Pulte, Member	Name: Mark T. Pulte
Company Name: 6125 North Ocean Blvd LL	Company Name: Mark Timothy Inc.
Address: 41 S.E. 5th Street Boca Raton, FL 33432	Address: 41 S.E. 5th Street Boca Raton, FL 33432
Phone: 561-272-6852	Phone: 561-272-6852

Planner: N/A	Architect:
Name:	Name: Benjamin Schreier
Company Name:	Company Name: AFFINITI ARCHITECTS
Address:	Address: 6100 Broken Sound Pkwy. NW Suite 8, Boca Raton Florida 33487
Phone:	Phone: 561-750-0445
	Florida Registration No.: AA0002340

Engineer:	Landscape Architect
Name: William P. Stoddard	Name: Joe Perterson
Company Name: SCHULKE, BITTLE & STODDARD	Company Name: Peterson Design Professionals
Address: 1717 Indian River Blvd, Suite 201, Vero Bch, FL 32960	Address: 151 S.W. 7th Terrace Boca Raton, FL 33486
Phone: 772-770-9622	Phone: 561-702-0136
Florida Registration No.: FL. Reg. No. 57605	Florida Registration No.: LA 0001355

Witness

Printed Name of Applicant

Applicant is:

- Owner
- Optionee
- Lessee
- Agent

Address:

Phone: _____

LEGAL DESCRIPTION

BEGIN AT A POINT IN THE CENTERLINE OF STATE ROAD A-1-A, 137.24 FEET NORTH FROM THE CENTERLINE OF ANNA STREET, AS SHOWN ON THE PLAT OF BOYNTON'S SUBDIVISION, RECORDED IN PLAT BOOK 12, PAGE 45; THENCE EAST AT AN ANGLE OF 92°31'00", MEASURED FROM SOUTH TO EAST, A DISTANCE OF 430 FEET, MORE OR LESS, TO THE WATER'S EDGE OF THE ATLANTIC OCEAN; THENCE SOUTHERLY ALONG THE WATER'S EDGE OF THE ATLANTIC OCEAN, A DISTANCE OF 100 FEET, MORE OR LESS, TO THE SOUTH LINE OF LOT 12, BLOCK 3, BOYNTONS SUBDIVISION; THENCE WESTERLY ALONG SAID SOUTH LINE OF LOT 12, BLOCK 3 AND LOT 12, BLOCK 10, TO THE CENTERLINE OF STATE ROAD A-1-A; THENCE NORTHERLY A DISTANCE OF 127.22 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, LESS THE RIGHT OF WAY FOR STATE ROAD A-1-1A.

ALL OF THE ABOVE LYING AND BEING IN PALM BEACH COUNTY, FLORIDA.

Exhibit A

The proposed new two story residence and (4) car garage will be constructed at the same N.G.V.D. elevation as the existing home currently set at 20.31' N.G.V.D. The new structure will extend a maximum of 128.40' (+/-) east of the Coastal Construction Control Line (CCCL).

A new deck, pool, spa and fire pit will extend a maximum of 164.66' (+/-) east of the Coastal Construction Control Line (CCCL). The deck, pool, spa and fire pit will be designed by others and under a separate permit. The finish elevation of these improvements will be approximately 19.72 N.G.V.D.

The existing dune crossing will remain and be repaired in its current location. See survey for exact location.

Existing site walls shall remain as drawn on sheet A1.0 except for those sections noted "to be removed".

An LP Gas tank will be located west of the Coastal Construction Control Line (CCCL) under a separate permit.

All of these improvements are in accordance with the standards set forth in the Town Code of Ordinances.

Mitchell F. Kunik, AIA, LEEDAP, NCARB
Brian J. Collins, AIA, NCARB
Benjamin Schreier, AIA

BOCA RATON — ORLANDO — BAHAMAS

Matthew W. Wheeler
Huy D. Nguyen
Lou Nunez, Jr.

June 12, 2015

Town of Ocean Ridge
Building Department
6450 N. Ocean Blvd.
Ocean Ridge, FL 33435

Regarding 6125 North Ocean Blvd, please note the following:

Total Lot Size	48,855 s.f.	
Maximum lot coverage allowable	15,634 s.f.	32%
Lot coverage provided	7,293 s.f.	14.93%
Maximum floor area allowable	17,588 s.f.	36%
Floor Areas		
1 st floor area	7,586 s.f.	15.52%
2 nd floor area	4,838 s.f.	9.90%
Total floor area provided	12,424 s.f.	25.42%

Note: 1st floor area 7,586 (75% equals 5,690 s.f.). Second floor area is less than 75% of first floor area.

Flat Roof Area

Gross roof area	7,293 s.f.	
Allowable flat roof area	1,094 s.f.	15%
Flat roof area provided	853 s.f.	12%

Sincerely,



Mitchell F. Kunik AIA
For The Firm

Memorandum

Date: **June 29, 2015**
To: **Mayor & Commissioners**
From: **Ken Schenck, Town Manager**
Re: **Town Update, July, 2015**

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

Spanish River Drive

We are reviewing several drainage problems on Spanish River Drive where water is ponding. We're analyzing the best way to eliminate these problems. Most of the problems remaining are in driveways and not a major priority but do need to be corrected.

FEMA Flood Maps

We've met with FEMA and have reviewed their maps. We have requesting them to exclude an additional 80 properties from the flood zone. They've agreed to look at it for their major study but we want them to make the change in the present study. We've received a letter from FEMA saying they're reviewing the information we sent them.

LPR Cameras

A major concern is FDOT's present ban on adding new cameras in their right of way. Three of our four entrances are affected by this decision. The Police Chief's Assoc. is looking to address this in the legislature next year.

FDOT Bridge Inspection

The approved bridge repairs have started.

Home Alarm Monitoring System

The new receiver and software have been installed and are working properly.

Wastewater Proposal

We were approached by the people involved in the wastewater plant at Crown Colony. It serves three condos. They wanted to look into sending their wastewater to Boynton and abandoning their plant. We have talked to other buildings in the area and they are also interested. We met with Boynton Beach and they are enthused about treating the wastewater and suggested a route for the piping. We are looking into the preliminary cost of the project. The units involved would pay for the changes not the Town although either Boynton or Ocean Ridge might have to front the funds. This would eliminate three package plant in the Town and numerous odor complaints. All of these plants are old and are expensive to repair and operate properly. It will give us an avenue to sewer the south end of Town if and when the State decides to eliminate septic tanks.

We are presently evaluating the estimated cost to see if the residents want to continue with the project. At present it appears favorable.

All Aboard Florida

A hearing was held in Tallahassee to consider the issuance of bonds for the project. The Board that is to make the decision was not present but they sent their staff. That's not an encouraging sign. No new word to date.

Spanish River –Swaim Project

The SFWMD and Mr. Swaim went to court to determine if he can complete his project, which includes Mangrove removal and filling in an existing waterway, without the normal permits. The judge ruled against Mr. Swaim so he does have to go through the regular permitting process.

Calendar of Events

Commission Meeting----- August 3, 2015 @ 6:00 PM

Code Enforcement Meeting-----August 4, 2015 @ 10:00 AM

Cc: Han Hutchins, Police Chief
Karen Hancsak, Town Clerk
Employees

Agenda: July 6, 2015
Memo: Item #7

Town of Ocean Ridge, Florida

Agenda Memorandum

Office of Police Chief

Subject: 1. Monthly Activity Report (May2015)
2. Monthly Boynton Beach Fire/EMS Activity Report

Mayor and Town Commissioners:

Attached you will find the May Monthly Police Activity Report; including the Boynton Beach Fire/EMS Activity Report. All of these reports are on the Town's website under Police Department/Monthly Reports.

I am proud to report that included as a part of tonight's agenda is the request for confirmation of the hiring of two new police officers to fill some of the vacancies created by the Department reorganization.

During the Month of June, two Ocean Ridge Police Department Officers were formally complimented for their work. Documentation is attached.

As always, I will be happy to answer any questions you may have, either prior to, or at the meeting.

Agenda: July 6, 2015
Memo: Item # 9

**Town of Ocean Ridge, Florida
Commission Agenda Memorandum
Office of the Town Clerk**

Subject: Lien Reduction Request/ 40 Hibiscus Way

Request:

Elaine James, attorney representing Stellar Alon Growth LLC, and Stephen Petrucci, agent for Stellar Alon VP, LLC (new owner since 3/26/14) are requesting lien reductions for three (3) code enforcement liens pertaining to 40 Hibiscus Way. They consist of Case #2008-016; concrete deck and dock w/o permit, 2009-027; overgrown, and Case # 2014-005; dock, 2nd story balcony, and concrete deck (issued to new owner, Stellar Alon Growth, LLC).

There are actually seven liens on the property, however; Atty James produced a recorded Notice of Lis Pendens filed on Nov. 24, 2009. It has been determined that Case #2010-014; not maintaining second story balcony, 2010-015; not maintaining pool/spa, 2010-020; overgrown, 2013-009; overgrown/pool maintenance were filed and liened after Nov. 24, 2015 to the prior owner, Gary Kafka and Sondra Pastore. It would appear that, although bringing the property into compliance still was required, enforcement of those liens is barred. Atty Spillias agrees with Atty James interpretation.

Stellar Alon Growth LLC was made aware of all the prior liens and code violations that were still in violation when they were cited under Case #2014-005 in April 3, 2014. In June 2014 they paid several outstanding garbage/trash and alarm monitoring liens that were issued to the prior owner. The current garbage/trash payment and alarm monitoring payment are paid.

Background:

Case#2008-016 to Gary Kafka, violating section 67-51 of the Town Code (replacing a wooden deck with concrete, replacing a wood deck by gazebo with concrete, wooden deck along seawall, and installing a boatlift without permit), was heard and on 8/5/08 found in violation and subsequently liened. The dock and deck were built several years prior and were discovered when the Town Engineer was checking the adjacent property and two surveys were reviewed reflecting that the work had been done. This violation was accruing a \$50 daily fine through 3/25/14 when the present owner was then cited. This lien totals \$142,049.33 (\$98,100/fines, \$713.95/administrative costs, \$43,205.38/interest, and \$30/rec and release of lien). **This lien is still active because it was filed before the Notice of Lis Pendens.**

Case #2009-027 to Gary Kafka, cited on 5/27/12 for violating section/s 66-151(b)(7) and 34-1 (not trimming/maintaining trees, overgrown lot) was heard on 7/7/09, found in violation and subsequently liened. This violation was accruing a \$50 daily fine for 172 days. This lien totals \$15,524.92 (\$8,600/fines, \$532.70/administrative costs, \$6,362.22/interest, and \$30/rec and release of lien). **This lien is still active because it was filed before the Notice of Lis Pendens.**

Case #2010-014 to Gary Kafka, violating section 67-175(4), 67-175(5), and 67-174(a)(1) of the Town Code and Section 115.1 of the Florida Building Code (not maintaining the 2nd story balcony on the house – not structurally sound) was heard on 9/7/10, found in violation, and subsequently liened. This violation was accruing a \$50 daily fine through 3/25/14 when the present owner was then cited under Case #2014-005. This lien under Case #2010-014 totals \$84,516.29 (\$62,450/fines, \$546.72/administrative costs, \$21,489.57/interest, and \$30/rec

and release of lien). Due to the filing of the Notice of Lis Pendens this lien cannot be enforced but I wanted to make you aware that it was outstanding.

Case #2010-015 to Gary Kafka, cited on 7/13/10 for violating section/s 66-174(a)(1) of the Town Code (not maintaining pool/spa), was heard on 9/7/10, found in violation, and subsequently liened. This violation was accruing a \$50 daily fine for 1,079 days before being brought into compliance. This lien totals \$75,055.34 (\$53,950/fines, \$538.68/administrative costs, \$20,536.66/interest, and \$30/rec and release of lien). Due to the filing of the Notice of Lis Pendens this lien cannot be enforced but I wanted to make you aware that it was outstanding.

Case #2010-020 to Gary Kafka, cited on 10/16/10 for violating section/s 34-6(a) of the Town Code (overgrown lot) was heard on 11/2/10, found in violation, and subsequently liened. This violation was accruing a \$50 daily fine for 284 days before being brought into compliance. This lien under Case #201-0020 totals \$21,017.20 (\$14,200/fines, \$554.76/administrative costs, \$6,232.44/interest, and \$30/rec and release of lien). Due to the filing of the Notice of Lis Pendens this lien cannot be enforced but I wanted to make you aware that it was outstanding.

Case #2013-009 to Gary Kafka, cited on 5/5/13 for violating section/s 34-6(a) and section 67-174(a)(1) of the Town Code (overgrown lot and not maintaining pool) was heard on 6/4/13, found in violation, and subsequently liened. This violation was accruing a \$50 daily fine through 3/25/14 when the present owner was then cited under Case #2014-005. This lien under Case #2013-009 totals \$14,765.58 (\$11,800/fines, \$578.82/administrative costs, \$2,356.76/interest, and \$30/rec and release of lien). Due to the filing of the Notice of Lis Pendens this lien cannot be enforced but I wanted to make you aware that it was outstanding.

Case #2014-005 was cited to the current owner, Stellar Alon Growth LLC, on 4/3/14 to appear at the 6/3/14 meeting for the same violations still open; wood dock/boatlift, concrete deck, not maintaining the 2nd story balcony, and not maintaining the pool because no work had been done. On 5/5/14 Officer Savino met with Lucaster Carr and Dennys Diaz, representatives from Stellar, who advised that the overgrown lot and pool maintenance which had also been cited under Case #2014-005 had been completed and should be removed from the list of outstanding violations. Officer Savino advised she would update the record but reminded them that the other violations still existed. The hearing was held on 6/3/14, no respondents were present and the Final Order was sent out. On 6/13/14 an application was submitted for the wood dock and seawall (final inspection 7/22). On 6/17/14 they applied for a permit for interior remodeling, replacing 1 impact window and the repair to the exterior balcony. The balcony portion was closed out on 7/16 & the remainder closed out on 2/20. During this period several other permits were applied for that did not involve the open code case for the concrete deck. These permits included interior remodeling, the sub permits for same, replacing the roof and also replacing the windows/doors with impact. These permits were closed out between 10/2014 and 2/2015. The open code case for the concrete deck permit was applied for on 3/10/15, after several attempted incomplete submittals, and a final inspection was done on 5/28/15. This one code case was actually split into three individual violations and **this lien is still active because it was cited to the new owner** and encompasses the following fines:

Constructing a dock without a permit which accrued 33 days at the \$50 daily fine. The total cost through 6/30/15 is \$1,801.89 (\$1,650/fines, and \$151.89/interest).

Not maintaining the 2nd story balcony/integrity of building which accrued 27 days at the \$50 daily fine. The total cost through 6/30/15 is \$1,474.27 (\$1,350/fines, and \$124.27/interest.

Constructing a concrete deck without a permit which accrued 342 days at the \$50 daily fine. The total cost through 6/30/15 is \$18,702.25 (\$17,100/fines, \$1,602.25/interest, and \$30/rec and release of lien).

Staff has spent many hours regarding these code enforcement issues during the ownership of both parties. The new owners chose to apply for other permits as their priority for the property rather than addressing the concrete deck violation, even though they advised at the Status Hearing on July 1, 2014 that they believed all work could be completed within 60 days, as reflected in the minutes. The concrete deck required the submittal of a drainage plan and landscaping plan to demonstrate that they retained the required the 1" of rainfall in one hour, which ultimately required site drainage modifications. This and the balcony were the most important issues to correct and the concrete deck was not completed until May 28, 2015.

In summary, the liens affected by the Notice of Lis Pendens total \$195,354.41 (totally inclusive of fines, interest and recording/releasing of lien). The three active liens total \$179,552.66 of which \$157,574.25 is attributable to the prior owner's liens and \$21,978.41 to the current owner.

Staff Recommendation:

The Commission has the only authority to reduce a lien if they so desire. If there is any consideration on reducing the liens, staff recommends that ONLY the liens to the prior owner be considered for any type of reduction and not the latest lien, because the owner was aware of these violations right after taking ownership (March 2014) for all of the liens and did not bring the property into full compliance until 5/28/2015, although they applied for other permits not related to the violations and completed that work. Copies of prior liens and orders are available for review if requested.

Karen E. Hancsak

From: Kenneth Spillias <spillkg@gmail.com>
Sent: Thursday, June 25, 2015 10:14 AM
To: Karen E. Hancsak; Kenneth Spillias
Subject: Fwd: Stellar Home Groups (21424.0002)

Karen,

Please see below email from Elaine James. I believe she is correct in her interpretation of the law. If the four liens in question were recorded after the lis pendens, then they are not enforceable. Please determine how much of the total amount is attributable to these four liens and let's discuss before I reply to Elaine.

Ken

----- Forwarded message -----

From: **Kenneth Spillias** <spillkg@gmail.com>
Date: Thu, Jun 25, 2015 at 10:11 AM
Subject: Re: Stellar Home Groups (21424.0002)
To: Elaine Johnson James <EJames@bergersingerman.com>

Thank you, Elaine. I will review and get back to you,

Ken

On Wed, Jun 24, 2015 at 12:59 PM, Elaine Johnson James <EJames@bergersingerman.com> wrote:

Dear Ken:

Thank you, and please convey my thanks to Karen Hancsak, for the time spent yesterday discussing the Town's liens on the property located at 40 Hibiscus Way in Ocean Ridge. I also appreciate the context and historical information Karen and you provided.

Upon reviewing the file after I returned to the office, I noticed that four of the liens (2010-014, 2010-015, 2010-020 and 2013-009) were recorded after Bank of New York filed its Notice of Lis Pendens on Nov. 24, 2009 and before Stellar Homes Group received its Certificate of Title in March 2014. It would appear that, although bringing the property into compliance still was required, enforcement of those liens is barred.

Below are excerpts from the lis pendens statute and notes from the Fund that support this contention. If you disagree, may we discuss this please? If you agree, can the Commission be so advised in the staff comments that are being drafted? Please advise, thank you again.

Elaine

Sec. 48.23 (1)(d), Fla. Stat. Except for the interest of persons in possession or easements of use, the recording of such notice of lis pendens, provided that during the pendency of the proceeding it has not expired pursuant to subsection (2) or been withdrawn or discharged, constitutes a bar to the enforcement against the property described in the notice of all interests and liens, including, but not limited to, federal tax liens and levies, unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens. If the notice of lis pendens expires or is withdrawn or discharged, the expiration, withdrawal, or discharge of the notice does not affect the validity of any unrecorded interest or lien.

The Fund:

TN 18.06.02 Code Enforcement Board Liens (Rev. 12/13) A. A certified copy of a code enforcement lien, authorized under Sec. 162, F.S., constitutes a lien against all real and personal property of the violator in the county where the lien is recorded. A copy of the order certified by the code enforcement board's record custodian constitutes a certified copy. *Monroe County v. McCormick*, 692 So.2d 214 (Fla. 3d DCA 1997). **B.** Duration. Effective October 1, 1989, code enforcement liens under Ch. 162, F.S., are enforceable for 20 years from date of recording. Sec. 162.10, F.S. A code enforcement lien recorded prior to October 1, 1989 but still in effect on that date, should be treated as having a duration of 20 years for insuring purposes. Releases should be obtained from the municipality or county imposing the lien. Examining attorneys should not rely on an order acknowledging compliance to ignore code enforcement liens as orders do not release the lien but instead merely terminate the continuing accrual of fines. **C.** Priority. Ch. 162, F.S., does not provide for the priority of code enforcement liens. Many municipalities, however, have enacted their own ordinances which grant code enforcement liens the same priority as real estate taxes. Pursuant to the ruling in *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So.3d 924 (Fla. 2013), the Supreme Court of Florida has concluded that the super priority provision enacted in a municipal ordinance is invalid. Governmental entities, including counties, may also impose liens on real property for improvements, services, costs of repair and associated penalties levied in accordance with local building code enforcement. Effective October 1, 2013, Sec. 695.01, F.S., was amended to add subsection (3) requiring liens by a governmental entity or quasi-governmental entity that attach to real property for an improvement, service, fine, or **18-24 Judgments and Liens** penalty, be recorded in the official records of the county in which the property is located in order to be valid and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration. The recorded notice of lien must contain the name of the owner of record, a description or address of the property, and the tax or parcel identification number applicable to the property as of the date of recording. The Fund's opinion is that the lien takes its priority from the time it is recorded. If the code enforcement lien is recorded before the lis pendens in the foreclosure action, the local government should be named and served in the foreclosure suit. **If the code enforcement lien is recorded after the lis pendens filed in the foreclosure action, the lien may be treated as eliminated by the lis pendens provided the foreclosure is completed through certificate of title, see AGO 93-77 (Nov. 4, 1993), with a very important caveat: Any policy issued on the title to the property where the violation has occurred must contain an exception for the possible ongoing violation.** Neither the Supreme Court ruling in *Palm Bay* or the amendment to Sec. 695.01, F.S., has any bearing on the other local government liens, which have a

priority established by other Florida statutes. For unrecorded liens and liens not appearing on the property tax bill, imposed by county, governmental and quasi-governmental entities prior to October 1, 2013, Fund Members should contact underwriting counsel. For a discussion of code enforcement liens and homestead property, see TN 16.04.03. (emphasis added).

UGuide:

Eliminating Code Enforcement Liens in Mortgage Foreclosure

A code enforcement lien recorded after recordation of the mortgage can be eliminated in a mortgage foreclosure. If the lien was filed after the mortgage, but before the foreclosure lis pendens, the City or Board of County Commissioners that filed the lien must be named as a defendant in the foreclosure. If the lien was filed after the lis pendens, the lien will be barred without naming the City or County Commissioners as a defendant.

However, a foreclosure will not eliminate the code violation itself on the subject property. Unless the lien or other recorded instrument shows that that the violation has been corrected, proof of compliance must be recorded. Alternatively, if acceptable to and agreed upon by the insured, an exception can be made for the violation.



Elaine Johnson James

One Town Center Road | Suite 301 | Boca Raton FL 33486

office: (561) 241-9500 | direct: (561) 893-8712 | fax: (561) 998-0028

EJames@bergersingerman.com | [bio](#) | www.bergersingerman.com

doing business in Florida resource: www.flabusinesslaw.com



Please consider the environment before printing this email.

This transmission is intended to be delivered only to the named addressee(s) and may contain information that is confidential, proprietary, attorney work-product or attorney-client privileged. If this information is received by anyone other than the named and intended addressee(s), the recipient should immediately notify the sender by E-MAIL and by telephone at the phone number of the sender listed on the email and obtain instructions as to the disposal of the transmitted material. In no event shall this material be read, used, copied, reproduced, stored or retained by anyone other than the named addressee(s), except with the express consent of the sender or the named addressee(s). Thank you.

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.:

50 2009 CA 040 142 XXXX MB

THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS, CWALT, INC.,
ALTERNATIVE LOAN TRUST 2007-OH2
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-OH2,

Plaintiff,

vs.

SONDRA PASTORE; GARY KAFKA;
UNKNOWN TENANT (S); IN
POSSESSION OF THE SUBJECT
PROPERTY,

Defendants.

AM

RECEIVED
CIVIL DIVISION
NOV 24 PM 4:40

11-24-09

NOTICE OF LIS PENDENS

TO THE ABOVE STYLED DEFENDANTS AND ALL OTHERS WHOM IT MAY CONCERN:

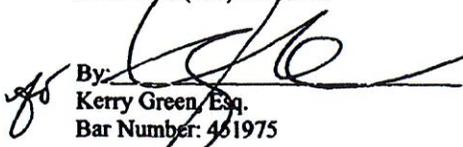
YOU ARE HEREBY NOTIFIED of the institution of this action by Plaintiff against you seeking to foreclose a mortgage recorded in Official Records Book 21507 at Page 1494 on the following property in Palm Beach County, Florida:

**LOT 21 OF OCEAN RIDGE BEACH, ACCORDING TO THE PLAT THEREOF
AS RECORDED IN PLAT BOOK 25, PAGE 24 OF THE PUBLIC RECORDS OF
PALM BEACH COUNTY, FLORIDA**

including the buildings, appurtenances, and fixtures located thereon.

DATED 11/13/09

Law Offices of Marshall C. Watson, P.A.
1800 N.W. 49TH Street, Suite 120
Fort Lauderdale, FL 33309
Telephone: (954) 453-0365
(800) 441-2438
Facsimile: (954) 771-6052

By: 
Kerry Green, Esq.
Bar Number: 461975

Yanique Johnson
Bar #63939

09-68533

STELLAR ALON VP, LLC

2700 West Cypress Creek Road Suite D-118
Fort Lauderdale, FL 33309
Telephone: 954-641-1400
Facsimile: 954-744-5850

May 29, 2015

Town of Ocean Ridge

6450 N. Ocean Boulevard
Ocean Ridge, Florida 33435

RE: 40 Hibiscus Way Boynton Beach, FL 33435

Ladies and Gentlemen,

We acquired this property through Public County Auction on March 7, 2014 and the Certificate of Title was issued on March 26, 2014, after which began to work on the property to bring property into compliance. Due to the way we acquired this property we were not privileged to any of the history or issues of the property and found out as we went along and are still to this day.

We ordered our Municipal Lien Search on March 14, 2014 and again April 9, 2014. Pursuant to the information received from same, we paid the Town hard costs and fees indicated on the Lien Search for Alarm monitoring, Garbage and Trash and Lot Violation. We paid these fee within 60 days of acknowledge of lien search.

We applied for numerous permits starting June of 2014 which included but not limited to interior remodeling, second floor balcony, landscaping, drainage, pool deck, seawall, and multi others as we were made aware of the items. Several permits took an unusual amount of time to acquire due to the fact that when anything can go wrong it does. We had to redo our survey four times, had an engineer whose father died suddenly in the middle of the project and staffing issue which result in unqualified people trying to permit in your town and told our engineers incorrectly. When we got the right people in place we were able to get things accomplished in a much timelier manner and were even able to address concerns from the building official without it becoming a violation. We provided the town with a seawall report showing the seawall in good standing conditions even though the neighbor had been filing complaints and a report from a plumber showing that there were no leaks on the property again due to the neighbor complaining. We freely supplied those reports so that the town had backup against the complaints. Our staff has left their cell phone with the building official in case there are any additional issues.

The final permit was issued May 22, 2015 and was closed out on May 28, 2015. We had our construction crew work overtime to try and meet the monthly deadline so that we could be in compliance prior to the monthly commissioner's meeting. Karen generously informed us on May 28, 2015 that the daily fees on the last violation had stop. We truly appreciate what the town staff has done and how helpful they were.

The violations did exist before we acquired the property. The prior owner's status left the property in shambles and the neighbors became ashamed of the neighborhood. When we acquired the property, we invested a considerable amount of funds to the point of increasing the value of not just our property but the properties adjacent to ours and in the neighborhood.

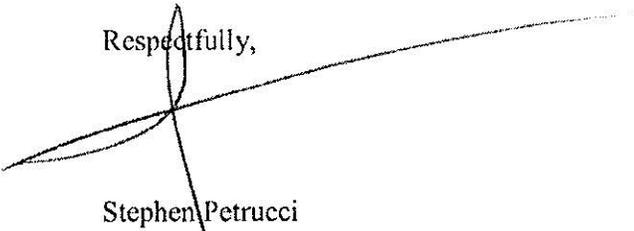
The property current state is beautiful and we believe we have accomplished the desired aesthetics of the community. Not barring many complaints and intrusions of the Neighbor regarding her dissatisfaction during the renovation.

Since the prior owner's violations are barred by the recorded Lis Pendens and foreclosed out by the Final Judgment and subsequent sale, we are requesting the partial releases for the barred violations and that the municipal records reflect the property is not subject to the prior owner fines.

We are graciously asking for consideration of the reduction of the Fines plus administrative fees and any re-inspection costs incurred by the Town for Case number CE2014-005 cited to Stellar Alon VP, LLC.

We would like to thank the Town of Ocean Ridge for all of their assistance and guidance throughout this process.

Respectfully,



Stephen Petrucci

Memorandum

Date: June 26, 2015
To: Mayor & Commissioners
From: Ken Schenck, Town Manager
Re: Approval to Hire Two Police Officers

The Police Dept. has been advertising for Police Officers to fill the empty positions in the Department. They have been reviewing the applications and doing background checks on those that looked promising. Two of the applicants appear to be good candidates to fill two of the four positions that are open. They have good backgrounds and good recommendations. These are Richard Ermeri and Jimmy Pilon. Attached is a memo from Chief Hutchins recommending their hiring.

We request Commission approval to hire these two Officers subject to all reviews being acceptable. To date everything is positive.

**Ocean Ridge Police Department
Inter-Office Memo**

To: Kenneth N. Schenck, Jr. , Town Manager

From: Hal C. Hutchins, Chief of Police



Date: June 26, 2015

Subject: Hiring of a new Police Officers

The Police Department is currently conducting background investigations of the below Police Officer candidates who successfully completed the application and interview process.

Richard Ermeri: Started his law enforcement career in 2000 as a Corrections Officer with the Moore Haven Corrections Facility and then became a Deputy Sherriff with the Glades County Sherriff's Office in 2005, where he is currently employed.

Richard has completed numerous training courses; all of which will be beneficial to the Ocean Ridge Police Department and the citizens we serve.

Jimmy Pilon: Started his law enforcement career in 2006 as a Corrections Officer for the Florida Department of Corrections and then became a Police Officer with the City of Clewiston Police Department in 2007, where he is currently employed as a Patrol Sergeant and K-9 handler.

Jimmy has completed numerous training courses, and is working toward his associates degree; all of which will be beneficial to the Ocean Ridge Police Department and the citizens we serve

Therefore, I submit these candidates to you for your review and approval for hiring, based upon the expected successful completion of the medical and psychological examinations. If you agree, I am also requesting that you place their names on the Agenda for the July 6th, 2015 Town Commission meeting for their consideration and authorization to hire.

Memorandum

Date: June 30, 2015
To: Mayor & Commissioners
From: Ken Schenck, Town Manager
Re: 110 Bonito Drive Demolition/Assessment

Notice was sent to the owner and lienholders of 110 Bonito of the Town's intention to demolish the property and include the demolition costs as a non-ad valorem assessment on the County's tax bills. The time period for a response has passed. I did receive a call from one of the named lienholders who asked for an extension of time. I informed him that only the property owner can request an extension, and he has not done so.

The next step is to contract with a demolition company to demolition the structure. I estimate that the cost of demolition will be approximately \$23,000 – \$25,000.

After the property is demolished we need to take the steps necessary to have the Town's costs included as a special assessment on the 2015 County tax bills pursuant to the special assessment district that was created by resolution and ordinance in 2011. The steps that need to be taken, and for which approval is being requested, are as follows:

1. Hire contractor and authorize the Town Manager to execute a contractor for immediate demolition.
2. Authorize an amount not to exceed \$25,000 from the Contingency Account to fund the cost of demolition.
3. Schedule a public hearing, either at the July 21st or Aug. 3rd meeting, to be held prior to September 15 to adopt a non-ad valorem assessment roll. Since the roll must be certified and forwarded to the property appraiser by September 15, and at least 20 days' notice for the hearing must be provided, the hearing should be scheduled for some time in mid-late August.

NOTICE OF INTENT TO DEMOLISH
OR SUBSTANTIALLY
REPAIR AND INSPECT
MAY 20, 2015

The owner or other interested parties for the structure located at 110 Bonito Drive, Ocean Ridge, Palm Beach County, Florida, 33435 (Parcel Control Number 46-43-45-22-10-000-1100, Lot 110, McCormick Mile Add 1 Subdivision), are hereby notified that the Town of Ocean Ridge, Florida, will proceed to have the structure repaired, demolished or removed thirty days after the date of this Notice if said structure is not substantially repaired by this date. All costs incurred by the Town in connection with the repair, demolition or removal will be assessed against the property.

If, as a result of this Notice, the structure is substantially repaired by the owner, notice is hereby given that the structure may be inspected by the Town. A \$50.00 fee will be charged for each inspection and the fees will be assessed against the property.

To request an extension of time, the owner should contact Kenneth Schenck, Town Manager at (561) 732-2635 within ten (10) days of the date of this Notice. Said request must be in writing pursuant to sub-section 67-185(c), Code of Ordinances, Town of Ocean Ridge.

An affected owner has the right to seek judicial relief from this action. The appropriate petition should be filed in the court of jurisdiction by the affected owner within thirty (30) days of the date of this Notice, pursuant to Section 67-189, Code of Ordinances, Town of Ocean Ridge.

PUB: The Palm Beach Post
5-20, 5-27/ 2015 \$423713

Signed

Tiffani Everett
April D. Emberton



APRIL D. EMBERTON
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
October 01, 2018

Sworn to and subscribed before 05/28/2015.

Who is personally known to me.

TOWN OF OCEAN RIDGE PROOF OF PUBLICATION STATE OF FLORIDA COUNTY OF PALM BEACH Before the undersigned authority personally appeared Tiffani Everett, who on oath says that she is Call Center Legal Advertising Representative of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a Notice was published in said newspaper on First date of Publication 05/20/2015 and last date of Publication 05/27/2015 Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. Also published in Martin and St. Lucie Counties. NOTICE OF INTENT Ad ID: 813725 Ad Cost: 337.12

Agenda: July 6, 2015

Memo: Item # 12

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

**Subject: Approve of a Budget Amendment through the Adoption
of Resolution No. 2015-04**

Mayor and Town Commissioners:

Attached please find Resolution No. 2015-04; Amending the 2014/15 Fiscal Year Budget to Include a Transfer from the Unassigned Fund Balance to the General Fund Operating Budget. The purpose of the amendment would be to reimburse Commissioner Lucibella for the legal fees incurred regarding his defense concerning the Municipal Recall Efforts.

See attached memorandum from Atty Spillias. He will also discuss the item further at the meeting.

RECOMMENDATION

Staff recommends adoption of Resolution No. 2015-04 amending the FY 2014/15 Budget.

RESOLUTION NO. 2015-04

A Resolution of the Town of Ocean Ridge Amending the 2014/2015 Budget to Include a Transfer from the Unassigned Fund Balance to the General Fund Operating Budget.

Whereas, several residents successfully obtained the necessary certified signatures to proceed with the first steps to schedule a Municipal Recall Election through the provisions of the Florida State Statutes (FSS) in Section 100.361; and

Whereas, the FSS in Section 100.361 permit a rebuttal by the Commissioner sought to be recalled through a Municipal Recall Defense; and

Whereas, the Commissioner filed the required rebuttal and the Municipal Recall Defense was circulated, however the time frame to resubmit the required signatures for the Municipal Recall Defense expired without submitting the required number of signatures; and

Whereas, in addition to the lack of the submittal of the required signatures on the Municipal Recall Defense, the affected Commissioner filed a Complaint for Emergency Declaratory and Temporary Injunctive Relief, which was granted on June 10, 2015; and

Whereas, the Commissioner is now seeking reimbursement for his legal fees incurred; and

Whereas, the Town's insurance company is still reviewing the claim regarding coverage and payment; and

Whereas, the Code of Ordinances does not explicitly provide direction for refunding of fees the Town believes that pursuant to Florida law it is reasonable to refund the legal fees in successfully defending against the recall effort; and

Now therefore be it resolved that the Town Commission of Ocean Ridge, Florida does hereby approve amending the 2014/2015 budget to include increasing the Fund Balance Unappropriated by \$100,000 and increase the General Government "Other Current Charges Account" by \$100,000 to provide funding for the legal fees incurred by the Commissioner in successfully defending the recall effort.

Section 1. This Resolution shall become effective immediately upon passage.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. Commissioner _____ seconded the motion.

The Mayor thereupon declared the resolution duly passed and adopted this 6th day of July, 2015.

TOWN OF OCEAN RIDGE, FLORIDA

Attest

Geoffrey A. Pugh, Mayor

Karen E. Hancsak, Town Clerk

Memorandum

Date: June 29, 2015
To: Mayor & Commissioners
From: Ken Spillias, Town Attorney
**Re: Comm. Lucibella Reimbursement for Recall
Petition.**

Commissioner Lucibella has requested reimbursement for his legal fees required to defend him against the recall petition. The court determined that the petition was legally insufficient. Additionally, the petitioners weren't able to obtain the necessary signatures under the relevant statute to call for a recall election.

As you know from copies I have sent you of my correspondence with our D&O insurer, I have researched the issue of the Commission's authority/obligation to reimburse Commissioner Lucibella in the circumstances presented. While I have found no statutory authority or requirement for such reimbursement, the Florida Supreme Court has spoken to this issue in a case virtually identical in all relevant aspects to the one before us. The name and citation of the case is *Thornber v. City of Fort Walton Beach*, 568 So.2d 914 (Fla. 1990). I previously made you aware of the *Thornber* case when I presented to you a request that the Town intervene in the recall lawsuit as a plaintiff/intervenor which you authorized me to do. The key points of the case for our purposes are that 1) a municipality has a public interest in intervening in a case where a recall petition is legally insufficient, and 2) the municipality is obligated to reimburse its elected officials for the cost of having to defend against an insufficient recall petition, even where the litigation to do so is initiated by the elected official sought to be recalled. I have provided you with a copy of the Supreme Court's opinion with relevant passages highlighted in yellow.

I have received from Commissioner Lucibella's counsel the invoices presented to him for their services through May, 2015, in defending him against the recall petition effort. Since the court's order was not received until early June, there will likely be another modest invoice that, hopefully, we

will have received by the time of the Commission meeting. Pending that final invoice, the amount Commissioner Lucibella has been billed for services through the end of May is \$82,081.22. I have closely reviewed the invoices and find that given the nature and complexity of the issues presented by the recall petition, the skill of the services rendered and the amount of time required, the fees that have been charged are reasonable.

While I find the invoices are, overall, reasonable, Commissioner Lucibella's counsel did bill for 6 hours which, in my view, do not directly address the defense against the recall petition. Subtracting the cost of these services reduces the amount presently being requested to \$79,171.22. I have spoken with Commissioner Lucibella regarding this issue and he is in agreement with the adjustment.

As of the date of this memo, the D&O insurer is claiming that an exclusion in the policy precludes our claim for reimbursement for the fees and costs paid by the Town to indemnify Commissioner Lucibella for his successful defense against the recall petition. I am vigorously contesting their interpretation of the policy in these circumstances and will continue to push forward in having it acknowledge its responsibility under the relevant (in my view) provision. If we are successful in "opening the eyes" of our insurer, it would be responsible for paying the monies paid to Commissioner Lucibella less a \$50,000 deductible. If not, I will bring the matter back to you for discussion and decision as to whether to file a legal action for breach of the policy.

As this was not a budgeted item the funds will have to be transferred from the reserve account.

568 So.2d 914 (1990)

Patricia THORNER, et al., Petitioners,
v.
CITY OF FORT WALTON BEACH, Respondent.

No. 74494.

Supreme Court of Florida.

October 11, 1990.

915 *915 George E. Day and Timothy I. Meade of George E. Day, P.A., Ft. Walton Beach, for petitioners/cross-respondents.

916 *916 James E. Moore, Bert Moore and Alice H. Murray of Moore, Kessler & Moore, Niceville, for respondent/cross-petitioner.

McDONALD, Justice.

We review *City of Fort Walton Beach v. Grant*, 544 So.2d 230 (Fla. 1st DCA 1989), based on express and direct conflict with *Ferrara v. Caves*, 475 So.2d 1295 (Fla. 4th DCA 1985). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We approve in part and quash in part *Grant* and approve *Ferrara*.

This case involves claims by Fort Walton Beach city council members Thornber, Franklin, and Grant for reimbursement of attorney's fees expended for private representation in six different legal and administrative matters arising from their actions while council members.^[1] We discuss only the council members' claim for reimbursement of attorney's fees spent in successfully enjoining a recall petition calling for their removal from office and in defending against a federal civil rights action filed against the city, the mayor, and themselves in their official and individual capacities.

The trial court denied the recall petition claim because the council members initiated the action and section 111.07, Florida Statutes (1981), under which they claimed entitlement to fees, only allows reimbursement of prevailing defendants. The district court affirmed, relying on the same rationale. The council members now allege conflict with *Ferrara* which allowed town commissioners to recover attorney's fees expended in obtaining declaratory and injunctive relief from a recall petition based on a common law theory rather than on section 111.07. The council members also challenge the district court's affirmance of the trial court's refusal to award attorney's fees under section 57.105, Florida Statutes (1981), for the city's frivolous defense of their claim for fees arising from the federal civil rights action. Lastly, the council members claim appellate attorney's fees under section 59.46, Florida Statutes (1987).

As to the federal civil rights claim, the trial court awarded attorney's fees to Grant as a prevailing defendant under section 111.07 but refused to award fees to Thornber and Franklin, finding that they held a private meeting which violated sunshine laws and prevented recovery. The district court affirmed the award of fees to Grant. It reversed the decision with respect to Thornber and Franklin, however, holding that the trial court improperly tried the sunshine law violation issue and that they were entitled to reimbursement as prevailing defendants. The city now cross-petitions regarding this decision, contending that the council members did not prevail in the civil rights action by virtue of a voluntary dismissal with prejudice.^[2]

We first address whether the council members are entitled to reimbursement of attorney's fees from the city for successfully enjoining the recall petition. For the reasons expressed in the district court's opinion, we agree that the council members cannot recover their attorney's fees expended in enjoining the recall petition from the city under

section 111.07. In this case, however, our inquiry does not end at whether the council members are entitled to recover fees under section 111.07.

917 Florida courts have long recognized that public officials are entitled to legal representation at public expense to ^{*917} defend themselves against litigation arising from the performance of their official duties while serving a public purpose. *E.g., Miller v. Carbonelli*, 80 So.2d 909 (Fla. 1955); *Williams v. City of Miami*, 42 So.2d 582 (Fla. 1949); *Peck v. Spencer*, 26 Fla. 23, 7 So. 642 (1890); *Lomelo v. City of Sunrise*, 423 So.2d 974 (Fla. 4th DCA 1982), review dismissed, 431 So.2d 988 (Fla. 1983); *Ellison v. Reid*, 397 So.2d 352 (Fla. 1st DCA 1981). The purpose of this common law rule is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently. *Nuzum v. Valdes*, 407 So.2d 277 (Fla. 3d DCA 1981). This entitlement to attorney's fees arises independent of statute, ordinance, or charter. *Lomelo*, 423 So.2d at 976. For public officials to be entitled to representation at public expense, the litigation must (1) arise out of or in connection with the performance of their official duties and (2) serve a public purpose. *Chavez v. City of Tampa*, 560 So.2d 1214 (Fla. 2d DCA 1990). See *Lomelo*; *Nuzum*; *Markham v. Department of Revenue*, 298 So.2d 210 (Fla. 1st DCA 1974), cert. denied, 309 So.2d 547 (Fla. 1975).

In this case the council members' legal defense against the recall petition meets both of these requirements. The factual basis for the petition was the council members' alleged malfeasance of meeting in violation of the sunshine law and subsequently voting at a public meeting in favor of resolutions effectively dismissing the city manager and police chief.^[3] Unquestionably, the vote taken at the public meeting was within their official duties. There is a sufficient nexus between the firing of these employees and the council members' official duties to satisfy the first prong of this test.^[4]

The council members' action in defending against the recall petition also served a public purpose and, thus, satisfied the second prong of this test. The city does not have an interest in the outcome of a recall petition because any individual, not any specific individual, can be the officeholder at issue. *Williams*, 42 So.2d at 582. It does have a decided interest, however, in protecting its officers from untimely and illegal recall petitions.^[5] We reject the city's contention that defending against a recall petition only serves the elected officials' personal interests in maintaining their position and is devoid of public interest. Notwithstanding that the council members have an obvious personal interest in keeping their jobs, under the circumstances of this case the public has an overriding interest in ensuring the effective and efficient functioning of its governing body. See *City of North Miami Beach v. Estes*, 214 So.2d 644 (Fla.3d DCA 1968), cert. discharged, 227 So.2d 33 (Fla. 1969); *Duplig v. City of South Daytona*, 195 So.2d 581 (Fla. 1st DCA 1967). If a recall petition is commenced, the public has an interest — and the city has a responsibility — to ensure that the recall committee follows the proper procedures, i.e., that the recall petition is facially correct. Officials should not have to incur personal expenses to ensure that a recall committee follows the proper procedures. While this case presents an unusual twist ^{*918} in that the council members initiated the litigation and were not actually the defendants in an action against them, they were defending against a recall petition, albeit in an offensive posture. We agree with the district court in *Ferrara* that, in the "spirit" of common law principles, the unique circumstances of this case should not preclude the council members from recovering attorney's fees under the common law.

Thus, the only question remaining for our resolution on this matter is whether the remedy provided by section 111.07 has superseded this common law remedy so as to provide the exclusive means by which public officials may recover attorney's fees from public funds for litigation arising out of their official duties. Whether a statutory remedy is exclusive or merely cumulative depends upon the legislative intent as manifested in the language of the statute. The presumption is that no change in the common law is intended unless the statute is explicit and clear in that regard. *City of Hialeah v. State ex rel. Morris*, 136 Fla. 498, 183 So. 745 (1938); *Harold Silver, P.A. v. Farmers Bank & Trust Co.*, 498 So.2d 984 (Fla. 1st DCA 1986); *Sand Key Associates, Ltd. v. Board of Trustees of Internal Improvement Trust Fund*, 458 So.2d 369 (Fla. 2d DCA 1984). Unless a statute unequivocally states that it changes the common law, or is so repugnant to the common law that the two cannot coexist, the statute will not be held to have changed the common law. *Cullen v. Seaboard Air Line Railway*, 63 Fla. 122, 58 So. 182 (1912); *Peninsular Supply Co. v. C.B. Day Realty Inc.*, 423 So.2d 500 (Fla. 3d DCA 1982); *In re Levy's Estate*, 141 So.2d 803 (Fla. 2d DCA 1962).

The express language of section 111.07 makes no mention of whether it superseded the common law with regard to the circumstances under which public officials are entitled to have the state provide for their representation, so as to provide the exclusive means by which officials may recover attorney's fees from public funds. Moreover, there is nothing in the legislative history or language of the statute by which to imply such an interpretation.^[6] Statutory abrogation by implication of an existing common law remedy, particularly if the remedy is long established, is not favored. 1 Am.Jur.2d, *Actions* § 77 (1962). See *Tamiami Trail Tours, Inc. v. City of Tampa*, 159 Fla. 287, 31 So.2d 468 (1947); *Peninsular Supply Co.* We agree with the district court that section 111.07 recognizes the common law but disagree that the legislature intended this statute to replace the common law completely. Thus, we hold that the statute is not the exclusive mechanism authorizing an award of attorney's fees to public officials defending against litigation arising from the performance of their public duties.^[7] We therefore direct *919 the district court to remand this portion of this case to the trial court to order the city to reimburse the attorney's fees expended by the council members in defending against the recall petition.^[8]

We now turn to the city's claim that the district court incorrectly held that the council members prevailed in the federal civil rights suit filed by police chief Ray seeking compensatory and punitive damages. Ray settled with the city, the mayor in both her official and individual capacities, and council members Thornber, Franklin, and Grant in their official capacities, and voluntarily dismissed the action with prejudice. The conditions of the settlement provided that the city was to reinstate Ray as police chief but place him on permanent disability leave. The city also agreed to pay Ray wages retroactively from the date of his firing and not to interfere with Ray's workers' compensation claim. In exchange Ray agreed not to pursue his claim for punitive damages and to dismiss his lawsuit. Several months later Ray voluntarily dismissed the council members in their individual capacities with prejudice on the condition that they would seek their attorney's fees from the city and not against Ray.

We agree with the district court that the council members prevailed in this action. In general, when a plaintiff voluntarily dismisses an action, the defendant is the prevailing party. *Stuart Plaza, Ltd. v. Atlantic Coast Development Corp.*, 493 So.2d 1136 (Fla. 4th DCA 1986). A determination on the merits is not a prerequisite to an award of attorney's fees where the statute provides that they will inure to the prevailing party. *Metropolitan Dade County v. Evans*, 474 So.2d 392 (Fla. 3d DCA 1985); *State Department of Health & Rehabilitative Services v. Hall*, 409 So.2d 193 (Fla. 3d DCA 1982). There must be some end to the litigation on the merits so that the court can determine whether the party requesting fees has prevailed. *Simmons v. Schimmel*, 476 So.2d 1342 (Fla. 3d DCA 1985), *review denied*, 486 So.2d 597 (Fla. 1986). Ray dismissed the council members in both their official and individual capacities with prejudice, thus signalling an end to the litigation. Although Ray obtained some relief, the council members were merely signatories to the stipulated settlement and did not contribute monetarily. Any relief sought by Ray came from the city and the mayor but not from the council members. Therefore, the council members are entitled to attorney's fees under section 111.07 as prevailing defendants.

Even though the council members are entitled to reimbursement for attorney's fees incurred in the recall election and in the federal civil rights action, they are not entitled to attorney's fees in their efforts to collect those fees. They claim such a right under section 57.105.^[9] The purpose of this statute is to discourage baseless claims, stonewall defenses, and sham appeals in civil litigation by placing a price tag through attorney's fee awards on losing parties who engage in these activities. *Whitten v. Progressive Casualty Insurance Co.*, 410 So.2d 501 (Fla. 1982). While the statute serves a salutary purpose, *920 it may not be extended to every case and every unsuccessful litigant. *City of Deerfield Beach v. Oliver-Hoffman Corp.*, 396 So.2d 1187 (Fla. 4th DCA), *review denied*, 407 So.2d 1104 (Fla. 1981). The city's defense of the council members' claim did not completely lack a justiciable issue of either law or fact so as to allow them to recover fees against the city under section 57.105. We therefore approve the district court's affirmance of the trial court's refusal to award the council members attorney's fees incurred in this proceeding.^[10]

We therefore disapprove that portion of the district court's decision denying reimbursement of attorney's fees to the council members for successfully enjoining the recall petition and approve *Ferrara*. We approve the remainder of the district court's decision.

It is so ordered.

SHAW, C.J., and OVERTON, EHRLICH, BARKETT, GRIMES and KOGAN, JJ., concur.

[1] These legal and administrative actions each arose from the same incident. City residents elected a new mayor and Thorner and Franklin as city council members, who ran on a "clean up" city government platform. Prior to being sworn into office Thorner, Franklin, and the mayor allegedly met privately and drafted several resolutions calling for the city attorney's resignation, the city manager's dismissal, and the appointment of the mayor as acting city manager. The entire city council later passed these resolutions at a public meeting with Thorner, Franklin, and Grant, who had been elected previously and had not attended the alleged "secret" meeting, voting in favor of the resolutions. As acting city manager the mayor fired the police chief.

[2] The city also cross-petitions on the district court's affirmance of the trial court's determination of the reasonable amount of fees awarded to Grant, contending that it violates Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985). We find this claim to be without merit.

[3] The alleged sunshine law violation is of no consequence in this case. The main thrust of the recall petition was that the council members' actions led to the wrongful firing of the city manager and the police chief.

[4] The city charter provided that the city manager served at the pleasure of the city council and could be hired or fired by majority vote of the council. The charter, however, placed the responsibility of the hiring and firing of the police chief with the city manager.

[5] After the recall petitions were filed with the city clerk, the council members filed an action in circuit court to enjoin the city clerk and supervisor of elections from processing the petitions. Thorner v. Evans, Case No. 81-1532, Circuit Court for Okaloosa County. The court found that the petitions against Thorner and Franklin were filed within one month after they were elected, in violation of § 100.361(6), Fla. Stat. (1981), which prohibits the filing of a recall petition until the public official has served one-fourth of his or her term of office. The petition against Grant was timely filed, because he had been elected some two years previously, but the court found the petition invalid because the recall committee failed to follow other procedures set forth in the recall statute. The district court affirmed. Taylor v. Thorner, 418 So.2d 1155 (Fla. 1st DCA 1982).

[6] Section 111.07 as originally enacted only authorized the state to defend any tort action brought against public officials for alleged negligence arising out of the scope of their employment. In 1979 the legislature added the majority of the language pertinent to this case by amending the statute to include any civil action brought against a public official. The major cause of that amendment was the increase in federal civil rights suits against public officials. In 1980 the legislature again amended the language of the statute to encompass any civil action "arising from a complaint for damages or injury suffered as a result of any act or omission." This change occurred as a result of this Court's decision in District School Bd. v. Talmadge, 381 So.2d 698 (Fla. 1980), which held that complainants could sue public officials individually, the state, or both for the officials' tortious acts. We can find nothing in any staff analysis or report concerning either the 1979 or 1980 amendments which mentions the common law or existing law with regard to providing public officials an attorney at public expense.

[7] If the statute were the exclusive remedy by which public officials could obtain reimbursement of attorney's fees from public funds, because § 111.07 is limited to civil actions, an official's successful defense of misconduct charges brought in proceedings before the Ethics Commission would not qualify for reimbursement of attorney's fees expended in that defense. The commission is an investigatory body and located in the legislative branch of government. Commission on Ethics v. Sullivan, 489 So.2d 10 (Fla. 1986). Therefore, proceedings before the commission cannot be "civil" actions. This is further evidenced by the fact that § 112.317(2), Fla. Stat. (1989), provides that upon a finding of a violation of the Code of Ethics and a recommendation of a civil or restitution penalty, the Attorney General must bring a civil action to recover the recommended penalty. Chavez v. City of Tampa, 560 So.2d 1214 (Fla. 2d DCA 1990). Thus, public officials would not be entitled to attorney's fees under § 111.07 for their successful defense of misconduct charges before the commission, while under common law they would be so entitled. See Ellison v. Reid, 397 So.2d 352 (Fla. 1st DCA 1981).

[8] We are cognizant that the council members based their claim for attorney's fees on § 111.07 and did not attempt to recover attorney's fees on a common law theory. Even though neither party raised this issue, we hold that the council members' failure to claim fees under common law does not preclude their recovery. When more than one remedy exists, but they are not inconsistent, only a full satisfaction of the right asserted will estop the plaintiff from pursuing other consistent remedies. Furthermore, if a mistaken remedy is pursued, the proper remedy is not thereby waived. See Board of Public Instruction v. Mathis, 132 Fla. 289, 181 So. 147 (1938); McCormick v. Bodeker, 119 Fla. 20, 160 So. 483 (1935); Matthews v. Matthews, 133 So.2d 91 (Fla. 2d DCA 1961).

[9] § 57.105, Fla. Stat. (1981), states:

The court shall award a reasonable attorney's fee to the prevailing party in any civil action in which the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

[10] They are not entitled to recover under § 59.46, Fla. Stat. (1987). This statute is inapplicable in this case.

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SHUTTS & BOWEN LLP

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E-mail: billing@shutts.com

Richard J. Lucibella
5 Beachway North
Ocean Ridge, FL 33435

April 14, 2015

Atty No.: 6471
Invoice: 1042678

Client: 41739-0001

Re: *Ocean Ridge Recall*

For professional services rendered thru: *March 31, 2015*

Total Service	29,272.50
Total Expense	3,567.96
Courtesy Discount on Westlaw Research	(2,000.00)
Credits Applied	(0.00)
Current Balance Due	30,840.46
<i>Prior Balance Due</i>	0.00
Total Balance Due	\$30,840.46

Terms: DUE UPON RECEIPT.

A 1% per month late payment charge will apply on any unpaid balance over 30 days from date of invoice.

Federal I.D. No. 59-0447122

TO INSURE PROPER CREDIT, PLEASE RETURN ONE COPY OF THE COVER SHEET WHEN MAKING
PAYMENT. THANK YOU.

SHUTTS & BOWEN LLP

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E-mail: billing@shutts.com

Richard J. Lucibella
5 Beachway North
Ocean Ridge, FL 33435

May 13, 2015

Atty No.: 6471
Invoice: 1048106

Client: 41739-0001

Re: *Ocean Ridge Recall*

For professional services rendered thru: *April 30, 2015*

Total Service	28,022.50
Total Expense	2,297.58
Credits Applied	(0.00)
Current Balance Due	30,320.08
<i>Prior Balance Due</i>	0.00
Total Balance Due	\$30,320.08

Terms: DUE UPON RECEIPT.

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Federal I.D. No. 59-0447122

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SHUTTS & BOWEN LLP

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E-mail: billing@shutts.com

Richard J. Lucibella
5 Beachway North
Ocean Ridge, FL 33435

June 19, 2015

Atty No.: 6471
Invoice: 1055802

Client: 41739-0001

Re: *Ocean Ridge Recall*

For professional services rendered thru: *May 31, 2015*

Total Service	19,775.50
Total Expense	1,145.18
Credits Applied	(0.00)
Current Balance Due	20,920.68
<i>Prior Balance Due</i>	30,320.08
Total Balance Due	\$51,240.76

Terms: DUE UPON RECEIPT.

A 1% per month late payment charge will apply on any unpaid balance over 30 days from date of invoice.
Federal I.D. No. 59-0447122

TO ENSURE PROPER CREDIT, PLEASE RETURN ONE COPY OF THE COVER SHEET WHEN MAKING
PAYMENT. THANK YOU.

Agenda: July 6, 2015
Memo: Item # 13

Town of Ocean Ridge, Florida
Agenda Memorandum
Office of the Town Clerk

Subject: Ordinance 611; Providing for the Date of the Annual Town Election in March, 2016, to Coincide with the Presidential Primary; Establishing the Proposed Qualifying Period for Candidates; Providing for Supremacy of this Ordinance Over All Ordinances Inconsistent with or in Conflict with this Ordinance

Mayor and Town Commissioners:

The Town's Municipal Election in March 2016 must be changed to coincide with the Presidential Primary to be held on March 15th. Unfortunately this will also change the qualifying dates to a much earlier period in order to meet the required state and federal laws for overseas and military absentee ballots to be mailed 45 days prior to said election. The qualifying dates will begin at noon, November 24, 2015 and run through noon, December 8, 2015.

This ordinance will provide for these changes and was adopted on first reading on June 1, 2015.

Recommendation

Adopt Ordinance 611 on second reading.

ORDINANCE NO. 611

AN ORDINANCE OF THE TOWN OF OCEAN RIDGE, FLORIDA, PROVIDING FOR THE DATE OF THE ANNUAL TOWN ELECTION IN MARCH, 2016, TO COINCIDE WITH THE PRESIDENTIAL PRIMARY; ESTABLISHING THE PROPOSED QUALIFYING PERIOD FOR CANDIDATES; PROVIDING FOR SUPREMACY OF THIS ORDINANCE OVER ALL ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 2-199(a), the Town Commission may change the date of its annual election from the second Tuesday in March to the date that the State of Florida holds its Presidential Preference primary; and

WHEREAS, Chapter 2015-5, Laws of Florida, was enacted by the Florida Legislature to amend Section 103.101(1) to provide that Florida Presidential Preference primaries would be held on the third Tuesday of March; and

WHEREAS, the third Tuesday in March in the year 2016 is March 15, 2016; and

WHEREAS, current state and federal laws require overseas and military absentee ballots to be mailed forty-five (45) days prior to state or federal elections; and

WHEREAS, Section 103.101(3), Florida Statutes, requires the Department of State to certify to each supervisor of elections the name of each candidate for political party nomination to be printed on the ballot no later than December 15, 2015; and

WHEREAS, the Supervisor of Elections of Palm Beach County has notified the County's municipalities that the deadline for municipal candidate names shall also be December 15, 2015; and

WHEREAS, the shifting of the date of the Presidential Preference primary and the date by which the Supervisor of Elections needs the names of the Town's candidates for the Town's annual March election in order to meet necessary ballot deadlines requires the Town to establish its proposed candidate filing deadline in time to meet the Supervisor's deadline.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF OCEAN RIDGE, FLORIDA, AS FOLLOWS:

Section 1. Findings of Fact. The WHEREAS clauses set forth above are adopted herein as findings of fact.

Section 2. Election Date. The annual election of the Town of Ocean Ridge, Florida, for the year 2016, shall be held on the date of the State of Florida's Presidential Preference primary election, that date being March 15, 2015.

Section 3. Candidate Qualifying Period. The candidate qualifying period for the Town's March 15, 2016, annual election shall be from noon, November 24, 2015, until noon, December 8, 2015.

Section 4. Primacy of Ordinance. This Ordinance shall have primacy over and shall supersede any provisions of the Town's Charter or Ordinances inconsistent with or in conflict with the provisions set forth herein.

Section 5. Effective Date. This Ordinance shall become effective immediately upon

FIRST READING this 1ST day of August, 2014.

SECOND AND FINAL READING this _____ day of September, 2014.

Commissioner _____ offered the foregoing Ordinance and its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

GEOFFREY A. PUGH, Mayor _____

DR. LYNN ALLISON, Vice Mayor _____

GAIL ADAMS AASKOV, Commissioner _____

JAMES A. BONFIGLIO, Commissioner _____

RICHARD J. LUCIBELLA, Commissioner _____

The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission of the Town of Ocean Ridge, Florida, on second reading, this ____ day of July, 2015.

TOWN OF OCEAN RIDGE, FLORIDA

BY: _____

GEOFFREY A. PUGH, MAYOR

ATTEST: _____

Karen E. Hancsak, Town Clerk

PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Town Commission of the Town of Ocean Ridge, Florida at a Regular Meeting to be held on Monday, July 6, 2015 at 6:00 P.M. in the Commission Chambers of the Town Hall, Ocean Ridge, Florida will have on the agenda the adoption of the following:

ORDINANCE NO. 611; AN ORDINANCE OF THE TOWN OF OCEAN RIDGE, FLORIDA, PROVIDING FOR THE DATE OF THE ANNUAL TOWN ELECTION IN MARCH, 2016, TO COINCIDE WITH THE PRESIDENTIAL PRIMARY; ESTABLISHING THE PROPOSED QUALIFYING PERIOD FOR CANDIDATES; PROVIDING FOR SUPREMACY OF THIS ORDINANCE OVER ALL ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THIS ORDINANCE, AND PROVIDING FOR EFFECTIVE DATE

The proposed ordinances noticed here are available to the public at the following places: Kiosk at the Town Hall; Shadow Box at the entrance to Island Drive; Shadow Box at the entrance to Crown Colony; and at the Town Hall Chamber

ALL PERSONS INTERESTED IN THIS MATTER may appear before the Town Commission at the time and place aforesaid and be heard.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. PERSONS WHO NEED AN ACCOMODATION IN ORDER TO ATTEND OR PARTICIPATE IN THIS MEETING SHOULD CONTACT TOWN HALL AT 732-2635 AT LEAST 5 DAYS PRIOR TO THE REGULAR COMMISSION MEETING IN ORDER TO REQUEST SUCH ASSISTANCE. 286.0105, F.S.

Dated: June 4, 2015 TOWN OF OCEAN RIDGE, FLORIDA
Publish: June 26, 2015 Karen E. Hancsak, Town Clerk

THIS NOTICE IS PUBLISHED PURSUANT TO THE FLORIDA STATUTES AND TO TOWN OF OCEAN RIDGE CODE OF LAWS AND ORDINANCES AND IS POSTED IN THREE CONSPICUOUS PLACES WITHIN THE TOWN OF OCEAN RIDGE.

Agenda: June 1, 2015
Memo: Item #13

Town of Ocean Ridge, Florida
Agenda Memorandum
Office of the Town Clerk

Subject: Ordinance 611; Providing for the Date of the Annual Town Election in March, 2016, to Coincide with the Presidential Primary; Establishing the Proposed Qualifying Period for Candidates; Providing for Supremacy of this Ordinance Over All Ordinances Inconsistent with or in Conflict with this Ordinance

Mayor and Town Commissioners:

The Town's Municipal Election in March 2016 must be changed to coincide with the Presidential Primary to be held on March 15th. Unfortunately this will also change the qualifying dates to a much earlier period in order to meet the required state and federal laws for overseas and military absentee ballots to be mailed 45 days prior to said election. The qualifying dates will begin at noon, November 24, 2015 and run through noon, December 8, 2015.

This ordinance will provide for these changes.

Recommendation

Adopt Ordinance 611 on first reading. Second reading and adoption will be July 6, 2015.