

**TOWN OF OCEAN RIDGE  
TOWN COMMISSION SPECIAL MEETING  
JOINT WORKSHOP WITH PLANNING & ZONING COMMISSION  
AGENDA**



**September 17, 2018  
9:30 A.M.  
TOWN HALL – MEETING CHAMBERS**

**TOWN COMMISSION**

Mayor James A. Bonfiglio

Commissioner Philip Besler  
Commissioner Kristine de Haseth

Commissioner Steve Coz  
Vice Mayor Don MaGruder

**PLANNING & ZONING COMMISSION**

Member Ric Carey  
Vice Chair Mark Marsh

Chairman Gerald Goray  
Member David Hutchins  
Alternate Neil Hennigan

Member Penny Kosinski  
Alternate James Leming

**ADMINISTRATION**

Town Manager James S. Titcomb  
Town Clerk Tracey L. Stevens  
Building Official Wayne Cameron

Town Attorney R. Brian Shutt  
Police Chief Hal C. 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 of the Commission and the right to limit discussion rests with the Commission. **Generally, remarks by an individual will be limited to one time up to three minutes or less regarding any single item on the agenda.** 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. (F.S. Section 286.0105)

Persons who need an accommodation in order to attend or participate in this meeting should contact the Town Clerk at (561) 732-2635 at least 5 days prior to the meeting in order to request such assistance. (F.S. 286.0105)

**CALL TO ORDER**

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENT**

**WORKSHOP DISCUSSION ITEMS**

1. Town Planner Report
2. Moratorium & Related Ordinances
3. Determine Meeting Date for the Planning & Zoning Commission Prior to October 1<sup>st</sup>
4. Planning & Zoning Commission Authority on Concept Plan Review Applications

**ADJOURNMENT**

# MEMORANDUM



**TO:** Mr. James S. Titcomb  
Town Manager

**FROM:** Marty R.A. Minor, AICP

**DATE:** September 11, 2018

**RE:** PROPOSED ZONING CODE AMENDMENTS

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Urban Planning and Design  
Landscape Architecture  
Communication Graphics

The proposed Zoning Code text amendments for the Town has been revised based on direction and input from Town Staff, the Planning & Zoning Commission and independent analysis.

The proposed amendment will help address deficiencies within the Town’s land development regulations and assist in preventing adverse impacts to existing single family neighborhoods. The proposed amendments will provide more green space on single family lots, which will assist in stormwater drainage, provide a parking requirement based on the total number of bedrooms within a dwelling unit. Discussions with the Palm Beach County Health Department with regards to the standards for the placement and operation of the septic systems also affected the proposed amendments.

Below is an analysis of proposed amendments and the potential impacts of the recommended code revisions.

## Single-Family Home Parking Requirements

Currently, all residential units within the Town, single-family or multi-family, are required to provide a minimum of two parking spaces. These parking spaces may be located within a garage, carport or driveway. The minimum dimensions for parking spaces for multi-family units in the Town are 9 feet by 18 feet. No specific size is required for single-family homes. However, as single family homes have grown in size and have included multiple bedrooms, the impacts on the surrounding properties have increased.

With the proposed zoning code text amendment, the parking requirement would require a parking space per bedroom or per room that would qualify as a bedroom and would also require a two (2) car garage per single family home. An additional requirement that for every two bedrooms above four bedrooms in a single family home, an additional garage parking space shall be provided. For example, a six-bedroom home would require six (6) total parking spaces with three (3) of the spaces located within an enclosed garage. This requirement will help avoid multiple vehicles parked within the lot’s front setback.

The proposed parking space dimensions are proposed to be 10 feet by 20 feet for single family homes. The proposed parking space size is

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consistent with the requirement of other communities and the physical dimensions of popular motor vehicles.

The following is the parking requirements for other communities and the dimensions of popular vehicles which will uses these spaces.

Here are the dimensions for the five most popular motor vehicles as determined by sales figures:

**Top 5 Selling Vehicles**

<b>Vehicles</b>	<b>Length</b>	<b>Width</b>	<b>Height</b>
2018 Ford F-150	17.4' - 20.9'	6.6' - 7.2'	6.6'
2018 Chevy Silverado	17.1' - 20'	6.7'	6.2
2018 Dodge Ram	19.8'	6.8'	6.5'
2018 Toyota Corolla	15.3'	5.8'	4.8'
2018 Honda Civic	15.3'	5.9'	4.8'

For the number of parking spaces required for a single-family home, we surveyed the parking requirements of several local communities. The results of that survey is provided in the following table.

<b>Municipality</b>	<b>SF Home Parking Requirement</b>
Ocean Ridge – <b>PROPOSED</b>	2 garage parking spaces per house plus 1 space for each bedroom. For every 2 bedrooms above 4 bedrooms, an additional garage parking space shall be provided.
Boca Raton	2 parking spaces per house
Gulf Stream	4 parking spaces per house
Palm Beach	2 parking spaces for first 3,000 SF of house + 1 space per additional 3,000 SF or portion thereof.
Jupiter Island	1 parking space per bedroom
Palm Beach Gardens	2 parking spaces per house or 1 space per bedroom whichever is greater
Wellington	2 parking spaces per house for up to 4 bedrooms + 1 additional space for each bedroom more than 4.

The proposed amendments have been provided in ~~strikeout~~ and underline format for your review.

**Sec. 64-46. - Off-street parking.**

- (a) *Single-family and two-family dwellings.* All single-family and two-family dwellings shall require one ~~have~~ off-street parking spaces per bedroom or per room that may qualify as a bedroom, as determined by the Building Official. Parking shall occur on driveways, garages and parking areas otherwise permitted by code. Parking areas which are not contiguous to a street or right of way shall be connected to such by a driveway.

Driveways shall be considered as constituting off-street parking spaces for single-family and two-family duplex dwellings in all appropriate residential districts, provided that sufficient spaces are available on such driveways to meet the requirements of this section. Driveways shall be constructed in a manner that is clearly delineated and engineered and consistent with [section 67-174\(a\)\(3\)](#). Each single-family and two family dwellings shall include an accessory attached and/or detached, fully-enclosed garage to accommodate two full-size vehicles. For single/two family homes on existing lots less than 10,000 square feet in area, an accessory attached and/or detail, fully-enclosed garage shall be provided for a minimum of one vehicle. For every two bedrooms above four bedrooms, an additional garage parking space shall be provided. Each parking space shall be a minimum of 10 feet by 20 feet. Parking spaces shall be located on the same property as of the primary structure and shall not be allowed to be vertically stacked.

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Landscaped Open Space

Currently, the Town’s regulations require that 25% of the single family lot be pervious (allowing water to pass through) area for drainage purposes. Within that 25% pervious area, any underground tanks and septic systems are included. This minimum requirement could lead to homes being constructed with minimum landscaping, larger patios and decks and parking areas. This minimum amount of pervious area also hinders drainage on the lot. Providing more open space on a lot provides for landscaping to grow to full sizes and provide relief from the climate impacts. In addition, single family neighborhoods which maintain a mature tree canopy holds onto its land value than neighborhoods will sparse landscaping.

To provide this needed landscaped green space, a minimum standard of 35% pervious area for a single family lot is proposed. The pervious areas are portions of the lot free of structures, patios, swimming pools, decks and driveways.

During discussions with the Planning & Zoning Commission, we examined several open space standards for single family lots of various sizes. These include percentages such as 40%, 45%, and 35% overall with 45% open space provided within the front yard. The suggestion that additional open space be provided within the front yard is complicated because the County Health Department requires a minimum 75 feet separation between septic systems and waterways. With numerous single family lots within the Town adjacent to canals, coves and the Intracoastal Waterway, septic systems for these lots are required to be located within the front yard.

The following is a table comparing the proposed open space standard with other local communities.

<b><i>Municipality</i></b>	<b><i>SF Lot Size</i></b>	<b><i>District</i></b>	<b><i>Open Space</i></b>
Ocean Ridge <b><i>PROPOSED</i></b>	20,000 SF 10,000 SF	RSE – Residential Single Family Estate RSF – Residential Single Family	35%
Palm Beach	10,000 SF	R-B	35% overall and 45% within front yard

Gulf Stream	16,500 SF	RS-C	40%
Palm Beach Gardens	11,000 SF	RL-2	35%
Jupiter Island	1 acre	B-40	50%

As indicated in the table above, the proposed pervious area/open space requirement is consistent with other local communities.

During the discussions of the proposed code amendments, a minimum landscaping requirement was suggested. Many communities provide minimum landscaping requirements for single family lots as a means of creating tree coverage within the Town. In addition to the aesthetic beauty, trees and landscaping reduce air pollution, conserve water, reduce soil erosion, reduce noise pollution and creates wildlife and plant diversity.

After studying various minimum landscaping requirements, a standard of one tree and six shrubs per 1,000 square feet of open space is proposed. For example, a 12,000 square foot lot with a 35% pervious area (4,200 square feet) would be required to have a minimum of 4 trees and 24 shrubs. The trees are required to be a minimum of 12 feet in height at planting. One of the required trees shall be located within 15 feet of the front property line so it be provided as the designate street tree.

In addition, the setback of patios, driveways and septic systems from side lot lines were also discussed. Currently, the setback for septic systems and patios is three feet. We are proposing to increase the setback to five feet to allow for separations of uses and allow for the opportunity for additional landscape buffering.

The proposed amendments have been provided in strikeout and underline format for your review.

**Sec. 1-3. Definitions.**

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*Open Space* means a required exterior open area, clear from the ground upward, devoid of residential and commercial buildings, accessory structures and impervious areas, except however, those buildings and structures used exclusively for recreational purposes. Open space shall be known as pervious area for the purposes of the code.

**Sec. 64-60. - Decks, patios, steps, stoops, and terraces (unenclosed and uncovered).**

Unenclosed and uncovered decks, patios, driveways, parking areas, steps, stoops, and terraces shall be setback at least ~~three~~ five feet from any property line or right-of-way line, whichever is closer. These improvements shall be maintained and drained so as to prevent nuisance conditions, which include, but is not limited to, nuisances as described in this Code, to the public and/or abutting property owners. In those instances where that portion of the property containing the deck, patio, steps, stoops or terraces abuts a sea wall, no setback shall be required.

**Sec. 66-117. - Applicability of division.**

The provisions of this division shall apply to all new or redeveloped off-street parking areas and other vehicular use, service and loading areas. ~~However, any lot shall have at least 25 percent of the total area in landscaped open space.~~

**Sec. 66-151. – Tree permits.**

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(d) *Minimum tree coverage requirements.*

(1) In connection with the clearing of any lot for new construction, each lot except as otherwise provided, shall have a minimum of one tree and six shrubs for each ~~2,500~~ 1,000 square feet of total open space lot area, or portion thereof. If the lot contains an insufficient number of existing trees to meet this requirement, new or replacement trees shall be provided. Trees shall be installed at a minimum of 12 feet in height. One of the required trees palms shall be located within 15 feet of the front property line as the designated street tree.

Drainage

As indicated above, the Town Code requires that 25% of a lot to be pervious area, which includes underground facilities, septic tanks and drainfields. The inclusion of these underground facilities hamper the on-site drainage on single family lots and may cause stormwater to drainage into off-site locations.

With the proposed amendments, the pervious area requirements are proposed to be increased to 35% for single family home lots. The proposed improvements to the Town's drainage standards which will improve the functionality of the required drainage facilities. One of the proposed improvements is the requirement that trench drains at the end of driveways is required to connect to a drainage system. The current code does not require such a connection. The proposed amendments to the drainage standards will improvement the efficiency of the Town's stormwater system.

The proposed amendments have been provided in strikeout and underline format for your review.

**Sec. 66-1. - General Provisions.**

(a) *Stormwater runoff.* Every site plan shall demonstrate the ability of the onsite detention facilities to accommodate a minimum of one inch of rainfall in one hour. Through the use of natural swales and other similar devices, post-development runoff and nonpoint source pollution shall not exceed predevelopment rates.

(b) *Water body and wetlands environmental protection report.*

(1) The site plan of any development adjacent to the Intracoastal Waterway and its tributaries, mangroves or conservation areas shall be subject to review of the vegetative cover adjacent to such water body or wetland area. The goal shall be to ensure that no direct stormwater runoff flows into these adjacent areas and that the vegetative cover achieves a natural transition to the maximum extent feasible. An environmental report shall demonstrate this water body and wetland protection.

(2) This report shall address any plans to trim or remove mangroves, including a mitigation plan acceptable to the county department of resource management and state department of natural resources, as applicable.

(c) *Pervious area.* At least ~~25~~ 35 percent of any contiguous buildable lot area shall be maintained in a natural or landscaped state pervious to rainfall in order to recharge the aquifer and otherwise minimize runoff. Pervious areas shall not include patios, swimming pools, decks, driveways, and any other impervious surface. See article IV of this chapter for plant material details.

(d) *Exotic vegetation.* The site plan application shall show any exotic plant species, including Melaleuca, Brazilian pepper and Australian pine. The plan shall demonstrate the removal of such species from the site.

(e) *Wellfield cones of influence.* Should any wellfields be established in the town, the provisions of County Ordinance No. 88-7 (the Wellfield Protection Ordinance) shall apply to ensure protection of the wellfield cone of influence.

**Sec. 67-33. - Drainage, required; swales; construction of driveways.**

(a) *Drainage required.* New construction of single or multifamily buildings, or any other new building made on any lot within the town or any addition of or removal of fill or grade alteration on a lot shall require a drainage system adequate to detain, retain and transport volumes of runoff as may be regulated from time to time by federal, state and county laws and regulations and this Code. The required drainage system shall not cause additional runoff to discharge to adjacent properties. Swales shall be installed where public or private rights-of-way are wide enough to accommodate both the roadway and a viable swale. Such swales shall be no less than six inches below the elevation of the nearest edge of the roadway, and the normal design shall be not less than eight feet in width with a contour slope of 1:8. It is at all times prohibited to plant trees or bushes on swales or otherwise obstruct the flow of water in any swale system. Variations in these criteria may be made by the building code administrator to accommodate individual property limitations. Where it is not practical to install a swale, other means of retaining, detaining and transporting runoff shall be made with the approval of the building code administrator.

(b) *Driveways; change of grade.* No person shall cause the changing of a street or road grade abutting any property or cause the right-of-way to be changed in grade in any manner which blocks or impedes proper or adequate drainage along the swale of such road. No driveway or approach shall interfere with public drainage. Where grading of a right-of-way is required, approval by the building code administrator shall be required prior to changing any grade of the swale within the right-of-way.

(c) *Trench drains; required.* A trench drain, as used herein, is any drainage structure approved by the building code administrator for the transport of runoff, which is below grade, and which crosses a driveway or other impervious structure, and which also allows for the collection of runoff from the surface elevation. It may include perforated pipe, a grade and trough, or other approved means. Trench drains along a property line shall connect to an existing or new drainage system. Any construction or reconstruction of a driveway, other than resurfacing, patching or top dressing, shall require the placement of a trench drain across the driveway at a suitable point where the driveway crosses the public right-of-way, if surface swaling is either insufficient to carry the drainage flow, or the angle of elevation of the driveway without a trench drain would otherwise impede normal vehicular use.



## Meeting Minutes

### Meeting with the Town of Ocean Ridge & the Palm Beach County Health Department

**Meeting date: August 07, 2018**

**Location: Ocean Ridge Town Hall**

**RE: Septic Tank and Drainfield Issues in RSF Zoning District  
Engenuity Group, Inc. Project No. # 00020.00**

#### **Attendees:**

***Town of Ocean Ridge: Commissioner Don MaGruder, Lisa Tropepe, Jamie Titcomb, Brian Shutt, Wayne Cameron, Hal Hutchins, Lisa Burns, Marty Minor, Planning & Zoning Alternate Member Neil Hennigan***

***PBC Health Department: Timothy Mayer, Jorge Patino, Tony Coates***

The purpose of this meeting was to engage the PBC Health Department in a discussion regarding proposed Town Restrictions on Septic Tanks and Drainfields in the RSF Zoning District in accordance with Town Ordinance No. 630 (enacted June 4, 2018).

The Health Department commended the Town in its endeavor to propose restrictions that are compatible with the Town's unique geology, location and character.

The Health Department is willing to enact the Town's constricting requirements as long as there is a mutual agreement in place articulating such restrictions. Deliberations about other areas in Florida were discussed to see if we can utilize their process/restrictions. Discussions about the Town's unique sub surface materials (i.e. muck/peat) were also shared with the Health Department.

The following technical questions and answers were addressed by the Health Department:

1. If the Town implements stricter standards for septic systems, will the reviewers at the Health Dept. use the standards during their review process on our behalf? For example, will the Health Dept. enforce Performance Based Treatment Systems if Ocean Ridge mandates advanced systems?

**Some restriction may or may not be able to be implemented, because of how State rules were promulgated. However, if a mutual agreement were pursued and agreed upon by both of us, then the Health Department would assist in its implementation.**

**In the case of Performance Based Treatment Systems, only the State can mandate this type of advanced system, pending the completion of a State Nitrogen Reduction Strategies project.**

2. Are there setbacks in place between drainfields and waterbodies?

**For plats recorded prior to 1972, the setback is 50 feet. For plats recorded after 1972, the setback is 75 feet.**

3. Is there a standard separation in between water service, lines and drain fields? Is there separation between adjacent properties drainfields or water services?

**The Health Department does look at adjacent properties when reviewing an application. There is a 10 foot separation between most water service lines and standard drainfields. This separation may be different depending upon the type of pipe used for the water service.**

**Standard drainfields should be 10 feet apart between properties.**

4. The septic system design gives a discount for additional bedrooms after 4, why is this? If we choose to implement stricter standards, can we use the same 100 gpd increase for each bedroom after 4 bedrooms instead of the standard 60 gpd?

**The Health Department looks at more than 4 bedrooms differently than the first 4 bedrooms. It has been their position that more than four bedrooms would not be occupied simultaneously and therefore lower flows per day are considered "average" or typical volume.**

5. Is there a size increase due to additional laundry facilities over 1 washing machine?

**There is no drainfield area increase for additional laundry facilities. Septic tank and Drainfield sizing, for the most part, are determined by square footage and bedrooms depending upon the application submitted.**

6. Are there any stricter standards related to the density of homes per acre? In some cases, the density in a single family zoned area could be 4 homes per acre. In Ocean Ridge, the home building trend is increasing the number of bedrooms, bathrooms and additional laundry facilities per lot. For example, if each home has 6 bedrooms and 6 bathrooms, four homes could possibly equate to 24 bedrooms and 24 bathrooms per acre to be treated.

**The Heath Department limits the flows to 2500gpd per acre. Since Ocean Ridge's RSF zoning district is very dense (approximately 4 lots per acre), the Health Department checks adjacent properties so their threshold is not exceeded.**

7. The Town is considering eliminating septic systems/drainfields from the required open space percentage per lot. Does the Health Dept. consider drainfields and unobstructed areas as natural, landscaped areas?

**The Heath Department does not, in their rules, address natural, landscape areas.**

Town notification of individual variance requests will be looked into by the Health Department.

We all agreed that the Town's relationship with the Health Department has been one of mutual respect and cooperation as we continue to work together in our permitting processes.

**CC: All Attendees  
Planning & Zoning Board  
Mayor & Commissioners**

## Memo

**To:** Town of Ocean Ridge Commission and Planning & Zoning Board

**From:** Lisa Tropepe, P.E. 

**RE:** RSF Zoning Moratorium  
Addition of the words "contiguous buildable" to the Pervious Area definition

**Date:** September 13, 2018

**Engenuity Job No. :** 00020.00

The purpose of adding "contiguous buildable" to the pervious area definition is for clarification purposes in the calculation. There are several landowners along waterways that own two parcels separated by a Town road. The second smaller unbuildable property has recently been used to calculate the percentage of pervious area. That would leave the buildable lot all impervious except where landscaping is mandated.

The majority, if not all, of the existing homes were NOT calculated that way. Staff has seen this interpretation of the code recently and needs clarification as to the intent of pervious area as it relates to the buildable lot.

Below is the paragraph with the proposed highlighted words:

(c) *Pervious area.* At least 25 35 percent of any **contiguous buildable** lot area shall be maintained in a natural or landscaped state pervious to rainfall in order to recharge the aquifer and otherwise minimize runoff. Pervious areas shall not include patios, swimming pools, decks, driveways, and any other impervious surface. See article IV of this chapter for plant material details.



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Tracy Stevens  
Town Clerk  
6450 North Ocean Boulevard  
Ocean Ridge, Florida 33435

September 13, 2018

Sent via USPS and electronic mail to [tstevens@oceanridgeflorida.com](mailto:tstevens@oceanridgeflorida.com)

**Re: Request for a Limited Exemption from Proposed Ordinances for Uniquely Situated Building Applicants**

Dear Ms. Stevens:

As you are aware, Robert N. Hartsell, P.A. represents Sunshine Estate Trust and Mr. John Luring, as its designated representative. The Luring family, through the Sunshine Estate Trust, owns the above referenced property and has submitted its final residential development plans for review and approval. The Laurings, who have been Ocean Ridge home-owners for over twenty-two (22) years, have been planning and working through the Sunshine Estate Trust, Everlast Realty, and its counsel, towards the construction of their family dream home since before 2015. Recently, in response to political pressure and the concerns of some Ocean Ridge residents, including but not limited to the Hennigans, the Town has prevented the Laurings from completing the very final steps of constructing their family home. The Laurings have engaged in a multitude of actions, in reliance upon the representations of the Town of Ocean Ridge that they would inevitably be afforded the opportunity to build their dream home, including but not limited to:

- Obtaining the *unanimous* approval of the Town of Ocean Ridge's Planning and Zoning Commission to recommend the replat of the subject property so that the Laurings could move forward and build their family home, in August of 2015;
- Obtaining the release/relocation of existing FPL and Town Easements as conditions required by the Town;
- Obtaining the necessary variance from the Palm Beach County Environmental Appeal Board to construct an on-site sewage treatment and disposal system (OSTDS), in November of 2015, along with findings of fact by the Palm Beach County Environmental Appeal Board, that the system appears to not only comply with current construction

standards, but that **the system will not be injurious to the area involved or to the public health and general welfare of the citizens of Palm Beach County;**

- Obtaining a memorandum of understanding between the Laurings and the Town of Ocean Ridge, indicating that the proposed project complies with Palm Beach County septic system requirement and all current replat requirements;
- Obtaining the *unanimous* approval of the Town of Ocean Ridge's Town Commission to replat the subject property so that the Laurings could properly build their family home, in March of 2016;
- Retaining of professional engineers to survey and create master paving, drainage, water and septic plans;
- Retaining of a professional architect to design and draw plans for the entire structure and property;
- Obtaining the *unanimous* recommendation from the Concept Review Committee for the project to be accepted, and subsequently relayed to the Town Zoning Official and Town Engineer for flooding and drainage analysis, after representations from the Town that the applications appears to meet the Town's zoning requirements, in March of 2018;
- Submitting an application for a demolition permit in April of 2018 and obtaining said demolition permit for the existing single-family home on the subject property in May of 2018;
- Cutting power to the existing single-family home in preparation of demolition;
- Submitting an application for a building permit to start construction fencing in April of 2018 and obtaining said building permit for fencing for the site of construction on the subject property in May of 2018; and
- Obtaining a construction permit from the State of Florida Department of Health for the construction of the aforementioned OSTDS in August of 2018.

**I. The Laurings May Invoke the Doctrine of Equitable Estoppel to Prevent the Town of Ocean Ridge From Enacting Ordinances That Would be Highly Inequitable and Unjust.**

Simply put, the Laurings have incurred substantial expense in working diligently with the Town of Ocean Ridge to receive approval to build their family home and have relied in good faith upon the Town's representations that this was inevitable, upon compliance with all existing zoning requirements, which by the Town's own admission, the Laurings had already complied with.

Notwithstanding, the Lauring family has been halted by the swift imposition of the Town's moratorium, before they could obtain final approval for the construction of their family home, in contravention with their equitable rights acquired in the property as provided for by Florida law.<sup>1</sup>

Florida law provides that a municipality "may be equitably estopped to enforce a change in zoning regulations against one who has substantially altered his position in reliance upon the original regulation."<sup>2</sup> It is well established that such relief is warranted when a property owner, relying in good faith, upon some act or omission of the government, has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he has acquired.<sup>3</sup>

To that end, the Laurings have been working persistently towards the construction of their family home, and relying upon the Town's representations and knowledge of said plans for over three years. The Laurings have also expended hundreds of thousands of dollars during and in furtherance of this process, again, in direct reliance of the Town's representations and the existing land development code. The current moratorium and any regulation changes precluding applicants who have an equitable right in their property, as described above, is precisely what Florida courts have sought to prevent. After holding that there is no requirement that landowner must have either obtained building permit or made physical changes in land in reliance on existing zoning in order for doctrine of equitable estoppel to be invoked to preclude municipality from making zoning change, the Second District Court of Appeals in *Town of Largo v. Imperial Homes Corp.*, stated:

**One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon. A citizen is entitled to rely on the assurances and commitments of a zoning authority and if he does, the zoning authority is bound by its representations, whether they be in the form of words or deeds...**

*Town of Largo*, 309 So.2d at 573.

While the Laurings understand the Town's wishes to amend its land development code, including but not limited to the minimum requirements for parking, septic systems, drainage, pervious and impervious open space, their application has a unique status and falls within an extremely limited category of applicants that have passed all but the very last of the approval process. For the forgoing reasons, including but not limited to, obtaining the approval and acceptance of the Concept Review Committee, submitting and obtaining demolition permits, building permits, and cutting the power in preparation of demolition, before the declaration of intent and enactment of the Town's sudden moratorium, the Laurings have established an equitable right in the construction of their family home as described by Florida law.

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1. See *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So.2d 10 (Fla. 1976); *Town of Longboat Key v. Mezrah*, 467 So.2d 488 (Fla. 2d DCA 1985); *City of Lauderdale Lakes v. Corn*, 427 So.2d 239 (Fla. 4th DCA 1983); *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571 (Fla. 2d DCA 1975).

2. *City of Lauderdale Lakes v. Corn*, 427 So.2d 239 (Fla. 4th DCA 1983).

3. See *id.*; *Town of Longboat*, 467 So.2d at 492.

Specifically, while nothing in *Town of Largo* should be construed as any impediment to the efforts of municipalities and other local governmental entities, which exercise zoning authority from making changes to zoning regulations in an orderly and comprehensive manner, in the interest of the public health, safety and welfare, it must be accomplished in a way as not to mislead innocent parties who in good faith rely to their detriment upon the acts of their governing bodies.<sup>4</sup> Especially when the basis for failing to further consider a site plan or proposed development is upon misguided allegations by the members of the community, including but not limited to, the Henningsans, that the Lauring family home will be used for a “sober home” as so often brought up, within and outside Town Commission and Planning and Zoning Commission meetings. This “purely political response” by the Town, preventing the Laurings in particular, from moving forward, consistent with their equitable rights, provides a basis for the Laurings to successfully invoke the doctrine of equitable estoppel.<sup>5</sup>

## **II. Enacting the Proposed Ordinances, Precluding the Laurings From Moving Forward with the Proposed Project, Subjects the Town of Ocean Ridge to Liability Under the Bert J. Harris, Jr. Private Property Rights Protection Act.**

The Bert J. Harris, Jr. Private Property Rights Protection Act of 1995 (hereinafter “Bert Harris Act”) created a new cause of action for an aggrieved property owner who demonstrates that governmental action “inordinately burdens” his property or **directly restricts or limits the use of real property** such that the property owner is **permanently unable to attain the reasonable, investment-backed expectation** for the existing use of the real property.<sup>6</sup> The Fourth District Court of Appeals in *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners* recently found for a property owner under the Bert Harris Act, after nothing about the physical or regulatory aspects of the subject property at the time of the governments change in zoning, made the property owner’s expectations for the proposed use unreasonable.<sup>7</sup> Further, the court found that because the proposed use was a permitted use under the zoning code as a matter of right, that throughout the site-plan approval process the property owner was led to believe that approval was inevitable, and because the property owner also obtained the services of an expert engineer who told him that the proposed use was feasible, his investment-backed expectations were reasonable.<sup>8</sup>

The likely forthcoming zoning changes to the Town’s land development code, restrict the Laurings’ ability to proceed with the construction of their family home, and thus, the use of their land. This governmental organization’s action, in restricting the Laurings’ use of their land, through future ordinances, precludes them from attaining the reasonable investment-backed expectation for the existing use of their real property, and thus constitutes an inordinate burden. Just as in *Ocean Concrete*, the Laurings’ proposed use was and is, a permitted use under the zoning code as a matter of right, throughout the site-plan approval process the Laurings have been led to believe that approval was inevitable, and they have also obtained the services of an expert engineer, architect, and builders at great expense.

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4. See *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571 (Fla. 2d DCA 1975).

5. See *Town of Longboat*, 467 So.2d at 492.

6. See §70.001(3)(e), Fla. Stat. (2018).

7. See *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, 241 So.3d 181 (Fla. 4th DCA 2018).

8. *Id.*

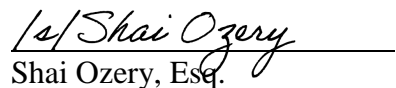


Thus, under *Ocean Concrete*, the Laurings have a clear “reasonable, investment-backed expectation” of their property, under the Bert Harris Act, entitling them to a trial on damages and opening the Town to liability.<sup>9</sup>

In light of the forgoing, Florida law, equity, and fairness demand that despite the above-mentioned changes likely to be considered to the Town’s land development code, a narrow category of applications such as the limited status possessed by the Laurings be exempted from any of the above-mentioned changes. These applications should be “grandfathered in,” so that the Laurings may complete the application process as it existed before the declaration of intent of moratorium, and as they were led to believe by the Town of Ocean Ridge, consistent with Florida law.

**I thank you for your prompt attention to this request.**

Sincerely,



Shai Ozery, Esq.

Florida Bar No. 118371

ROBERT N. HARTSELL, P.A.

cc. Town Attorney R. Brian Shutt - [bshutt@torcivialaw.com](mailto:bshutt@torcivialaw.com)

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9. See *Ocean Concrete*, 241 So.3d at 189-190.