

TOWN OF OCEAN BREEZE  
MINUTES REGULAR TOWN COUNCIL MEETING

Monday, June 10, 2019

Ocean Breeze Jensen Beach Clubhouse, Pineapple Bay Room – 10:30 a.m.  
700 NE Seabreeze Way, Ocean Breeze, FL 34957

1. **Call to Order** – President Ken De Angeles called the meeting to order at 10:30 a.m.
  - Pledge of Allegiance – Council Member Gerold led the Pledge of Allegiance
  - Roll Call – President Ken De Angeles, Council Members Kevin Docherty, Richard Gerold, Terry Locatis and David Wagner  
Absent – Mayor Karen Ostrand, Vice-President Ann Kagdis
  - Staff Present – Town Management Consultant, Terry O’Neil; Town Attorney, Rick Crary, Town Clerk, Pam Orr, and Bookkeeper/Clerical Assistant, Kim Stanton

2. **Approval of Minutes** – Council Member Locatis asked for clarification of the Minutes of the May 13, 2019 meeting. He referred to page 9 in which Mr. O’Neil asked for Motion regarding the unit with the electrical issues and condemnation. He added that on page 10, he had made this Motion. However, the Minutes stated that “Council Member Locatis stated the matter should be put to a vote.” He commented that he did not think it was clear as to what the Council voted. He stated votes should be made clear.

Pam Orr, Town Clerk, stated that when the Town Council makes a Motion, it should be stated clearly. She explained that discussion continued between the time the Motion was made and the actual vote. She asked that Motions be made clearly.

President De Angeles asked for Council Member Locatis to clarify his Motion.

Council Member Locatis stated that the Motion was for Staff to discontinue with the stipulation procedure and take steps necessary under the Building Code including condemnation of the unit, if necessary, to resolve the matter.

Mr. O’Neil reported that Staff took that action, as the Motion stated, and contacted the owner of the unit and withdrew the Stipulation Agreement. Mr. O’Neil stated that if there was discussion regarding any Motion it would be good practice to restate Motions closer to the final action.

Council Member Docherty, seconded by Council Member Locatis, made a Motion to approve the Minutes of the May 13, 2019 meeting.

In favor: De Angeles, Docherty, Gerold, Locatis

No: Wagner

Absent: Kagdis

Opposed: None

Motion Passed: (4-0)

3. **Budget to Actual Quarter Ending 3/31/2019** – Kim Stanton presented the Budget to Actual to the Town Council.

President De Angeles asked for questions regarding the budget from October 1, 2018 – March 31, 2019.

There were none.

Council Member Wagner, seconded by Council Member Docherty, made a Motion to accept the Budget to Actual report for the quarter ending March 31, 2019.

Roll Call:

In favor: Wagner, Gerold, Locatis, Docherty, De Angeles

Absent: Kagdis

Opposed: None

Motion Passed: (5-0)

**4. Request Motion to Accept and Transmit F/Y 2017-2018 Audit Report to appropriate State Level Governmental Agencies** – David Haughton, CPA, Berger, Toombs, Elam, Gaines & Frank, Certified Public Accountants, spoke about and explained the Annual Financial Report including the Report of Independent Auditors, Statement of Net Position, Statement of Activities, Changes in Fund Balance (General Fund and Special Revenue Fund), Auditor’s Report on Internal Control with no material weaknesses nor significant deficiencies and Management Letter. Mr. Haughton stated the report would be finalized according to the Council’s approval.

President De Angeles asked for questions or comments from the Town Council.

There were none.

Mr. O’Neil spoke about the complexity of the audit due to the Indian River Drive Project grants and thanked Mr. Haughton.

Council Member Locatis, seconded by Council Member Wagner, made a Motion to approve the Audit Report and forward it to the appropriate authorities.

Roll Call:

In favor: De Angeles, Locatis, Gerold, Wagner, Docherty

Absent: Kagdis

Opposed: None

Motion Passed: (5-0)

**5. Comments from the public on topics not on the Agenda** – Candi McKenzie, 30 NE Nautical Dr., Ocean Breeze, Florida, commented that after the pool attendant left, individuals were in and around the pool with their own alcohol and wine glasses. She stated that she had brought this matter before the Council before and that she did not believe it was the residents’ responsibility to police these matters. She asked about a state agency site inspection and how that might compromise the Resort’s liquor license. She stated that the pool attendant hours were changed from ending at 6:30 p.m. to 2:30 p.m. She asked if the Town Council, as the governing body, could help.

Mr. O’Neil answered that following the last Regular Meeting, Staff sent an email to the Division of Alcoholic Beverages and Tobacco in Fort Pierce regarding the comments from the public regarding patrons bringing alcoholic beverages onto a licensed premise. He stated that the Agency was given a copy of highlighted portions, with public comment, of the Minutes and indicated that the license holder was Ocean Breeze Resort. Mr. O’Neil read aloud the email. He stated that the Town had not yet received a response to the questions. He indicated that he understood that an individual cannot bring alcohol onto a license premise. He added that the Town would continue to press for answers to share with the public at the July meeting.

President De Angeles asked Mr. O’Neil to follow up on the matter aggressively.

Council Member Locatis stated that he spoke to (Major) Kent Stanton, the regional area representative, before the license was issued and asked him about this issue. He continued that he was told by Mr. Stanton that the Agency did not oversee operations, and the only reason they would conduct an inspection was if they received a report that a minor was being served alcohol.

Mr. O'Neil stated that the Town had a right to ask the Agency to explain why they would not enforce the rules.

President De Angeles asked if this information had been shared with Sun Communities.

Mr. O'Neil answered that the material was provided to Sun and that he had contacted Sun and left a lengthy message with Chris Walters. He mentioned that there were some signs that had been posted since the last meeting.

Council Member Gerold stated that signs were put up around the pool and that the gates were locked around the pool, except for one. He added that the County Inspector stated that due to safety and liability, all the gates had to be unlocked. He stated that nothing was said about the coolers and/or the drinks.

President De Angeles asked what responsibility Sun Communities had in enforcing these alcohol laws in the pool area.

Mr. O'Neil stated that Sun was the license holder and that they were responsible to adhere to the State laws and regulations. He explained to Mrs. McKenzie that the Town was waiting on a response from the Division of Alcoholic Beverages and Tobacco to the questions of May 28, 2019.

Council Member Wagner suggested using a cell phone camera.

Mrs. McKenzie stated that she did not have her cell phone at the time and asked if the residents could take pictures.

Council Member Gerold spoke about the security cameras and other issues. He commented that nothing was done about the issues so Sun was either ignoring the issue, the cameras did not work or no one was watching the video.

Mrs. McKenzie asked about taking pictures with her cell phone.

Attorney Crary stated he could not advise her about taking pictures with her cell phone.

Paul DiCenso, Buoy Drive, remarked that in defense of Sun, shortly after the email was sent (to the regulatory agency), signs were put up on all the gates and all the gates were locked. He stated that because of complaints, there was a fire inspection and the gates were now open for the safety of the residents; he added that they cannot lock the gates. He commented that he had seen drinking in the pool and recommended that residents and guests who witness these actions, inform those individuals about the rules. He spoke about the pool attendant; and added that people from the Jensen Beach area come into the pool to swim but management was ignoring the problem.

Mrs. McKenzie spoke about an incident in which a resident did speak up about the pool rules and that the response was verbal abuse. She stated it was not the responsibility of the residences to perform these tasks. She spoke about Sun hiring a \$10 an hour pool attendant.

President De Angeles acknowledged that this was a problem and that the Town was attempting to work with Sun to resolve the problem.

Sue Sokel, 175 NE Portside Dr., Ocean Breeze, Florida and asked for a clarification about the roadway with one-way signs. She spoke about turning right at a certain intersection and asked if Portside was one-way from the end of the road. She asked if cars were allowed to turn right on Portside?

President De Angeles stated that this was a Sun Communities issue and she should confer with management.

Mr. O'Neil mentioned that the road-way configuration in the Planned Unit Development was a fixed item and that he did not recall one-way roads. He added that Sun was coming forward with amendments and one of the items to be reviewed were the roadway patterns. He added that if any roadways were not as shown on the Master Plan, Sun should depict them in the amended plan and show how they function appropriately. He commented that he anticipated the roads would be discussed at a PUD Amendment public hearing for the Council to have discretion on approval of one-way movements.

**6. Comments from the Council on topics not on the Agenda** – Council Member Docherty asked about the status of the “your speed” signs that the Council approved.

Mr. O'Neil answered that the Town had applied to Martin County for a right-of-way permit and confirmed that the County would waive the \$900.00 permit fee. He added that the liability issues associated with the permit application had been resolved and confirmed that Staff had asked to expedite the process. He remarked that the Town obtained two requests for quotes for installation of the signs. He mentioned that delivery time was two weeks from the time the signs were ordered. He noted that they should be installed by the next Regular Meeting.

Council Member Docherty asked about the lighting along Indian River Drive stating that ninety percent of the lights were out and had not been replaced in over a month. He asked if this was Sun's responsibility.

President De Angeles answered that this was Sun's responsibility.

Council Member Locatis asked if these were the public lights.

Council Member Docherty answered that they were not the public lights.

Council Member Gerold stated that at the last meeting, the Council passed a Motion to include certain items within the upcoming PUD Amendment that were going to be tabled due to the fact that residents were away for the summer. He spoke about Sun being overdue with some prior commitments and added he was concerned about compliance. He asked Mr. O'Neil if it would be beneficial to include all of the Amendments. He stated that residents who were away could get the Minutes on-line and he invited further discussion.

Council Member Locatis asked if the Council could obtain some correspondence from Sun stating that the Council could proceed with the meeting and that certain items would be postponed until a future meeting.

Mr. O'Neil answered that at the last meeting, the direction of the Council was regarding pushing the meeting until later in the year and it was discussed that the application could be broken up to do certain, smaller items at the July 8, 2019 public hearing and then, review the other items later. He stated that the Council directed Staff to contact Sun Communities to alert them that the Town Council would like to break-up the PUD Amendments into Minor Amendments with the other PUD Amendments, which might involve the residents, postponed until October or November. He commented that he had communicated that information to Marcela Camblor, Sun's Representative. He added that Sun preferred not to separate the items into separate PUD Amendments, but to come before the Council with a package to perform certain Amendments, i.e. the kayak launch, the cover over the pier and a few other items. He stated there were remedial Amendments which need to take place, i.e. the roadway configuration, location of one-way streets and lighting. He stated that he believed the Council Members hearing the proposed PUD Amendments as a package had advantages. He added that the Town was expecting written correspondence from Sun regarding the matter, but it had not yet been received. He mentioned that this was at the discretion of the Council.

President De Angeles asked if Ms. Camblor had a time in the future when the PUD Amendments would be ready?

Mr. O'Neil answered that if the PUD Amendments were heard at the July 8 Regular Meeting, advertising must take place 15 days in advance of the meeting, all the material had to be submitted and reviewed by Staff, a Resolution would need to be drafted and all the components would need to be reviewed. He stated that this was the plan for the July 8<sup>th</sup> meeting and that if the PUD Amendments were separated, the applicant would be coming forward with only some of the Amendments. He concluded that for the Town Council to review all the material together might be advantageous. He referred to the letter by Vice-President Kagdis in which she addressed this matter.

Council Member Wagner stated that Town business was not seasonal and that he agreed with Vice-President's Kagdis.

President De Angeles read aloud the letter of May 8<sup>th</sup>, 2019 from Vice-President Ann Kagdis in which she stated she did not believe it was in the best interest of the Town to delay making a decision on the PUD Amendments.

Council Member Locatis asked if certain issues could be tabled should the Council not be able to finalize a decision about a PUD Amendment item(s).

Mr. O'Neil answered that the Town Council was at liberty, as long as there was a legitimate concern or request for additional information, to decline to make all the decisions at one particular hearing and that they could continue the hearing. He stated that if the Amendments were put back together as an entire package, the Council would consider all the items at the same time, say "no" to certain things, negotiate additional changes and dialogue with the Applicant regarding the Amendments. He asked for guidance from the Council as to how they would like to proceed because it would help in preparing the items for the Council's review.

Council Member Locatis stated that he believed the Council should proceed without breaking up the items.

President De Angeles added that he believed hearing the items as a whole was best. He stated that if the Council heard the PUD Amendments together in one package, they would see the entire scope of issues.

Council Member Locatis stated that he agreed.

Mr. O'Neil stated that in light of the direction from the Council at the last regular meeting, it would be appropriate to create a new Motion giving Staff direction to proceed with the entire Application being considered.

Council Member Docherty, seconded by Council Member Gerold, made a Motion to proceed to review the entire (PUD) package from Sun Communities.

Roll Call:

In favor: Gerold, Docherty, Wagner, Locatis, De Angeles

Absent: Kagdis

Opposed: None

Motion Passed: (5-0)

President De Angeles confirmed that the Council would be reviewing the entire PUD Amendment package at the next Regular Meeting.

Council Member Wagner spoke about his absence at the last Regular Meeting and his dismay that the Minutes indicated a departure from protocol of the meeting Agenda order. He spoke about his disappointment over the public's reaction and the Council's decision to reverse their decision to serve a resident in need of help with bringing his home up to the Florida Building Code.

Council Member Locatis stated that the May 13<sup>th</sup> Minutes stated the Town Council approved the Minutes of April 8<sup>th</sup>.

Mr. O'Neil stated that he believed Council Member Wagner was referring to the resident that had construction defects. He stated that at an earlier meeting, the Council decided to assist in the repairs of faulty wiring because the owner did not have the capacity to perform these duties. He remarked that a Stipulation Agreement was prepared, with the assistance of Attorney Crary, and explained the reasons for the Stipulation Agreement. He commented about the Town's level of concern adding that a quote was obtained for around \$2,500.00. He stated that the Town would have lien rights against the property in order to recover the costs for correcting the public safety issue; this was a life safety issue and a means that governments use in the area of code enforcement. He stated that he believed it was the most cost effective manner in dealing with such an issue. He added that the Council deliberated and there was lengthy discussion about the nature of the Stipulation, which had not yet been executed, and the Council decided to go another route so the offer for the Stipulation Agreement was withdrawn in writing. He added that the other option and next step was to proceed with a Notice of Violation with a reasonable period to allow the individual to fix the issues and ultimately, if not repaired, the Town would take steps to ask this individual to leave the premises because this was a life safety issue. He spoke about enforcement options.

Council Member Locatis stated there were several other options presented at that meeting and with the exception of one resident, everyone opposed to setting a precedent such as this. He remarked that it was his belief that two options were going to be followed-up which were two Veterans groups and Habitat for Humanity. He added that he did not believe any of these options were followed-up.

President De Angeles asked Mr. O'Neil if the Town Council had voted to agree to the Stipulation.

Mr. O'Neil answered that he reported to the Town Council the intended course of action at the prior meeting and indicated that there was a level of emergency. He stated that the Town Council, at the subsequent meeting, decided the Town did not want to enter into the Stipulation.

President De Angeles asked about the individual's military service.

Mr. O'Neil stated that the Town could not take on certain responsibilities in this instance and that the Town had been in touch with the Veterans Administration. The information was provided to the individual to be able to receive financial assistance. He added that a local group of Veterans had been alerted to the issue and the individual was put in touch with them as well. He commented that the Town attempted to assist this individual with other options. He stated that the wiring had to be repaired and the Town's options had been described. He remarked about the costs to the Town should the Town go the route of violation notice and eviction.

Attorney Crary stated that he did not attend last month's Town Meeting. He added that this situation raises questions regarding enforcement mechanisms a municipality might use and that the mechanisms were designed to either force, coerce or encourage citizens to act according to the law. He commented that enforcement mechanisms must be in place and they must be tailored in a way that produces results. He continued that, over the decades, due to the Town's low budget, coupled with a need to encourage people to act lawfully, the Town had always found ways that were cost effective. He commented that the most immediate enforcement mechanism, in this case, allows municipalities to enforce the Florida Building Code. He further commented that he had discussed the matter with the Town's Building Official, Larry Massing and added that Martin County had a magistrate system with code enforcement officers that cite individuals. He remarked that the magistrate system lacked the authority to involve the Martin County Sheriff's Department. He noted that ultimately the Town would have to be able to legally abandon, remove someone from their own residence and that would take a judicial order. He stated that whether the Town were to create a code enforcement system, the Town would still have to resort to the Courts. He noted that Mr. Massing informed him that Martin County hired outside counsel in the rare situations to obtain a Court Order, get the Martin County Sheriff involved. He stated it was a long and cumbersome process and included an appeals process. He explained that the Town was attempting to get immediate results for the least amount of money with the Stipulation Agreement. He commented that this was a rare situation because the gentleman was in a terminal condition and lacked the funds to repair an immediate safety situation. He added that the Town's building fund (permit fees) could be used to hire an electrician to immediately make the repair for public health and safety reasons. The Stipulation was designed for this individual to agree to pay the amount the electrician charged and if he did not come up with those funds, the Town would place a lien on his residence. He stated that the lien would have to be paid off upon sale of the unit; not absolutely collectable, but the expense to the Town would be a lot less. He spoke about the uniqueness of Ocean Breeze and its ability to be able to work things out on a small budget. He spoke about the need for the Town to have means and mechanisms in place for such matters as the Town grew. He stated that his goal was to economically perform these tasks. He reiterated that he believed the Stipulation Agreement was best as a method would get the best and quickest results.

Council Member Docherty thanked Mr. Crary for his explanation. He explained that the reason he wanted to abstain from his vote at the last meeting was to hear a precise explanation.

Attorney Crary stated that this was a rare situation and he believed it did not set a precedent; he added that governments had the right to as to what they enforce and what they do not.

President De Angeles asked Mr. O'Neil if any of the other possible solutions had been investigated.

Mr. O'Neil answered that the Town had found other resources that might intervene and stated that to his knowledge, this had not worked. He commented that Staff had put forth the effort to get the information and steer the individual in the right direction. He continued that, to the best of his knowledge, outside assistance had not taken place. He stated that the Building Official was in a position to issue a Notice of Violation.

President De Angeles asked if Sun Communities had been approached.

Mr. O'Neil answered that this was an owned unit, not a rented unit; he added that he believed they were aware of the situation.

Mr. Crary asked that the Minutes reflect that the Town had health, safety and welfare responsibilities; the Town would not be held liable in a case such as this.

Ron Reilly, 10 NE Nautical Drive, Ocean Breeze, stated that he owned an older unit in the resort and decided to get a new one. He stated that when the older units were built, they were built to code, and the codes have changed. He spoke about older units to which residents had been relocated that were not up to code. He asked if these units would be considered "Grandfathered-In?"

Mr. Crary answered that if someone were to go before a Judge, it would be up to Larry Massing, Town Building Official, to prove that an issue was creating an immediate threat to life or limb; he believed a Judge would rule that the matter had to be corrected. He stated that the opposing side could prove that the unit was Grandfathered-In and it would be a matter of how the Judge weighed the issue.

Mr. Reilly asked if the Town would be responsible for repairing someone's unit in a similar situation.

Mr. Crary answered that if a person was in danger....

Mr. Reilly interrupted and asked if the Town were to perform this type of repair for one of the units, why the Town wouldn't perform this repair for the rest of the units.

Mr. Crary stated that if an individual had the ability to pay and refused to repair their unit, it was unlikely that the Town would attempt to repair the unit. He added that the process to condemn and evict an individual was cumbersome.

Council Member Wagner spoke about the uniqueness of this particular situation citing that this individual was relocated into this unit that was not up to code. He added that when Sun was approached, they told this individual that this move was made by Carefree and that it was not Sun's problem. He stated that when Sun purchased the resort, they bought everything. He noted that there was not an issue until a problem occurred and then, the issue was discovered. He commented that ultimately this was a Sun issue, but they refused to deal with the problem. He stated the matter had to be addressed and that it was a safety issue.

Mr. Crary reiterated his favor towards the Stipulation Agreement due to the expense of the alternative.

Deirdre Henry, 107 NE Bay Drive, Ocean Breeze, stated that she, as a legacy resident, had someone help maintain her unit and she knew of another qualified individual who might help. She spoke about the poor condition of her roof and leaks. She stated that when one owns property, along with that comes responsibilities and she believed that if someone couldn't take care of their responsibilities, perhaps they should go elsewhere.



Council Member Locatis asked if Staff was able to obtain any financial information about the individual; assets, liabilities, etc.

Attorney Crary answered that he would not investigate that because of the costs to the Town.

Council Member Locatis asked if anyone verified the “hardship” issue.

Mr. O’Neil answered that the enforcement mechanism (Stipulation) put the Town in a position where they could recover the \$2,500 and that he did not believe that anyone with means would enter into such a stipulation. He stated that because the matter was brought before the Town and this gentleman was a Veteran, Staff set in motion the search for other funding sources.

Council Member Locatis asked if anything was verified.

Mr. O’Neil answered that this was not a loan, but a compliance matter. He stated that the Town did not have a system in place and he did not recommend setting one up because this was not a loan, but an enforcement issue.

Attorney Crary stated that the Stipulation stated that at the point that the electrician generated a bill, the individual had to pay and if he didn’t pay, in other situations, you would have to go into Court and sue and get a lien. The Stipulation also stipulates that if he doesn’t pay in a timely manner, he would agree to a lien being placed on his unit so the judicial steps were being cut out.

Joe Lynch, 123 NE Bay Drive, Ocean Breeze, asked that if something happened to this individual and the unit gets taken over by someone in his family, would the Town have to wait to recover these dollars.

Attorney Crary stated that the legacy tenancy was not transferrable to their heirs; “correct?”

Mr. O’Neil answered that the legacy status was not transferrable but the PUD allowed protections to legacy residents regarding ownership. He stated that Staff’s view on this situation was that if the unit were sold or transferred, the lien would be in position. He stated if the unit were sold or transferred to Sun, the Town’s position was that permitting would cease until the lien was satisfied.

Attorney Crary stated that very few purchasers want to purchase something with a lien; but, if inherited with a lien, the Town would have the option of foreclosing the lien if it were not paid.

President De Angeles asked for further comments.

There were none.

**7. Comments from Town Management Consultant Terry O’Neil – No further comments.**

**8. Comments from Mayor Ostrand – absent.**

**9. Announcements –** President De Angeles announced the Monday, July 8, 1019 Regular Town Council Meeting to be held at 10:30 a.m. at Ocean Breeze Resort Clubhouse, Pineapple Bay Room.

- Florida Legislature passed HB107 was passed – wireless communication while driving authorizes the enforcement of texting while driving as a primary offence. Additionally, the bill specifies that the person may not use a hand-held wireless communication device while driving in a designated, sensitive area, school crossing, school zone or work zone area while workers were present or were operating equipment.
- Environment Regulations Bill – originally issued with the contaminated recyclable materials but a provision was added that included a moratorium on local motion of the single-use plastic straw – vetoed by Governor DeSantis.

President De Angeles asked for further comment.

There were none.

**10. Adjourn** – Council Member Wagner, seconded by Council Member Locatis, made a Motion to adjourn the meeting at 11:54 a.m.

In favor: De Angeles, Docherty, Gerold, Locatis, Wagner

Absent: Kagdis

Opposed: None

Motion Passed: (5-0)

Respectfully Submitted,

*Pam Orr,*

Town Clerk

Minutes approved: July 8, 2019