

TOWN OF OCEAN BREEZE
MINUTES REGULAR TOWN COUNCIL MEETING

Monday, August 12, 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 De Angeles called the meeting to order at 10:30 a.m.

- Pledge of Allegiance – Mayor Ostrand led the Pledge of Allegiance
- Roll Call – Mayor Karen M. Ostrand, President Ken De Angeles, Vice-President Ann Kagdis, Council Members Kevin Docherty, Richard Gerold, Terry Locatis and David Wagner
- 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 Wagner, seconded by Council Member Docherty, made a Motion to approve the Minutes of the July 8, 2019 Regular Meeting and the July 16, 2019 Special Meeting.

All in favor; Yes: De Angeles, Kagdis, Gerold, Docherty, Locatis, Wagner; No: None; Motion Passed

3. Florida Power & Light Company – Mayor Ostrand introduced the Town’s new Florida Power & Light Senior External Affairs Advisor, Kate Cotner.

Ms. Cotner stated that she was the External Affairs Advisor for Martin and St. Lucie Counties, she gave an update on the underground utilities and she announced her cell phone number, (772) 214-7438. She added that the information had to be entered into their system and the easement had been recorded by Sun Communities; that a conservative number for completion of the work was ten weeks after recording the easement. She answered questions from the Town Council.

Sargent David Rosko, Martin County Sheriff’s Department – Sargent Rosko gave a report regarding the traffic concerns on Indian River Drive through the Town of Ocean Breeze.

Discussion ensued

4. Emergency Ordinance Number 295-2019 – The Town Clerk read the Ordinance into the record.
AN EMERGENCY ORDINANCE OF THE TOWN OF OCEAN BREEZE, FLORIDA, RECOGNIZING THAT ANY AND ALL ORDINANCES AND REGULATIONS OF THE TOWN RELATING TO THE FIELD OF REGULATION OF FIREARMS AND AMMUNITION AS PREEMPTED PURSUANT TO FLORIDA STATUTES SECTION 790.33 WAS NULL AND VOID, AND THE SAME WAS HEREBY REPEALED PROVIDING FOR SEVERABILITY, APPLICABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Attorney Crary explained the need for this emergency Ordinance.

President De Angeles asked for questions from the Council Members.

There were none.

President De Angeles asked for questions from the public.

There were none.

Vice-President Ann Kagdis, seconded by Council Member Locatis, made a Motion to adopt Ordinance Number 295-2019.

Roll Call Vote: Yes: De Angeles, Kagdis, Gerold, Docherty, Locatis, Wagner; No: None; Motion Passed 6 - 0

5. Quasi-Judicial Public Hearing: Consideration of Resolution 293-2019: The Town Clerk read Resolution 293-2019 into the record – **A RESOLUTION OF THE TOWN OF OCEAN BREEZE, FLORIDA, AMENDING ORDINANCE NO. 170, ORDINANCE NO. 251-2017, ORDINANCE NO. 274-2017 AND RESOLUTION NO. 277-2018, TOGETHER COMPRISING THE OCEAN BREEZE WEST PLANNED UNIT DEVELOPMENT (PUD) AGREEMENT(S), ALSO KNOWN AS THE 143-UNIT “SEAWALK” SINGLE-FAMILY RESIDENTIAL DEVELOPMENT, APPROVING MINOR CHANGES TO THE PROJECT’S MASTER SITE PLAN, PHASING PLAN AND LANDSCAPE PLAN, INCLUDING; REDUCTION IN THE SIZE OF THE DEVELOPMENT’S SWIMMING POOL AND POOL DECK AREA, CHANGES TO ENTRY LANDSCAPING FEATURES, RELOCATION OF STREET TREES TO AVOID UNDERGROUND UTILITIES, CHANGES TO STORM WATER RETENTION AREA LANDSCAPING TO MEET SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) REQUIREMENTS, ADDITIONS AND MODIFICATIONS TO PROJECT FENCING, MODIFICATION OF THE PROJECT’S PHASING PLAN PERTAINING TO THE TIMING OF SITE CLEARING, SIDE WALK CONSTRUCTION AND THE FINAL INSTALLATION OF ROADWAY ASPHALT; DECLARING SAID CHANGES TO BE CONSISTENT WITH THE TOWN’S COMPREHENSIVE PLAN; PROVIDING FOR CONFLICT PROVISIONS AND A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.**

President De Angeles asked if any of the Town Council Members had any exparte communications to disclose.

There were none.

President De Angeles asked for those giving testimony to rise, raise their right hand and be sworn in by the Town Attorney.

Attorney Crary swore in Mr. O’Neil, Mr. Karl Albertson, and Ms. Kristen Northup of D.R. Horton.

President De Angeles asked Staff to present testimony, including any evidence, and give their recommendation.

Mr. O’Neil referred the Council to his Memo dated August 5, 2019. He gave a brief history of the Ocean Breeze West PUD documents, he introduced the PUD Amendment Application and explained that this was a Quasi-Judicial hearing. He described the proposed minor amendments and provided a description of the applicant’s proposed changes referencing Page 2 of his Memorandum. He confirmed that Town Staff had reviewed the Resolution and approval documents for form and that MacKenzie Engineering had conducted a technical review of the proposed changes and found them acceptable. He introduced Karl Albertson of D.R. Horton and asked him to present the evidence to the Council.

President De Angeles invited Mr. Albertson to present the D.R. Horton testimony.

Karl Albertson, along with Kristen Northup, presented the following amendments to the PUD:

- a) Changes to the entry landscaping
- b) Relocation of street trees to avoid conflicts with water, sewer and drainage infrastructure in the right-of-way
- c) Addition of street trees on lots by way of revised landscape plans and notes
- d) Revision to Declaration of Covenants and Restrictions to add street tree protection and maintenance language
- e) Changes to landscape plan for retention areas (per SFWMD permit)
- f) Addition of 6' opaque decorative fence (at developer's option) in Phase 3 along south property line
- g) Relocation of 6' opaque, decorative fence to property line for lots 1 through 10; he further explained the reason for this change.
- h) Modification to CO Phasing Plan to allow clearing/development of Phase 4 upon completion of the infrastructure in Phases 1 and 2
- i) Modification of CO Phasing Plan to create completed sidewalk loop allowing issuance of CO's in Phases 1 and 2 prior to completion of all sidewalks in Phases 1 and 2
- j) Modification of CO Phasing Plan to require the 2nd layer of asphalt within 24 months or prior to the issuance of 85% of the COs in each phase, whichever comes first
- k) Modification of the community pool and deck, thereby reducing the pool's dimensions from approximately 30' x 50' to approximately 20' x 40' and reducing the surrounding deck's width from approximately 80' to approximately 70'

Discussion ensued.

President De Angeles asked for further questions for the Petitioner from Council Members.

There were none.

President De Angeles asked Staff for questions for the Petitioner.

Mr. O'Neil spoke about an addition to the Resolution regarding dust control. He asked about the fence design and maintenance.

Discussion ensued.

President De Angeles asked for comments from the public.

Paula Joyal, 1340 NE 29th Terrace, Jensen Beach, asked about DR Horton's fence, affects to her property, maintenance of the fence, ground covering, weeds and location of her property.

Discussion ensued.

Attorney Crary spoke about the HOA setting up a defined rule that the area behind the fence was not a walkway; it was strictly for maintenance.

David Britt, 1802 NE South Street, Jensen Beach, spoke about the 5' easement for FPL, maintenance of the fence on his side, removal and installation of vegetation, dust issues related to his pool, his expectation to be reimbursed for extra pool maintenance, sod quality, his anticipation of problematic issues in the long run, and his willingness to work with D.R. Horton.

Discussion ensued.

Mr. O'Neil stated that during the initial PUD process, D.R. Horton recognized their role to be as flexible and accommodating as was reasonable.

Discussion ensued.

Tony Richmond, 1592 South Street, Jensen Beach, spoke about his home located behind Lots 2 & 3 where D.R. Horton was proposing to relocate the fence, a hill that had been removed from behind his home by D.R. Horton, guide wires being exposed due to erosion, the easement behind his home, his property line, his response to questions he posed to D.R. Horton regarding the fence, his observance of posts that had erosion on the east side of Skyline Drive, his desire for a retaining wall to hold the dirt, the vacant lot on South Street and its back corner (west side corner) being eroded, methods to hold the berm that he lost, his desire not to have a fence nor a five foot easement, but a retaining wall (he stated he wants his hill restored), and that he did not want to lose any of his (undistinguishable) to erosion, ignorance nor building.

Mr. O'Neil stated that it was reasonable to ask D.R. Horton to explain how their construction activities were isolated solely to their property and if these activities were causing erosion problems to an adjacent property. He commented that the Town would want to impress upon D.R. Horton to address the issue to prevent erosion. He added that from the Town's regulatory standpoint, it wasn't reasonable for D.R. Horton's excavation activities to cause erosion on adjacent properties; and suggested that the design engineer weigh in on the issue.

Mr. Richmond suggested a site visit in the very near future. He stated that when others visited, he asked them about the pile of sand, guide wires, FPL's crooked pole and erosion; and added that those visitors suggested a retaining wall.

Mr. O'Neil stated that the Town would ask the design engineer and the Town's engineer, with D.R. Horton's concurrence, to be on site to inspect the issue and explain what was sensible for this area. He added that this was not a component of this PUD approval, but that this was a site level permit issue and that it was not inconsequential.

Mr. Richmond asked about ceasing to clear that area until the issue was resolved.

Mr. O'Neil addressed the Council and stated that the Town would want to perform these tasks right away. He added that the engineers would guide the Town as far the outcome and recommended that those three individuals, plus Staff, look at the situation.

Mr. Richmond asked if he would be included in the meeting and if he would be notified.

Mr. O'Neil answered "yes."

President De Angeles asked for further comments from the public.

There were none.

Council Member Gerold asked about the outcome of the erosion issue.

Mr. O'Neil answered that he did not believe that anything within the content of the PUD application would be changed, but that at approval, the Town Council could direct staff to meet with Mr.

Richmond and the others on site to advise of a solution; he added that this could be done parallel to the approval of the application.

Council Member Gerold stated that he was concerned not only about Mr. Richmond's property, but others.

Mr. O'Neil answered that if this erosion was occurring and affecting other parcels, a solution would be sought for the entire area. He asked the Council about the position of D.R. Horton regarding this issue.

President De Angeles called on Mr. Albertson to reply.

Mr. Albertson stated that D.R. Horton would agree not to perform any clearing along lots 1-10 until everyone could meet on site and come to a decision with the engineers.

Mr. Richmond agreed.

Mayor Ostrand stated that the relocation of the fence along property line Lots 1-10 was included in this issue and asked if item "g" were to be eliminated from the application.

Mr. O'Neil answered that the fence was in addition to the resolution of this issue.

Mr. Albertson stated that D.R. Horton wanted the opaque fencing.

Council Member Gerold asked if D.R. Horton was going to wait to relocate the fence.

Mr. Albertson answered that was true until it was determined by the engineers that a retaining wall...

Discussion ensued.

Mr. Albertson reiterated there would be no additional clearing on Lots 1-10 until D.R. Horton meets...

Discussion ensued.

Attorney Crary stated that a parenthesis after item g) that says no clearing or fence construction shall be done until Town Engineer determines whether a retaining wall was needed.

Council Member Gerold agreed.

Mr. O'Neil addressed the Council to give Staff approval to draft language which would limit activities until the erosion issue was resolved, and that this would limit any activities. He asked that whoever made a Motion to approve the item would make the item contingent on that direction to Staff.

Mayor Ostrand asked if item g) was being eliminated temporarily.

Attorney Crary stated that approval would be on adding additional parenthetical language which addressed the situation.

Vice President Kagdis, seconded by Council Member Locatis, made a Motion to approve Resolution Number 293-2019 contingent upon Section g) having additional language regarding no clearing, no fences, no installations until the engineering report was submitted to the Town.

Roll Call Vote: Yes: De Angeles, Kagdis, Wagner, Locatis, Gerold, Docherty; No: None; Motion Passed 6 -0

6. Comments from the public on topics not on the Agenda – There were none.

7. Comments from the Council on topics not on the Agenda - Council Member Wagner stated the paver sidewalk at the West End exit was being undermined and collapsing which was creating a possible safety issue. He stated the issue needed to be investigated and he confirmed that the pavers were installed by Sun Communities.

Mr. O'Neil stated that there were minimum maintenance requirements for Sun to meet. He added that Staff would look into the matter and ask Sun Communities to resolve the problem.

Vice-President Kagdis spoke about the Town's donation of \$200.00 to The Entrepreneurship Foundation and the additional \$200.00 donation to the Environmental Studies Center last year. She asked for discussion and a decision as to whether the Town would continue to support this school for the coming year.

Council Member Docherty asked about the relationship between the School and the Town.

Vice-President Kagdis answered that the Environmental Studies Center was a critical educational component in the Town receiving the grants for the Indian River Drive project.

Council Member Wagner, seconded by Council Member Docherty, made a Motion to approve the contributions. All In Favor: Yes: De Angeles, Kagdis, Gerold, Docherty, Locatis, Wagner; No: None; Motion Passed: 6 -0

Vice-President Kagdis provided an update and briefly explained various Bills signed by Governor De Santis relating to 1) prohibitive acts in connection with obscene or lewd materials prohibiting a person from knowingly, possessing, distributing, advertising child-like sex dolls, 2) insurance companies and policies in the State of Florida, 3) invasive lionfish, 4) coastal restoration issues, and 5) the new Division of Law Enforcement over issues that had to do with environmental protection.

8. Comments from Town Management Consultant Terry O'Neil – there were none.

9. Comments from Mayor Ostrand – Mayor Ostrand announced her participation along with Vice-President Kagdis at the upcoming Florida League of Cities Annual Conference. She spoke about her role on the Legislative Committee, preemption.

10. Announcements – President De Angeles announced the following meetings to be held at Ocean Breeze Resort Clubhouse, Pineapple Bay Room, 700 NE Seabreeze Way, Ocean Breeze, FL

- Regular Town Council Meeting – Monday, September 9, 2019 at 10:30 a.m.
- Tentative Budget and Proposed Millage Rate Hearing – Wed., September 4, 2019 at 5:01 pm
- Final Budget and Proposed Millage Rate Hearing – Wed., September 11, 2019 at 5:01 pm

11. Adjourn – Council Member Wagner, seconded by Richard Gerold, made a Motion to adjourn the meeting at 12:14 p.m. All In favor: De Angeles, Kagdis, Docherty, Gerold, Locatis, Wagner; Opposed: None; Motion Passed: (6-0)

Respectfully Submitted,

Pam Orr,

Town Clerk

Minutes approved: September 9, 2019