

TOWN OF OCEAN BREEZE
MINUTES REGULAR TOWN COUNCIL MEETING
Monday, March 11, 2024, 10:30AM
Ocean Breeze Resort Clubhouse, Pineapple Bay Room
700 NE Seabreeze Way, Ocean Breeze, FL

1. Call to Order – President Kelley called the meeting to order at 10:30 a.m.

- Pledge of Allegiance – Mayor Ostrand led the Pledge of Allegiance
- Roll Call – Present: Mayor Karen M. Ostrand, President Sandy Kelley, Vice-President Liz Reese, Council Members Kevin Docherty, Michael Heller, Gina Kent, and Matthew Squires
- Staff Present – Town Management Consultant, Terry O’Neil; Attorney Paul Nicoletti; Town Clerk, Kim Stanton; Permit Processor, Pam Orr

2. Approval of Minutes – Council Member Docherty, seconded by Council Member Kent, made a motion to approve the minutes of the Regular Meeting, Monday, January 8, 2024.

President Kelley asked for comments from the public.

There were none.

All in favor: Yes: Heller, Kent, Squires, Kelley, Docherty, Reese; No: None: motion passed 6-0.

Council Member Heller, seconded by Council Member Squires, made a motion to approve the minutes of the Regular Meeting, Monday, February 12, 2024.

President Kelley asked for comments from the public.

There were none.

All in favor: Yes: Heller, Kent, Squires, Kelley, Docherty, Reese; No: None: motion passed 6-0.

3. Proclamation – Problem Gambling Awareness Month – Mayor Ostrand – Mayor Ostrand read a portion of the Proclamation into the record and mentioned the importance of public awareness. She proclaimed March 2024 as Problem Gambling Awareness Month in the Town of Ocean Breeze.

Council Member Kent, seconded by Council Member Reese, made a Motion to approve the Proclamation.

President Kelley asked for comments from the public.

There were none.

All in favor: Yes: Heller, Kent, Squires, Kelley, Docherty, Reese; No: None: motion passed 6-0.

4. Proposal to fund a project identification/public education sign, in an amount not to exceed \$1,000, for a shoreline restoration project sponsored by the neighboring Environmental Studies Center – Council President Sandy Kelley and Michael Glynn, Plant Operator, Environmental Studies Center – President Kelley gave a brief explanation of the project and stated that it would be funded out of the gas tax funds in the special revenue account. She invited Mr. Glynn to speak about the project.

Michael Glynn, Environmental Studies Center, gave an update on the project. He reported that the Native Plant Society donated three hundred (300) native plants and after all the exotics were removed volunteers did the planting. He asked the Town to help fund a supplemental kiosk to explain the benefits of the project.

He took questions from the Council and Mayor regarding Phase II of the project, shoreline stabilization, the water environment and tidal restoration to create habitat, state and federal permits, timeline, funding, size of the shoreline, usage of the riverfront with the students, Florida Oceanographic Society, oyster and sea grass establishment, Representative John Snyder and funding set aside for such projects at the State level.

Mayor Ostrand gave a brief history of the Town of Ocean Breeze and its neighbor, the Environmental Studies Center.

Mr. O'Neil confirmed that consistently throughout the years, the Town had provided funding and collaborated on efforts for the neighboring school. He pointed out that the project was within the confines of the Indian River Drive water quality project and that it was consistent with the previous road project which included baffle boxes that filter runoff water before entering the lagoon. He stated that the gas tax funds were limited to this type of spending and added that if the Council approved the expenditure, staff would come back to the Council at a subsequent meeting with a budget amendment. He stated that staff was recommending the project.

Vice-President Reese, seconded by Council Member Heller, made a motion to approve the project with the Environmental Studies Center.

Roll Call Vote: Yes: Heller, Kent, Squires, Kelley, Docherty, Reese; No: None: motion passed 6-0.

5. Comments from Attorney Paul Nicoletti regarding closeout of development projects – Mr. Nicoletti referred the Council to his memorandum dated March 6, 2024. He added that on Friday (March 8, 2024) he sent a letter to Zachery Griffin, the Land Development Director for Forestar, regarding the Seawalk PUD indicating that there were issues that still needed to be resolved prior to final closeout. He added that he sent Mr. Griffin another copy of the matrix that had been prepared in December 2022 along with an updated checklist of outstanding items that staff had prepared. He stated that in the letter, he gave the Developer until July 1, 2024 to resolve these issues, invited him to contact staff and bring this to closure. He also spoke about the Sun Communities PUD and goals to complete that closeout.

Council Member Docherty asked if the Town had performed a “partial approval?”

Attorney Nicoletti replied “no” and that on several occasions, the Developer had asked for partial reduction of the bond which was in place to assure completion of the infrastructure. He added that so much of the infrastructure was bound up in other parts of the community like final elevations. He stated that in his letter to Mr. Griffin, the Town recognized that the Developer had an interest in reducing the performance bond. He commented that the renewal was in August 2024. He stated that he hoped everything would get resolved, that the professionals could agree that everything was complete and that the bond would be released. He added that even if the bond could be reduced, there was a “set aside” for warranty work for infrastructure; he believed it was a ten percent (10%) or four hundred thousand dollars (\$400,000) which was standard.

Mr. Nicoletti took questions from the Council regarding the final approvals and the additional fifteen (15) month period, water runoff behind Publix, drainage as part of the infrastructure, code enforcement violation procedures and county courts.

Melissa Heller, resident of Seawalk community and representative of the Seawalk HOA, spoke about her positive impressions of Town staff. She asked the Town Council to make additional resources available to Staff, if needed, to ensure that all the present deficiencies within the Seawalk Community and the Resort are thoroughly and fully resolved.

6. Comments from the public on topics not on the Agenda – Joe Beert, resident of the Seawalk community, spoke about his support of the Environmental Studies Center project using gas tax dollars. He stated that he did not agree with the Town Council making charitable donations out of the general fund. He provided some breakdowns of figures paid to the Town for ad valorem taxes. He spoke about the differences in ad valorem paid by residents of the Resort versus residents of the Seawalk community. He asked if the Town could investigate something more balanced and limit charitable donations.

President Kelley stated that charitable donations are considered when and if organizations come before the Council to ask for a donation.

Mr. O’Neil answered that during budget season, staff investigated some of the inequalities in the ad valorem. He stated that certain options are available, for example the possibility of adopting a utility tax, which was a tax on electricity and water usage. He commented that staff investigated some preliminary numbers on the issue and added that as the budget for the upcoming year was being developed, it might be appropriate to look at some other options that might make it more equitable. He commented that a tax on electricity was still a tax, but that staff could do an analysis to see how it would shake out in terms of equity versus the current use of ad valorem. He stated that he would not recommend doing away with ad valorem, but that it could be brought down to a fractionable amount. He added that staff would investigate the matter and be able to provide the residents with some other options at budget time.

Mayor Ostrand spoke about the amounts of annual increases (5%) in the rents paid by residents of the Resort, which include ad valorem.

Discussion ensued regarding the amount of ad valorem taxes that the Resort paid, the number of lots in the Resort, choice in charitable donations, budget process, legal fees, increase in HOA dues, 2024/2025 budget, and constituent concerns and beliefs regarding charitable donations made by the Town.

7. Comments from the Council on topics not on the Agenda – Council Member Kent asked about a sound barrier wall to block the noise of the Brightline trains. She stated that she believed that there was funding provided by the government to build a wall, similar to the one at Sun Communities, to make a difference in noise reduction. She asked Mr. O’Neil if he knew about how much funding might be available from the government to erect a wall like the wall along Green River Parkway, to block out the noise from the trains and to protect children from playing on the tracks.

Mr. O’Neil answered that staff would investigate and that a municipality could be a platform for certain grant applications, which would need to be coordinated with private property owners. He stated that “yes” staff would investigate.

Council Member Heller asked Pam Orr what additional expertise might be useful going forward in moving the closeout issues along.

Pam Orr answered that Attorney Nicoletti had a good handle on the close-out and staff was providing the appropriate paperwork.

Attorney Nicoletti remarked that staff had delivered excellent service in providing the necessary and anticipated documentation, and that he believed that there was nothing lacking in the ability to push this close-out over the finish line. He added that if Forestar / D. R. Horton decided to not do what they should, then there were mechanisms that could be employed and would be recommended to the Town Council prior to any filing; but there were things that could be done.

Council Member Heller asked if D. R. Horton were to start performing this corrective work, would a construction manager be employed to oversee and make sure the work was done properly.

Mr. O'Neil answered that the Town did not want to walk away from the model already in place. He added that follow-up inspections were to be paid for by the developer and the professional performing the work must report to the Town because of the fiduciary relationship. He stated that the Town would not release the bond or move off the position unless the professionals stepped-up and certified the work that was being required. He commented that a lot of the items on the list were not physical but records attesting to things having been done properly. He stated that "yes" the Town had to hire some expertise, and that Staff may come back before the Council for some additional assistance. He stated that he could see that the Town may need some additional advice along the way from Mike Flaugh, Landscape Engineer. He added that the two reports provided by Mike Flaugh, at the Town's expense, and on behalf of the Town had been provided to the developers and all other parties. He stated that there were open questions which needed to be answered at close-out particularly regarding irrigation, trees, and soil amendments. He commented that these things, which were not new, were items that the Town could not let go and they must be addressed at close-out.

Council Member Heller stated that this was like the fox watching the hen house because D. R. Horton was paying the inspectors.

Mr. O'Neil answered that the Florida legislative delegation needed to be addressed as to how this was set up, and that the Town must accept the model. He added that this did not mean that the Town Engineer, Town Attorney, Town Manager, or others were not going to ask for proof and if an attestation was provided that was clearly and plainly nonsensible, the Town could not close the project. He advised that there would have to be more conversations, and ultimately the professionals have obligations to their licensure through the State that they must tell the truth and be accurate.

Council Member Heller added that certain homeowners hired private inspectors. He stated that he was suggesting the same thing; that when the time comes, we hire our own.

Pam Orr asked Mr. O'Neil to confirm that the Town Engineer was reviewing things also.

Mr. O'Neil answered "yes" that the Town Engineer was looking over the shoulder of all the other professionals, as was the Town's Building Official. He added that it might be that the Town's Building Official would more involved.

Council Member Heller asked about the remedies for the deficiencies listed in Mike Flaugh' report.

Mr. O'Neil answered that the report had been shared with Attorney Nicoletti. He commented that it was part of the Town's position with the developer, within the matrix and confirmed that they had work to do in

closing out the landscaping issues. He stated that the Town had a licensed professional saying that these are deficiencies. He stated that for example, the irrigation system was not in compliance with the PUD and that was an enforceable issue. He added that their remedial efforts must coincide with the interest of the HOA and the residents because they were dealing with properties that were now under the control of the HOA, so the HOA had to be a partner in the remediation effort. He added that at the end of the project, there may be a need for a PUD amendment. He remarked that the issues were not major but would have to be done to the satisfaction of the Town and the HOA, because the HOA would be a co-applicant for an amendment.

Discussion ensued regarding the Seawalk HOA and their willingness to cooperate and coordinate any activities necessary.

Sheila Raver, Seawalk resident, (Lot #1) spoke about her issues with her lot, her attorney, the HOA, her engineering report, her survey, and her to date costs in the amount of \$14,800 dealing with problems created by D. R. Horton.

Council Member Reese spoke about the exit at Skyline Drive coming out of the Publix parking lot. She spoke about her desire to partner with the owners of the Shopping Plaza to remove the concrete on the road at that exit. She asked about using the gas tax funds to remove the concrete.

Mr. O'Neil stated that gas tax funds could be used for public purposes and in general when it came to physical improvements in the right-of-way that are under government control and added that some of the features in that area may be within the right-of-way, but not entirely. He stated that if the initiative went forward and a project could be done in cooperation with the Plaza owners and the Town would need County approval because it was in the County right-of-way. He added some of the gas tax funds could be used to do that. He spoke about other opportunities to improve that stretch of Skyline Drive within the right-of-way and with the County's approval; an improvement such as a sidewalk enhancement or beautification. He commented that opportunities to utilize the gas tax funds are constrained because the Town does not own a right-of-way. He commented as done in the past, that the Town could donate funds to Martin County for their efforts because a project was either in the Town or adjacent to the Town.

Council Member Reese asked how the Town would do this.

Mr. O'Neil answered that in this instance, the Town would need to know that the Plaza had an interest in doing what was described. He stated that the Plaza had a permit to develop the current configuration of that exit. He commented that if the Plaza wanted to maintain what they currently had, there was not much the Town could do. He added that because Skyline Drive was a County road, they would have to approve the intersection configuration under a permit or agreement. He informed the Council that over the years there had been some push back from the (South Street) neighborhood that objected to drive through traffic exiting the Plaza going down South Street to avoid Jensen Beach Boulevard.

Council Member Reese stated that they had agreed to move the Stop sign.

Mr. O'Neil stated that the Stop sign's removal was not a result of anything the Town had done.

Council Member Reese stated that she had gone to Martin County.

Mr. O'Neil commented that the sign was on private property.

Council Member Reese stated that whoever removed it said it was fine and that she did go through the Town.

Mr. O'Neil commented that the Town was aware of the issue and explored with the County what it would take to do that (remove the sign) and, in the meantime, no action was taken by the Town and the sign came down. He stated that the Town did not know who took the sign down.

Council Member Reese stated that the Town had spoken to the owners of the shopping center and then it disappeared.

Mr. O'Neil answered that the Town did speak with the Plaza owners to lay the groundwork to see if they were even interested in removing the sign.

Council Member Reese asked if the Town could pursue this.

Mr. O'Neil answered that staff could revisit the issue.

Council Member Reese asked if the Town could offer to pay for removal of concrete bump with the gas tax funds.

Mr. O'Neil answered that the money must be spent within the confines of the right-of-way and that he did not believe this could be accomplished without the Plaza paying for some of the costs because some of the improvements were on their property. Mr. O'Neil stated that the fuel tax dollars could not be spent on private property absent easements, etc.

Mayor Ostrand asked what needed to happen first to get this accomplished.

Mr. O'Neil answered that the Plaza owners would need to be contacted first and then approach the County about a reconfiguration project using some gas tax funds. He stated that the Council would need to direct Staff to talk to the Town Engineer because safety would have to come first. He continued that there might be some push back from the County, the Plaza owners, or the neighboring residents.

Council Member Reese, seconded by Council Member Squires, made a motion to investigate the possibility of eliminating the right turn only configuration (no left turn) of the exit onto Skyline Drive from the Ocean Breeze Plaza, and that any costs be paid using gas tax funds.

Council Member Docherty asked that this reconfiguration be performed by first asking the Plaza owners if they would be willing to change the configuration and that the funds to pay for such a project come from gas tax funds. He spoke about the lengthy amount of time he had spent waiting for Indian River Drive safety upgrades.

Council Member Kelley asked for comments from the public.

(unknown) spoke about the current configuration of no left turn and the ramifications caused by this configuration.

Roll Call Vote: Yes: Kent, Reese, Kelley, Squires, Heller, Docherty; No: None: motion passed 6-0.

Council Member Heller asked about lights or reflector improvements along the railroad tracks at Jensen Beach Boulevard.

Mr. O'Neil answered that the Town was advised by the Martin County Public Works Director that they have hired a firm to do a plan for West End Blvd. which included the intersection at the railroad and the circle. He stated that they were closing in on their final report and that staff had communicated to County staff the Town's concerns. He commented that the Town did not have a draft of their work product yet and indicated that they were struggling with right-of-way issues, trying to establish two-way traffic on West End Blvd. and accommodation of pedestrian and ADA traffic. He remarked that he believed the County's goal was to change the traffic northbound on West End rather than the current configuration. He stated that he hoped to have something for the Council to look at in the next few weeks. He commented that it was conceivable if there was a component the Town would like to see added, the Town could advise the County and participate with gas tax funds.

Mayor Ostrand commented that she had been working on the West End Boulevard project for four years and that these types of things take a lot of time.

Council Member Docherty discussed his attendance at the Treasure Coast Council of Local Governments and talked about the new reservoir restoration projects being built around Lake Okeechobee to help the rivers.

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

9. Comments from Mayor Ostrand – Mayor Ostrand mentioned the St. Patrick's Day parade in downtown Jensen Beach. She also spoke about the legislative actions that recently took place, and that she would be coming back at the next meeting with an update.

10. Announcements – Regular Town Council Meeting to be held Monday, April 8, 2024 at 6:00PM at Ocean Breeze Resort Clubhouse, Pineapple Bay Room, 700 NE Seabreeze Way, Ocean Breeze.

11. Adjourn – Council Member Docherty, seconded by Council Member Kent, made a motion to adjourn the meeting at 11:47AM.

Respectfully Submitted,

Kim Stanton
Town Clerk

Minutes approved: April 8, 2024