

TOWN OF OCEAN BREEZE  
MINUTES REGULAR TOWN COUNCIL MEETING  
Monday, November 13, 2023, 10:30 a.m.  
Ocean Breeze Resort Clubhouse, Pineapple Bay Room  
700 NE Seabreeze Way, Ocean Breeze, FL

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 – Present: Mayor Karen M. Ostrand, President Kenneth De Angeles, Council Members Kevin Docherty, Sandy Kelley, Gina Kent, and Liz Reese
  - Staff Present –Town Management Consultant, Terry O’Neil; Town Building Official, Steve Nicolosi; Town Engineer, Scott Montgomery; Town Attorney’s, Rick Crary and Nicole Laliberte; Town Clerk, Kim Stanton; and, Permit Processor, Pam Orr
  
2. **Approval of Minutes** – President De Angeles requested a motion to approve the following minutes:
  - Regular Town Council Meeting, Monday, September 11, 2023
  - Regular Town Council Meeting, Monday, October 9, 2023

Council Member Reese, seconded by Council Member Kent, made a motion to approve the Minutes of the September 11<sup>th</sup> and October 9<sup>th</sup>, 2023, meetings.

President De Angeles asked for comments from the Council.

There were none.

President De Angeles asked for comments from the public.

There were none.

All in Favor: Yes: De Angeles, Docherty, Kelley, Kent, Reese; No: None; Motion Passed – 5 - 0

President De Angeles stated that the minutes of the Tentative Millage Rate and Budget hearing would be forthcoming in December 2023.

3. **Presentation by Jensen Beach Chamber of Commerce President, Ron Rose** – President De Angeles introduced Ron Rose.

Mr. Rose congratulated the Town on its recent sixty-three-year anniversary as a municipality and acknowledged the new, incoming Council Members. He spoke about the history of the Town and the Jensen Beach Chamber and presented a book about the history of Ocean Breeze to the new Council Members. He updated the Council on the Jensen Beach downtown event. He recognized President De Angeles’ long-standing volunteerism and community leadership over the past four decades, and honored him with a commemorative gift. He invited everyone to visit the Chamber of Commerce in downtown Jensen Beach and he reiterated his commitment to develop strong business relationships.

He took questions from the Council and staff regarding benches, sidewalks, construction, trees, flower placement, Florida Power and Light work, old post office building and County Commissioner Doug Smith.

**4. Update on close-out of the Seawalk residential project – Council Member Reese introduced the Seawalk Homeowners' Association Treasurer, Melissa Heller.**

Mrs. Heller, a resident of Seawalk, spoke about the Seawalk close-out process and the Town's willingness to work with the HOA. She spoke about the PUD, building code issues, dollars spent by the HOA that the HOA Board believed should be reimbursed by the developer, dollars spent by the HOA on security updates, construction debris removal, pool furniture degradation, common area landscaping, community-wide irrigation, invasive plants / trees in the western preserve area and the deterioration of the storm drains. She stated that the developer should be compelled to return to the project, to be held accountable and complete the work that they started.

Mr. O'Neil gave a brief history of the close-out of the Seawalk development and reviewed the list of close-out issues which was previously provided to the developer, the PUD, and the bond (which covered only infrastructure issues). He explained that the PUD was a development agreement that existed in perpetuity and was the zoning for the property. He discussed the progress of building code issues and added that the home construction issues were between the developer and the homeowner. He stated that the HOA issues focused more on the common areas and the PUD. He thanked the Town's Building Official, Steve Nicolosi, for his diligent work. He commented as to the next steps and an upcoming meeting with Landscape Consultant, Mike Flaugh, Landscape Architect. He remarked that staff was consulting with the Town Attorney to help understand the Town's options to compel compliance.

President De Angeles asked for comments from the public.

Scott Stulb, 1673 NE White Pine Terrace, Seawalk Community, commented that his sprinkler system had six (6) zones as opposed to other households with three to four (3-4) zones, watering of common areas adjoining his lot, the high costs of this watering, other lots within the Seawalk community with the same watering issues, NE perimeter fence as it related to the PUD and D. R. Horton / Forestar not adhering to the landscaping requirements of the PUD, the Indian River Lagoon, water-testing of ground aquifers and major cracking of walls and floors, compaction reports, D. R. Horton's warranty department, ongoing issues his neighbors are experiencing, and the four (4) million-dollar bond held by the Town of Ocean Breeze.

Mr. O'Neil asked Mrs. Heller and Mr. Stulb to provide the Town Clerk with their prepared statements to have them on record.

Council Member Kelley asked if there was a deadline on the close-out, about the Town's communications with D. R. Horton and options available to the residents of the Seawalk community.

Mr. O'Neil replied that the Town had repeatedly asked the developer for missing information and added that the bond had a shelf life. He stated that the Town had options to enforce the terms of the PUD and stated that the legal team would have to advise the Town. He stated that he was encouraged by the recent meetings with the HOA Board because there was another group talking to the developers. He commented that there was some variance with the PUD master plan and that would require a PUD amendment, which would require participation by the HOA. He stated that the Town had requested the developer contact the HOA Board and their attorneys to begin discussions for a PUD amendment, which could be approved administratively.

Council Member Kent asked about the compaction tests of the topsoil. She asked what the value would be to correct all the topsoil and the foundation.

Mr. Nicolosi stated that would not fall under his jurisdiction.

Mr. O'Neil explained that the soil treatment was related to the quality and longevity of the landscaping, and that the compaction issue was related to the foundation when the homes were constructed and added that these were two different issues. He stated that both were required, and that the Town did receive certifications.

Mr. Nicolosi stated that the Town did receive the compaction results for each lot.

(unknown) asked if these tests were legitimate.

Mr. Nicolosi stated as far as he knew, and that it was something difficult to disprove.

Council Member Kelley asked the outcome of the tests.

Mr. Nicolosi stated that all the lots had the proper density.

Council Member Kelley asked if there were issues pertaining to Mr. Stulb's remarks.

Mr. Nicolosi answered that it would take more exploration, and he explained the compaction tests.

Council Member Docherty asked about the anticipated legal fees with the Town's limited number of reserves and expressed his concern.

Mr. O'Neil spoke about the budget amendment on the agenda in the amount of \$39,450 of which represented a substantial amount of staff time spent on close-out issues. He stated that with the assistance of the Town attorneys, staff would be more effective in getting the developer to respond.

Mr. O'Neil acknowledged that the Town currently has reserves.

Attorney Crary remarked that he would be retiring and that his firm had other fully capable attorneys.

He acknowledged that the Town was requesting more investigations of legal enforcement and added that due to the expense, he had always advised the Town to resolve things without having to go the judicial route. He stated that due to the Sunshine law, the Town Council could not meet in private with the Town attorney but that the Town attorney could meet in private with the Chief Executive Officer, the Mayor.

Mayor Ostrand spoke about the upcoming staff meetings with the Seawalk HOA Board and the plan to meet on a regular basis. She stated that the close-out could not occur without her signature, and that she wanted most of the issues resolved. She encouraged anyone to contact her if they have any questions.

Council Member Kelley stated that of the \$39,000 in the budget amendment, \$19,000 was for legal fees. She asked if the Town could recoup any legal fees from D. R. Horton because they did not do their job nor were they code compliant.

Liz Meredith, 2960 NW Breezeway Circle, Seawalk, asked about the shelf-life of the bond.

Attorney Crary stated that the Town was well within the expiration of the bond.

Ms. Meredith stated that DR Horton had been repairing the roof vents and asked who checked their work to make sure it was performed correctly.

Mr. Nicolosi answered that the original inspector, Absolute Engineering, was returning to verify that the work was performed correctly.

Ms. Meredith asked if they were checking every vent in every single house.

Mr. Nicolosi stated that Absolute was the official inspection company and was required to check all homes. He added that he had been spot checking them and that he believed that the work had been performed correctly.

Ms. Meredith asked if there was to be documentation guaranteeing that all the repairs were fixed properly.

Mr. Nicolosi answered "yes."

Ms. Meredith asked if the original baffles were supposed to be separated from the vents.

Mr. Nicolosi stated that he asked the manufacturer and others, and no one has been able to give him an answer.

Mr. Stulb asked if the Town could contact the State Attorney General's office to assist in fighting the battle because D. R. Horton had not adhered to the PUD.

Attorney Crary stated that the Town would take his comment under advisement, but that he did not want to say one way or the other.

President De Angeles asked for other comments.

Pam Orr, Permit Processor, stated that Mrs. Heller had asked about the deterioration of the storm drains and asked Town Engineer, Scott Montgomery, to comment.

Mr. Montgomery replied that he had looked at several storm drains and one of them showed deterioration of grout work around the grate which would fall under the category of maintenance. He added that the two would need incidental maintenance which would normally come under the bond. He stated that the work was minor and was not a failure of a grate system or the structure itself, but just grout work where the grates secured to the top of the structure.

Mr. O'Neil asked if that work could be performed under the bond as infrastructure related improvements.

Mr. Montgomery answered, "that was correct."

President De Angeles asked for further comments.

Mrs. Heller spoke about the Town's reserves and the millage rate.

Mr. Crary stated that the attorneys at his firm would be looking into the issues from a standpoint of enforcement by the Town. He cautioned not to confuse the Town with the HOA, and that the HOA could investigate how they could enforce under the HOA and where the line of responsibility lied. He added that the Town would not be looking out for the HOA nor the individual homeowner's individual rights.

**5. Resolution No. 343-2023 – A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF OCEAN BREEZE, FLORIDA AUTHORIZING BUDGET AMENDMENT #4 TO THE GENERAL FUND BUDGET IN THE AMOUNT OF \$39,450 TO RECOGNIZE ADDITIONAL GENERAL GOVERNMENT AND PUBLIC SAFETY EXPENSES, PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES** – President De Angeles asked the Town Clerk to read Resolution No. 343-2023 into the record.

Kim Stanton, Town Clerk, read the title of Resolution No. 343-2023 into the record.

President De Angeles asked for a Motion to approve Resolution No. 343-2023.

Council Member Kelley, seconded by Council Member Docherty, made a motion to adopt Resolution No. 343-2023.

President De Angeles asked for public comment.

There were none.

President De Angeles asked for comments from the Council.

There were none.

Roll Call Vote – Yes: Kent, Reese, Kelley, De Angeles, Docherty; No: None; Motion Passed - 5 - 0

**6. Comments from the public on topics not on the agenda** – President De Angeles asked for 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 Docherty spoke about the Ocean Breeze Resort PUD. He added that he was collaborating with staff to have the three crosswalks refurbished along with the speed stripping. He discussed the Florida League of Cities, Treasure Coast Regional League of Cities, and advocacy meetings.

He asked if the Council Members who might not be using their allotted conference and travel if they would each be willing to move \$50 (\$250) of their funds to his account to allow him to attend the State meeting in Tallahassee in January, 2024. He remarked that this practice had been performed in the past to allow more active members to represent the Town at the State level. He stated that he was on the Finance, Taxation and Personnel Committee and would be traveling to Tallahassee to argue for Home Rule. He commented that he may not use the funds but would like them in place should the need arise.

Mr. O'Neil stated that the past practice had been that a Council Member or Mayor make the request and then a motion and second would be necessary to shift \$50 from each of the Members to allow Council Member Docherty to attend these events.

Council Member Docherty, seconded by Council Member Kelley, made a Motion that each Council Member transfer \$50 (\$250) from their allotted conference and travel funds to allow him to attend these meetings.

Council Member Reese asked about the dollars that were not spent from last year's budget.

Mr. O'Neil answered that this policy had been longstanding so that if any one Council Member or the Mayor needed extra funds from their allotted amounts, the funds could be transferred to the member needing the extra dollars.

President De Angeles asked for public comment.

There was none.

Roll Call Vote – Yes: Docherty, Kent, Reese, Kelley, De Angeles; No: None; Motion Passed - 5 - 0

Mr. Stulb asked Town Engineer, Scott Montgomery, about the perimeter fence on the northside of Seawalk that bordered Publix and the flooding of their parking lot. He stated that he had worked with the government workers at Ocean Breeze and submitted video and photographic evidence regarding rain run-off that was shin deep.

He remarked that rainwater from the Publix parking lot ran south and west; he added that the problem was also occurring at the pedestrian gate at the southwest corner. He commented that this flooding was affecting his lot all the way down to Council Member Kent's lot. He stated that he was told that the storm drain system was antiquated and he did not believe it was the responsibility of the Town to have this altered but the property owners of the Ocean Breeze Plaza. He remarked that the water was spilling up and over onto the grassy area and had made it to the perimeter fence on the Seawalk property. He suggested utilizing the 100 ft span storm water retention area with the natural grasses that was in the center of the main gate. He expressed his concern regarding water encroaching upon the properties of the Seawalk residents.

Mayor Ostrand stated that Phillips Edison was the owner of the Plaza property.

Mr. Montgomery commented that he had reviewed the videos and if in the future the waters levels rise, other than the walkway connection, to let him know. He added that a straightforward improvement in the meantime would mean that the developer would need to initially make a means of redirecting the water to the retention area, which would be able to easily manage it in the short-term but remarked that the item needed to be addressed by the developer. He added that, in his opinion, it was not the fault of the original engineer of record and would not have been anticipated but rather it was a matter of the (Plaza) facility not functioning correctly.

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

**9. Comments from Mayor Ostrand – Mayor Ostrand spoke about the noise level the trains are bringing to the area. She introduced Janet Galante, who lived in Ocean Breeze Resort to comment on the subject.**

Janet Galante commented that she had brought the item of loud train horns to the Mayor's attention. She stated that she counted thirty-six trains a day and spoke about acceptable decibel levels. She referred to the email from Don Donaldson, Martin County Administrator, in which he spoke about quiet zones. She remarked that she was not necessarily looking for quiet zones, but the length of time the trains were allowed to blow their horns. She stated that she was looking for information on how this could be addressed with Martin County.

Council Member Docherty stated that there were sixteen trains going one-way, which would amount to thirty-two trains a day. He also spoke about the sound barrier wall.

Mr. O'Neil stated that consensus from the Council would allow staff to investigate this issue further and he commented that there had been conversations with Martin County and the City of Stuart. He added that they had relayed that they were pursuing a quiet zone designation for Martin County. He stated that he did not believe there was any other way to regulate the railroad other than in this quiet zone designation, which would come from the Federal Railroad Administration. He commented that there were twenty-eight intersections in Martin County and a strategic amount of those intersections would need to be improved with gates, fences, and pedestrian crosswalks to make them "secure." He continued that a quiet zone designation could not be entertained without having a certain number of these intersections approved. He added that the County was reserving a decision until September 2024 on whether to seek the quiet zone.

**10. Announcements** – Regular Town Council Meeting, to be held Monday, December 11, 2023 at 10:30 a.m. at Ocean Breeze Clubhouse, Pineapple Bay Room, 700 NE Seabreeze Way, Ocean Breeze.

Council Member Docherty reminded the Council about the Treasure Coast Regional League of Cities luncheon in December 2023.

**11. Adjourn** – Council Member Docherty, seconded by Council Member Reese, made a motion to adjourn the meeting at 11:34 a.m.

All in Favor: Yes: De Angeles, Docherty, Kelley, Kent, Reese; No: None; Motion Passed – 5 - 0

Respectfully Submitted,

*Kim Stanton*  
Town Clerk

Minutes approved: Dec. 11, 2023