

TOWN OF OCEAN BREEZE
MINUTES REGULAR TOWN COUNCIL MEETING
Monday, September 9, 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.

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

President Kelley recognized Michael Glynn, Environmental Studies Center, and thanked him for providing coffee and donuts. She spoke about the Town’s collaboration with the Environmental Studies Center to remove invasion plants along Indian River Drive.

Mr. Glynn thanked the Town and the community for their support.

2. Approval of Minutes – Vice President Docherty, seconded by Council Member Kent, made a motion to approve the minutes of the Special Meeting and Budget Workshop, Setting of Tentative Millage Rate dated July 24, 2024.

President Kelley asked for comments from the public.

There were none.

All in favor: Yes: Kent, Kelley, Docherty, Heller, Squires; No: None; motion passed 5-0.

3. Proclamation – Declaring “Hunger Action Month” in Ocean Breeze, Florida – Mayor Ostrand read the Proclamation into the record.

President Kelley asked for a Motion to approve the Proclamation.

Council Member Docherty, seconded by Council Member Kent, made a motion to approve the Proclamation declaring “Hunger Action Month” in Ocean Breeze, Florida.

President Kelley asked for public comment.

There were none.

All in favor: Yes: Kent, Kelley, Docherty, Heller, Squires; No: None; motion passed 5-0.

Mayor Ostrand invited Gary Porter, Director of Community Relations, Treasure Coast Food Bank, to speak.

Mr. Porter addressed the Mayor and the Council regarding the Treasure Coast Food Bank’s efforts to raise awareness and the need to end hunger along the Treasure Coast.

4. Request for Approval of Contract with Gemma Torcivia to Serve as Town Attorney – Mayor Ostrand recommended Gemma Torcivia to serve as the Town Attorney and asked the Town Council to approve her contract.

Council Member Heller asked about Item #3 in the contract. He stated that Item #3 was regarding a three percent annual increase in rate of pay annually over the next three years and thereafter, Attorney Torcivia, would have to request an increase every year thereafter. He asked if the contract could be modified to provide for an automatic annual increase for as long as the contract was in effect. He stated that he did not believe that the Town attorney should have to ask for an annual increase of three percent each year. He added that if there were an issue with her performance, then the increase could be discussed.

Mr. O’Neil stated that a motion should be made to make that change.

Council Member Heller, seconded by Council Member Docherty, made a motion to remove the cap.

President Kelley asked for public comment regarding the revisions to Attorney Torcivia’s contract.

Discussion ensued regarding the details of the contract.

Attorney Nicoletti stated that the contract was easily modified to read “the Firm’s fee rates shall be increased by 3% annually each October 1st” and he clarified that was October 1st, 2025 “subject to approval by the Town during the annual budget review process.” He added that if the Town wanted to negotiate then that could be considered, and that the change would include the attorneys and the paralegals. He commented that the contract would say “fee rates for attorneys and paralegals.” He said that the contract could be modified if it were approved.

President Kelley answered “yes.”

Council Member Heller, seconded by Council Member Docherty, stated that his motion reflected the changes discussed by Attorney Nicoletti.

Roll Call Vote: Yes: Kelley, Squires, Kent, Heller, Docherty; No: None; motion passed 5-0.

Attorney Gemma Torcivia introduced herself and briefly addressed the Council.

Council Member Heller, seconded by Council Member Docherty, made a motion to approve the contract with the revisions.

President Kelley asked for public comments.

There were none.

Roll Call Vote: Yes: Heller, Docherty, Squires, Kent, Kelley; No: None; motion passed 5-0.

Attorney Nicoletti swore-in Attorney Torcivia.

5. Comments from the public on topics not on the Agenda – Melissa Heller, Seawalk resident, thanked the Mayor, Town Council and staff for the continued assistance and support during closeout.

Matthew Biondolillo, 2680 NE Breezeway Circle, Seawalk, Ocean Breeze, stated that the closeout list was updated recently and asked what tab number on the closeout included certification of sub-slab preparation including soil compaction?

Attorney Nicoletti answered that he did not have the matrix in front of him but that he would investigate it, and he would email Mr. Biondolillo directly.

Mr. Biondolillo spoke about sub slab preparation and soil compaction testing. He added that he was requesting that the Town take a hard look at soil compaction requirements in comparison to soil compaction test results on lot 24. He spoke about the off-ridge vents and asked if he could gain an understanding of whether vertical construction would be included as part of the closeout?

Attorney Nicoletti answered that he believed that Mr. Biondolillo had seen Mr. O'Neil's memo from 2023 to the Mayor and Town Council referencing closeout and vertical construction that was not part of the infrastructure covered by the bond. He commented that the same was true regarding sub soil compaction. He stated that he did not know if there was a specific matrix tab that dealt with that issue but that he would be happy to look at it and find out.

Mr. Biondolillo answered that he had a copy of the matrix and asked who created the closeout list.

Attorney Nicoletti answered that the closeout list was originally created by Mr. O'Neil, and at the beginning of the year, he rewrote it to simplify and clarify the list so that Forestar had a clear understanding of what was required.

Mr. Biondolillo commented that tab twenty-nine (29) stated that "claims that the allegation of the off-ridge vents was not property installed" and that under the status, it stated that it was cleared by the Town Building Official.

Attorney Nicoletti stated that was correct.

Mr. Biondolillo stated that this was not his first time before the Council and that he was expressing his deepest concern over lot 24, as well as the remainder of the lots in the development, that modification of the off-ridge vents was not performed in accordance with applicable Florida Statutes and Florida Building Code.

President Kelley asked if lot 24 was his lot?

Mr. Biondolillo answered "yes."

Discussion ensued regarding Florida Statutes, Florida Building Code, modification of products, and manufacturers' instructions.

Mr. O'Neil stated that Mr. Nicolosi, a seasoned Building Official, had been very clear and had written several times. He commented that there was not much more to which the Town could respond. Mr. O'Neil continued that the Building Official was licensed by the State and that the Town did not substitute its' opinion for those of the licensed Building Official, Mr. Nicolosi.

Mr. Biondolillo asked about making an appeal or petition.

Attorney Nicoletti answered that the Town did not have a building board of appeals and that this was not covered by the Martin County's because there was no interlocal agreement. He commented that any action Mr. Biondolillo would want to take, would need to go through the State of Florida and to do that, he believed Mr. Biondolillo would need to hire an attorney.

Mr. Biondolillo stated that he did not think that he would, but that he would investigate.

Attorney Nicoletti told Mr. Biondolillo to think in terms of warranty work and that if he needed to hire an attorney to file a lawsuit against the contractor, DR Horton...he did not believe that the Town would object or try to intervene.

Mr. Biondolillo stated that he was significantly affected based on a decision made by the local Building Official. He added that he would move forward with an appeal and petition at the State level soon. He asked if this was supposed to be on the closeout list because he was informed for over a year that it shouldn't be there and then it suddenly showed up.

Attorney Nicoletti stated that he believed it was on the closeout list and was removed because it had been addressed / resolved by the Building Official. He commented that this was a question that was on the early matrix for Forestar or DR Horton to resolve, but then the Building Official did answer the question, so it was removed.

Mr. Biondolillo asked if it was removed from the closeout list, or if it was completed?

Attorney Nicoletti answered that there were several citizen concerns that were clearly addressed, and once they had been addressed, they were removed off the list because they did not have anything to do with infrastructure, or to do with the closeout of the PUD per se.

Mr. Biondolillo spoke regarding the closeout list date, tab #29, HVAC, the errors and omissions from Mr. Wojcieszak's report and certain communications in the agenda packet.

President Kelley stated that in some cases, the information must be summarized.

Mr. O'Neil clarified that at the last Town Council meeting, Council Member Kent mentioned the issue of the difference between the Town's obligations under the code, and those items that would fall under warranty. He added that the material that was put into the packets was not intended to be a complete summary of all the correspondence, but that staff had simply searched for instances in which those items were discussed – warranty work versus Town code. He stated that this was intended to be responsive to Council Member Kent's inquiry about the difference between warranty work and building code issues.

Mr. Biondolillo spoke about Florida Building Code requirements and/or Florida Statutes and warranty issues. He stated that a huge burden was being placed on his family.

Mr. O'Neil advised President Kelley that the Town's current and prior legal counsel and Building Official have gone to great lengths to not overrepresent what the Town was able to do under the Town's code provisions and in doing that, have spoken at great length about warranty, as did Mr. Wojcieszak (indecipherable). He stated that the professionals told the Town that there was a difference, and that the Town had displayed an aggressive attitude to investigate the issues and hired Mr. Wojcieszak, among other professionals, to assist the Town. He added that the Town had attempted to articulate that warranty issues did exist.

President Kelley commented that as a homeowner in Seawalk she had to understand the difference between warranty work which was the responsibility of the developer; and that there was a distinction.

Discussion ensued regarding warranty issues and work performed in accordance with Florida Statutes.

President Kelley asked for further comments from the public. George Ciaschi, 261 NE Coastal Drive, Ocean Breeze Resort, Ocean Breeze, asked about the Planned Unit Development and what was remaining for the Ocean Breeze Resort area and the Seawalk Development.

Mr. O'Neil answered that both PUD documents were on the Town's website and added that if Mr. Ciaschi had further questions, he would meet with him at the Town office.

Mr. Ciaschi thanked the Council for reducing the millage rate from 5.1 down to a potential 0.8. He asked about the rate being paid by Seawalk versus the other areas in the Town.

Mr. O'Neil answered that the millage rate, by law, had to be the same for all properties. He added that the discrepancy occurs from the way the State prescribes the method the Property Appraiser appraised the property. He commented that the Town had been exploring ways to equalize by initiating a utility tax and that there would be further discussion. He commented that the property at the Resort was appraised as a business, not as individual parcels.

Mr. Ciaschi asked about parking issues within the Town. He asked about ways to get county, state, or federal funding to purchase the upper portion of the parking lot in the plaza and install a two-story parking garage.

Mr. O'Neil stated that the County's Community Redevelopment Area (CRA) was situated to perform such tasks through tax increment financing and that there was a master plan for the downtown Jensen Beach area. He added that the Town was not part of the CRA. He commented that there was a development proposal for the front-end of the plaza property and that for that site, something like additional parking would not be feasible. He stated that the downtown CRA area would be the appropriate site. He added that the Town had inquired about the old Post Office property, which sits unused. He advised Mr. Ciaschi that the CRA was the entity to approach to inquire about additional parking downtown.

Mayor Ostrand informed Mr. Ciaschi that a Corporation privately owns the plaza property.

Mr. Ciaschi asked about leasing from the plaza owners.

Kim Stanton told Mr. Ciaschi that she would send the CRA meeting information to him in an email.

Mr. Ciaschi asked about annexing some of the neighboring properties.

Mayor Ostrand informed Mr. Ciaschi that annexing would include stages and dealings with the County as well as the State and the property owners themselves. She added that Stuart had paid over \$2 million dollars in court costs just to annex certain properties.

President Kelley asked for further public comments.

There were none.

6. Comments from the Council on topics not on the Agenda – President Kelley asked for comments from the Council.

Council Member Kent asked about the status of collecting available funds for the public safety barrier.

Mr. O'Neil answered that he had been in touch with the City of Stuart Manager, their staff person who handled the grants, and Captec Engineering. He added that they remain willing to assist the Town in evaluating a public safety barrier and quiet-zone concepts. He commented that this remains a work in progress and that he was glad that the City of Stuart was allowing the Town to piggyback on their efforts. He commented that the City was actively looking to apply for certain grants as well.

Vice-President Docherty spoke about the Friends-to-Neighbors website which provided information about the Town of Ocean Breeze, the County and other Cities within Martin County. He commented that the Chamber of Commerce also had information listed on their website.

Council Member Heller brought up the possibility of implementing a utility tax to diversify the Town's revenue and improve equity among its taxpayers. He commented that several residents met with the Town Manager last month to discuss how this could work. He stated that while it was too late to include it in the 2025 budget, he requested that Staff bring back a presentation and Ordinance at a future meeting for the Town Council to consider.

President Kelley concurred and asked to see detail as to what the impact would be for the Seawalk residents, Ocean Breeze Resort residents and the plaza.

Mr. O'Neil answered that this could be brought back before the Council.

President Docherty stated that the Florida League of Cities would be offering an online seminar for available grant assistance on September 24, 2024. He added that every other week, the Florida League of Cities offered educational webinars and that he recently attended such a webinar regarding Robert's Rules.

7. Comments from Town Management Consultant, Terry O'Neil – President Kelley asked Mr. O'Neil if he had any comments.

Mr. O'Neil directed the Council to the "blue sheet" informational items regarding the ongoing closeout efforts. He added that Attorney Nicoletti was in attendance to provide the Mayor and the Council with an update.

Attorney Nicoletti provided an update on the Forestar close-out. He added that the new compliance date was September 30, 2024. He spoke about ramifications should Forestar not comply, and about filing a Notice to Appear in County Court for violation of the Ordinance. He stated that he confirmed that the bond was in place and that he had obtained a new verification certificate from the bond company, dated August 27th, 2024. He commented that this was the same verification given to the Town in March. He spoke about case law in the Florida Statutes and stated that the bond did not actually start to run until the work had been completed.

Council Member Heller asked about an ordinance violation and if it would be the responsibility of the developer or the HOA.

Attorney Nicoletti answered that at this point, the Town did not have any thought about filing a Notice of Violation against the HOA. He added that he believed this could be done separately.

Attorney Nicoletti discussed the process of the bonding company. He added that this was a long way off and that he hoped the issues would be resolved without having to involve the bond. He spoke about a letter he received from Attorney David Earle, on behalf of Sheila Raver, his client, who owned Lot 1. He stated that there was a substantial issue and discrepancy at Lot 1 which was adjacent to a preserve area, now owned by the HOA and regulated by the Town and other agencies. He commented that Attorney Earle asked that the Town not release the surety bond unless and until the issues at Lot 1 had been resolved. He commented that he had forwarded Mr. Earle's letter to Forestar's Attorney, Mr. McFetridge. He spoke about his follow-up letters to Attorney McFetridge regarding the Indemnity Agreement and other items which remain open. He informed the Council that Attorney McFetridge responded and that Forestar would be addressing the issues soon. He stated that on August 29th and September 6th he had contacted Attorney McFetridge for an update and had not yet received a response.

Attorney Nicoletti gave an update on the Sun Communities closeout, flooding at 348 Starboard Way, his contact with Sun's attorney Bob Raynes, work performed in the infill area without obtaining permits for grading and site work, which may have affected drainage patterns, repaving or recontouring the roadways, possible work on the water and sewer systems without permits, email from Attorney Raynes in which he stated Sun Communities believed that they had until November 20, 2027 to closeout the PUD (based on the gubernatorial extensions that have occurred via Executive Orders). He stated that this was a complex matter.

Council Member Docherty asked about these Executive Orders.

Attorney Nicoletti answered that if the Governor's Executive Order covered Martin County, then it would apply, however, in most of those orders it was clear that if someone was in violation of the code, the orders do not apply. He stated that Sun Communities, through their attorney, was saying that they believed they had until 2027. He remarked that on August 28th he forwarded an email to Bob Raynes advising that Bayview Construction had submitted construction permits for ten (10) new homes. He added that he had asked Terry and Pam to hold up on issuing permits because municipalities did not issue permits where the potential permittee was in violation of the code. He commented that the Florida Legislature changed the law in 2024 to make it so that municipalities had 30 (thirty) days within which to issue building permits, respond or face a diminution of their building permit fees by 10 (ten) percent per day. He said that by the 20th of September, the Town would know the answer to this issue and respond to Sun Communities. He commented that he had asked Sun Communities to be mindful of the issue of performing work in the infill area. He stated that he had not received a compliance date from Sun Communities. He continued that the Town had received a response from Brad Pinover, Senior VP of Construction Services for Sun Communities, that they were completing their engineering review of issues in the infill area and would further advise the Town. He added that Sun Communities did not believe that there was any water or sewer work done without permits, and that they had televised the sewer system and found no critical issues were determined. He stated that the Town would want to see that report. He commented that Sun Communities said that the water system replacement plans would be submitted to the Florida Department of Environmental Protection for approval. He added that he believed that it would be phased over time and that no dates were provided.

Mayor Ostrand asked about the infrastructure on the north end of the Resort and spoke about the four (4) water main breaks within a six (6) week period. She asked about the engineering report deadline of July 30th.

Attorney Nicoletti answered that the engineering report was underway and may be complete, but that it had not been submitted to the Town. He added that it was to be submitted to Florida Department of Environmental Protection first which was normal procedure.

Mr. O'Neil stated that there was an inquiry by the new manager at the Resort regarding speed bumps and that they were not aware of the history. He added that the Town Council had taken a strong position that the speed tables needed to be proposed in context of all the other fixes (stormwater, etc.) and that that the Council had to approve a minor amendment to the PUD to allow for the speed bumps. He added that Attorney Nicoletti had reminded Sun's attorney, Bob Raynes, that the Resort's Prospectus had clear language and obligations to deal with speeding. He reminded the Council that the Town had advised Sun to submit a design with FDOT approved speed bumps.

Attorney Nicoletti added that golf carts and emergency vehicles did not do well over certain kinds of speed bumps. He commented that drainage patterns must also be considered.

Vice-President Docherty stated that the Resort had asked residents to respond on Neighbor to Neighbor regarding speed bumps and that the response had been mostly negative. He added that he believed that the Resort would let the Town know how they want to proceed.

Attorney Nicoletti added that his comments today were also in a Memorandum (dated September 9, 2024) which would be distributed to the Council.

President Kelley asked for further comments from Town Management Consultant, Terry O’Neil.

There were none.

8. Comments from Mayor Ostrand – Mayor Ostrand mentioned her recent attendance at the Florida League of Cities Annual Conference and her accomplishments. She spoke about the Florida League of Cities Advocacy work for towns and villages in the State of Florida. She added that during Legislative Action Days she would be going to Tallahassee to advocate for towns and villages in the State of Florida. She stated that she was on the Florida League of Mayors Board of Directors and that mental illness among veterans, the homeless, and others was a topic of concern. She encouraged everyone to get involved. She commented that she would provide numbers that could be posted on the website. She added that she would be attending committee meetings in October in Orlando.

9. Regular and Budget Meeting Announcements – All meetings, including all **Budget meetings**, will be held at the Ocean Breeze Resort Clubhouse, Pineapple Bay Room, 700 NE Seabreeze Way, Ocean Breeze, FL

- **Wednesday, September 11, 2024: 6 :00 pm – Public Hearing for setting of Tentative Millage Rate and Budget for FY 2024/2025**
- **Wednesday, September 25, 2024: 6:00 pm – Public Hearing and Adoption of Final Millage Rate and Budget for FY 2024/2025**
- Monday, October 14, 2024: 6:00 pm Regular Town Council Meeting
- ~~Monday, November 11, 2024: 10:30 am-Veteran’s Day Holiday (Town Office closed)~~
- **Tuesday, November 12, 2024: 10:30 am**
- Monday, December 9, 2024: Regular Town Council Meeting 10:30 am

Mr. O’Neil stated that in previous years, prior to an election at the October meeting, candidates for Town Council and/or Mayor had been welcomed to introduce themselves before the Council and the public, during public comments. He added that this was an informal invitation, as it takes place during public comments, that everyone was welcome to speak about any topic they wish, and that the Town was not sponsoring the event. He stated that this was not a requirement of any candidate running for office.

10. Adjourn – Vice-President Docherty, seconded by Council Member Squires, made a motion to adjourn the meeting at 11:58 am.

All in favor: Yes: Kent, Kelley, Docherty, Heller, Squires; No: None; motion passed 5-0.

Respectfully Submitted,

Kim Stanton,
Town Clerk

Minutes approved: November 12, 2024