

TOWN OF OCEAN BREEZE
MINUTES TOWN COUNCIL REGULAR MEETING
Monday, October 9, 2017
Jensen Beach Community Center – 10:30 a.m.

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

- Pledge of Allegiance – Mayor Ostrand led the Pledge of Allegiance; Vice President De Angeles asked for a moment of silence for the families of the victims in the Las Vegas shootings.
- Roll Call – Present: Mayor Karen Ostrand, President Ann Kagdis, Vice-President Kenneth De Angeles, Council Members Richard Gerold, Terry Locatis and David Wagner
Absent: Council Member Jerry Collins
- Staff Present – Town Management Consultant, Terry O’Neil, Town Attorney, Rick Crary, Town Building Official, Larry Massing; Town Clerk, Pam Orr and Bookkeeper/Clerical Assistant, Kim Stanton

2. Approval of Minutes – Vice-President De Angeles, seconded by Council Member Wagner, made a motion to approve the Minutes of the August 1, 2017 Budget Workshop.

All in Favor: Kagdis, De Angeles, Gerold, Locatis, Wagner

Opposed: None

Absent: Collins

Motion Passed 5 – 0

Vice-President De Angeles, seconded by Council Member Wagner, made a motion to approve the Minutes of the August 14, 2017 Regular Meeting.

All in Favor: Kagdis, De Angeles, Gerold, Locatis, Wagner

Opposed: None

Absent: Collins

Motion Passed 5 – 0

3. Amy Adams, Grant Administrator and Joe Capra, Captec Engineering – Mr. Capra gave an update of the Indian River Drive Project and included a projected timeline. He took questions from the Mayor and the Town Council regarding the crosswalk signs.

Amy Adams, Grant Administrator, provided copies of the budget for the Indian River Drive Project and explained the various grants / matches. She stated that the Town’s match for the entire project was 16%. She presented a verbal progress report and advised that the construction was due to be complete in April, 2018. She added that due to the water quality monitoring requirement the entire project would officially end in June, 2019.

President Kagdis asked for questions from the public.

There were none.

President Kagdis asked for questions from the Council.

There were none.

4. Sun Communities Request for Zoning approval for a 2COP Liquor License

for Beer and Wine – Mr. O’Neil stated that Sun Communities would applied for a 2COP (Consumption on Premises), beer and wine license from the State of Florida, which required zoning approval from the Town. He reminded the Council that on the Master Plan for Sun’s development, there was a graphic depicting a café area and that Staff believed that this was consistent with having food services, with beer and wine included. He explained that Marcela Cambor, from Sun Communities, had prepared an Exhibit showing the layout of the alcoholic beverage sales area within the red boundary. He added that Staff was recommending approval of the zoning for the state license, with conditions that the sale and consumption of alcohol be limited to the designated area as shown on the Exhibit, occur between 10:00 a.m. and midnight only, customers would not be permitted to leave the designated areas with alcoholic beverages and that a full menu food service be available when the alcoholic beverages were being sold. He stated that the café was the main service and that the beer and wine was an adjunct to the café. He stated that Mr. Crary had been in touch with the School Board and they were of the opinion that the Environmental Studies Center was not a school facility; therefore, the Florida Statute mentioned in the Memo was not applicable.

Marcela Cambor, Planner Sun Communities, explained the red outlined area on the graphic and that the beer and wine would be relegated specifically to the areas outlined in red; she commented that by State law, one cannot walk out of the red lined areas with beer or wine purchased in the kitchen and bar area.

Discussion ensued.

Mr. Timmons stated that every resident received a prospectus and the rules and regulations were attached to that prospectus. He stated that the pool had some rules that were required by the State and some were Sun rules which would be posted on signs. (Inaudible)

Mayor Ostrand asked about the food service ratio.

Mr. O’Neil stated that the reason Staff suggested a full service menu be available was because this was being built as a café when the PUD was approved and food service was implied.

Ms. Cambor stated that this was evidenced by the full commercial kitchen set-up.

Council Member Locatis asked for clarification on the red outlined areas.

Ms. Cambor stated that the red line applied to the entire amenity center except for the fitness center and the bathrooms.

Attorney Crary stated that the Statute was researched and verbal verification was confirmed, with a written confirmation forthcoming, that the Environmental Studies Center was not classified as an elementary, middle or high school, so the Statute regarding the 500 foot rule did not apply. He stated this was contingent on obtaining written verification from the School Board.

Ms. Cambor confirmed that the School Board Attorney substantiated this opinion and that it would be provided to the Town, in writing, from the School Board.

Council Member Locatis stated that he spoke with 15 to 20 residents regarding the zoning change. He added that once he discovered that Sun was asking for the entire amenity center including the assembly halls, covered patios, pool area, activity rooms, etc., that the responses he received were consistently opposed to the current plan. He pointed out the statement in the meeting documents, the email from

Marcela Cambor, that “outside alcoholic drinks in the outlined area were prohibited by the liquor license. In pools where there was no liquor license and food venue, Sun Communities’ rules prohibit beverages. So regardless of the scenario, no outside alcoholic beverages would be allowed.” He spoke about the rules at Savannah Club, a Sun Community, allowing outside alcohol. He recommended one option would be to deny approval of this license at this time and invite Sun to work with the Council in coming up with a plan that was in the best interest of all present and future residents.

Ms. Cambor stated that the Statute does not allow outside drinks.

Council Member Locatis stated that the Statute did not allow you to bring it into the designated area marked in red.

Discussion ensued.

Mr. O’Neil stated that this was a zoning issue and at the discretion of the Council to establish the boundary of the designated area. He added that time, place and manner were routinely a zoning authority issue granted to the local jurisdiction.

Discussion ensued.

Mr. O’Neil stated that a carry-out license was a package sales license and that the PUD would need to be amended.

President Kagdis stated that the problem seemed to be the extent of the coverage of the amenity area. She asked Ms. Cambor if she would revisit the reline of the amenities area so that one section of the pool area would be designated as bring-your-own.

Ms. Cambor stated that Sun could not police this.

President Kagdis stated that it was the responsibility of this municipal government to set the zoning regulations.

Attorney Crary stated that the Town’s jurisdiction was limited to whether this fits within the zoning category and if the Town’s zoning category included cafés. He added that the Council had some ability to regulate as to manner of time and reasonableness of location. He stated he would need to further research whether the Town had jurisdiction to regulate the red line boundaries. He concluded that the primary duty of the Council was to decide whether or not the café designation included beer and wine use.

Mr. O’Neil stated that the Department of Alcohol and Tobacco does look at the premises and the physical boundary because local jurisdictions could have restrictions on the time, place and manner of the activity.

President Kagdis asked if, given the facts, there was a possibility that this could be postponed.

Mr. Timmons (inaudible).

Mr. O’Neil answered that the Planned Unit Development Agreement was silent on the issue of alcohol; as a jurisdiction, the Town was entitled, under its zoning authorities to restrict the time, place and manner of sales.

Ms. Camblor asked if the zoning was tied to what could take place outside the red boundaries.

Attorney Crary asked if the PUD designated the boundaries of the café.

Ms. Camblor stated that it points to the amenity core / café.

Attorney Crary stated that a café normally would have beer and wine and not a more significant liquor license. He stated that the issue outstanding was what the PUD meant as to boundaries of the location of that café.

Ms. Camblor stated that nowhere in the PUD, nor as a part of this license process was the issue of allowing people to bring their own drinks to a pool. She added that if the Council would like to shrink the red line, then Sun rules would apply to the rest of the area.

Council Member Locatis asked of Ms. Camblor if she knew of any Sun Community that applied such a rule.

Ms. Camblor stated that she was referring to this specific zoning issue (inaudible) and this would not make any difference in the zoning.

Council Member Locatis added that he would like to invite Sun to meet with the Council to come up with a reasonable and satisfactory plan.

Discussion ensued.

Attorney Crary stated that the Town Council was being asked to verify that this request met the zoning.

Discussion ensued.

Council Member Locatis made a Motion to deny the request and invite Sun to work with the Council to come up with a reasonable request.

Council Member Locatis made a Motion to table the request, conduct further research and ask Sun to meet with the Council to come up with an acceptable solution.

Council Member Gerold stated he believed the Council needed to approve this request and work with Sun at a future date to secure boundaries.

Vice-President De Angeles asked Mr. Timmons if beer and wine were to be approved for the café, would Sun be able to get the license for the café.

Mr. Timmons answered that to get the license, Sun must have a designated area.

Vice-President De Angeles asked Mr. Timmons if it would be profitable for Sun to have just beer and wine in that one, small designated area.

Mr. Timmons answered "no."

Discussion ensued.

Vice-President De Angeles asked Mr. Timmons if there were an alternative area that would be acceptable.

Mr. Timmons answered that he believed these were State issues and not Town issues (inaudible) and that Sun was obligated to follow State law.

Mr. O'Neil explained the differences between the different liquor licenses.

President Kagdis asked for Attorney Crary's recommendation.

Attorney Crary stated that he did not like to usurp the role of the Council, but from a purely legal issue, the café falls under the adopted PUD. He asked what the Council would have considered the café to be under the PUD; the State wants to know if you have the zoning that allowed the license. He stated that the law was a prediction of what a Judge would say; and, that his opinion was that if there were to be a café that served beer and wine around the pool, the café would be put in the pool area.

Council Member Locatis made a Motion to move that the Council deny approval of the TCOP license as shown with the current boundaries at this time and invite Sun to work with the Council on coming up with a plan that was amiable to Ocean Breeze Residents.

President Kagdis asked Ms. Camblor if the café area could be remarked so that the two assembly rooms were not considered part of the café area.

Ms. Camblor stated that if that were the case, that drinks would not go into the assembly rooms in the event of a party, etc. and would also not allow anyone to bring their pre-mixed cocktail into the pool area. She continued that it would be up to Sun if pre-mixed beverages would be brought into the assembly rooms. She stated that this would mean no alcohol of any kind would be allowed in those rooms.

Mr. Timmons stated that the main assembly room was tied together to the kitchen and the café area to allow flow into those areas (inaudible).

Ms. Camblor stated she believed the issue was not the area but the ability to bring outside drinks; one had nothing to do with the zoning before this Council today. (inaudible)

Council Member Gerold stated that outside drinks would mean bring-your-own-cooler or bring-your-own-cooler-with-a-cocktail-inside.

Ms. Camblor stated this had nothing to do with the determination of the location.

Council Member Gerold, seconded by Vice-President De Angeles, made a Motion to approve the zoning with a condition that the Council would be able to revise the plan.

Attorney Crary stated that the café area was being defined.

Mr. O'Neil asked for clarification that Council Member Gerold was making a Motion to approve the area in red as defined, subject to the confirmation with the School Board and subject to the earlier stated conditions. He stated that the Council did have the discretion to contract the red line if the Council believes it was reasonable to do so.

President Kagdis stated that the adopted PUD explained the café area as a kitchen and eating area; now the café area was the whole amenity center.

Ms. Camblor stated that the site plan states amenity/café and that had never changed. She commented that the boundaries of the café were not designed at that time. She added that contracting the lines for more control was fine, but that did not open up permission to bring outside beverages to all the areas.

President Kagdis asked if the café area had been expanded so that any other area was precluded from being assessable to people who were not interested in attending the café. She added that she believed a section of the amenity core should be left free of inclusion of the café and bar.

Ms. Camblor stated that it was the assumption that if people came to the café, they would want to take their beverage to other areas. She stated that it had always been understood to open up the community hall to the pool so that parties would flow in and out.

David Myer, 119 Bay Drive, recommended approval of the request.

Attorney Crary clarified the issues.

President Kagdis stated she believed that there was more research needed to resolve the issue along with the input of the part-time residents.

Attorney Crary stated that the issue was what was intended at the adoption of the PUD. He suggested further investigation into the PUD.

Discussion ensued.

President Kagdis asked if Mr. O'Neil would review the adopted PUD for the next meeting so that the Council had a better understanding of the intent at that time.

Mr. O'Neil stated that there were several public hearings, both at the LPA level, Zoning Board level and the Council level. He commented he would work with Marcela and review the presentations, slide shows, Minutes, records and the PUD.

Vice-President De Angeles withdrew his second on the Motion.

Ms. Camblor agreed and requested that the focus remain on the boundaries and not whether outside beverages would be allowed.

Council Member Locatis, seconded by Vice-President De Angeles, made a Motion to table the issue of zoning approval for the 2COP Liquor License for Beer and Wine until the November, 2017 regular Town Council meeting.

All in Favor: Kagdis, De Angeles, Gerold, Locatis, Wagner

Opposed: None

Absent: Collins

Motion Passed 5 – 0

5. Election Proclamation – President Kagdis read the 2017 Election Proclamation into the record.

Vice-President De Angeles stated that residents could be registered to vote in any County in the State of Florida and that their address could be changed up until the day of the election.

Attorney Crary stated that Council Member Collins had missed 5 consecutive meetings and under Section 2.07 of the Charter, office of the Council Member shall become vacate if the Councilman was absent for 4 consecutive regular Town Council meetings without being excused by the Town Council prior to the 4th consecutive absence. He stated that there was now a vacancy in his position and advised the Town Council that they have the authority to fill the vacancy.

Vice-President De Angeles, seconded by Council Member Gerold, made a Motion to leave the seat vacant with no chance of filling it until the election.

All in Favor: Kagdis, De Angeles, Gerold, Locatis, Wagner

Opposed: None

Absent: Collins

Motion Passed 5 – 0

Mayor Ostrand voiced her concerns regarding the conditions of the commercial portion of the Town, siting possible health issues and the Town's lack of an ordinance concerning these issues. She spoke about signage concerning loitering and littering.

Vice-President De Angeles asked if the Town had jurisdiction over these things.

Mr. O'Neil stated that there was no PUD agreement with the Plaza; that they were developed under "straight zoning" in which the default was Chapter 9 of the code of Ordinances which dealt with the zoning issues, State Building Code and Life Safety Code. He added that the Town does have jurisdiction over these matters to the extent that the codes have been violated. He remarked that property maintenance codes were allowable.

Mr. Massing, Town Building Official, stated that the Town did not have a property maintenance code which was done locally by ordinance. He spoke about the sewer gas being a health department issue. He added that he had not seen a tenant approval permit since the Just Believe facility.

Mayor Ostrand stated that she believed these issues should be resolved sooner rather than later.

Mr. Massing advised that in the past, Publix had kept the balance.

Vice-President De Angeles agreed and asked for clarification from Mr. Massing.

Mr. Massing stated that this was governed by the Town and Martin County would not enforce any jurisdiction.

Attorney Crary stated that the proper way to move forward would be to investigate which agency be addressed with the concerns. He stated Step 1 would be to identify the issues to be addressed and Step 2 would be to determine if the Town had the lawful jurisdiction to address the issues. He added that if an ordinance was adopted, the Town must have a means of enforcement and hiring a code enforcement officer was expensive; enforcement could be made by going to court to get an injunction, which was

also very expensive. He concluded that the Town could enter into an Interlocal Agreement with another jurisdiction that does enforcement and pay to use their magistrate and system.

Mr. O'Neil suggested that a document could be drafted providing the high points of a minimalist property maintenance code. He stated that he did not believe that a code enforcement apparatus was necessary at this time. He stated that he would be able to put something together.

Mayor Ostrand spoke about a time frame in the ordinance and letters to the owner of the plaza for compliance.

6. City Government Week – President Kagdis read Resolution #264-2017 into the record. Vice-President De Angeles, seconded by Council Member Gerold, made a Motion to approve the adoption of Resolution #264-2017 into the record.

All in Favor: Kagdis, De Angeles, Gerold, Locatis, Wagner

Opposed: None

Absent: Collins

Motion Passed 5 – 0

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

8. Comments from the Council on topics not on the Agenda – President Kagdis gave updates on various residents, hurricane Irma status, etc. She announced that the Pineapple Festival would be held on November 17, 18 & 19, 2017 and volunteers were needed. She announced that the Treasure Coast Regional League of Cities installation of the Board of Directors and Officers would be December 1, 2017 in Fort Pierce at the Pelican Yacht Club. She announced that she met with Senator Negron and he had agreed to submit an amendment to the existing Statute which precluded towns of more than 500 residents from meeting outside of their jurisdictions. She stated that he had agreed to amend to increase that number to 1,000 residents.

9. Comments from Town Management Consultant Terry O'Neil – Indian River Drive Update

10. Comments from Mayor Ostrand – Commercial Plaza Concerns (see above). Mayor Ostrand encouraged residents to invite their neighbors to attend the Town meetings.

11. Announcements –

Monday, November 13, 2017 Meeting at the Ocean Breeze Resort Clubhouse.

12. Adjourn – Vice-President De Angeles, seconded by Council Member Wagner, made a Motion to adjourn the meeting at 1:15 p.m.

All in Favor: Kagdis, De Angeles, Gerold, Locatis, Wagner

Opposed: None

Absent: Collins

Motion Passed 5 – 0

Minutes approved: November 13, 2017