



TOWN OF LOXAHATCHEE GROVES

TOWN COUNCIL MEETING AGENDA

TUESDAY, FEBRUARY 18, 2014 @ 7:00 P.M.

*Mayor David Browning (Seat 4)*

*Vice Mayor Ron Jarriel (Seat 1)*

*Councilman Tom Goltzené (Seat 5)*

*Councilman Ryan Liang (Seat 3)*

*Councilman Jim Rockett (Seat 2)*



# Town of Loxahatchee Groves

## Town Council Meeting

Tuesday, February 18, 2014 at 7:00 p.m.

Loxahatchee Groves Water Control District, 101 West "D" Road

Mayor David Browning (Seat 4)  
Vice Mayor Ronald D. Jarriel (Seat 1)  
Councilman Tom Goltzené (Seat 5)  
Councilman Ryan Liang (Seat 3)  
Councilman Jim Rockett (Seat 2)

Town Manager Mark Kutney  
Town Clerk Janet K. Whipple  
Town Attorney Michael D. Cirullo, Jr.

Tentative  
Subject to Revision

### **PUBLIC NOTICE/AGENDA**

#### **1. OPENING**

- a. Call to Order & Roll Call
- b. Pledge of Allegiance & Invocation – Mayor Browning
- c. Approval of Agenda

#### **2. CONSENT AGENDA**

- a. Minutes for Approval: **January 14, 2014** and **February 4, 2014**

#### **3. PUBLIC COMMENTS**

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4. **PRESENTATIONS** - *NONE*

5. **COMMITTEE REPORTS** – *NONE*

6. **RESOLUTIONS** - *NONE*

7. **ORDINANCES**

a. **ORDINANCE NO. 2013-11 / SECOND READING / PUBLIC HEARING:**  
**(Historical Legacy):**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO HISTORICAL LEGACY USES AND APPROVALS; AMENDING THE TOWN OF LOXAHATCHEE GROVES UNIFIED LAND DEVELOPMENT CODE (ULDC), TO AMEND SECTION 75-035, ENTITLED “USES AS OF OCTOBER 1, 2006” TO ADD THE TERM HISTORICAL LEGACY TO THE SECTION TITLE; TO SPECIFY THE CATEGORY OF SPECIAL EXCEPTION NECESSARY FOR CERTAIN USES IN THE ZONING CATEGORY; TO REQUIRE THAT THE PROPERTY ON WHICH THE USE IS LOCATED SHALL HAVE BEEN OWNED AND SUBJECT TO A HOMESTEAD EXEMPTION IN THE NAME OF THE OPERATOR OR HIS OR HER DIRECT RELATIVE RELATED BY BLOOD OR MARRIAGE; TO REQUIRE THAT THE USE DOES NOT PRESENT A THREAT TO PUBLIC HEALTH; TO REQUIRE THAT THE USE HAS NO HISTORY OF CODE VIOLATIONS OR THE USE HAS BEEN BROUGHT INTO CODE COMPLIANCE; TO REQUIRE THAT THE OWNER-OPERATOR SUBMIT AN AFFIDAVIT STIPULATING TO COMPLIANCE WITH CERTAIN CONDITIONS; AND TO REQUIRE REVIEW AND INSPECTION BY THE TOWN; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE.

8. **ADMINISTRATIVE UPDATE** – *Town Manager Kutney*

- a. RETGAC Vacancy
- b. Compton Road Equipment Demonstration

**9. OLD BUSINESS**

- a. Reconciliation of ULDC work authorization (*Town Manager Kutney*)
- b. Discussion of Manure Ordinance No. 2012-03.

**10. NEW BUSINESS**

- a. Discussion of Town Management/Council Priorities/Business Plan Initiatives.
- b. Bernardo Alzate Nursery Request to end the one (1) year permit restrictions for Property Owner Manure Permit per Ordinance No. 2012-03.

**11. CLOSING COMMENTS**

- a. Public
- b. Town Attorney
- c. Town Council Members

**12. ADJOURNMENT**

**The next regular Town Council Meeting is tentatively scheduled for March 4, 2014.**

**Comment Cards:** Anyone from the public wishing to address the Town Council must complete a Comment Card before speaking. This must be filled out completely with your full name and address and given to the Town Clerk. During the meeting, before public comments, you may only address the item on the agenda in which is being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.

***Town Council Agenda  
02/18/2014***



# Town of Loxahatchee Groves

## Town Council Meeting

Tuesday, January 14, 2014 at 7:00 p.m.

Loxahatchee Groves Water Control District, 101 West "D" Road

Mayor David Browning (Seat 4)  
Vice Mayor Ronald D. Jarriel (Seat 1)  
Councilman Tom Goltzené (Seat 5)  
Councilman Ryan Liang (Seat 3)  
Councilman Jim Rockett (Seat 2)

Town Manager Mark Kutney  
Town Clerk Janet K. Whipple  
Town Attorney Michael D. Cirullo, Jr.

### MINUTES

#### 1. OPENING

- a. Call to Order & Roll Call

Mayor Browning called the meeting to order at 7:07 p.m. Present were Mayor Browning, Vice-Mayor Ronald D. Jarriel, and Councilmen Tom Goltzené, Ryan Liang, and Jim Rockett. Also present were Town Manager Mark Kutney, Town Attorney D. J. Doody, Town Planning Consultant Jim Fleischmann, and Town Clerk Janet K. Whipple.

- b. Pledge of Allegiance & Invocation – Mayor Browning
- c. Approval of Agenda

- Request by Town Manager Kutney to amend the Agenda and combine:

1.) **6.b.** – Resolution No. 2014-02 – Terminating for Convenience, the Agreement with Sirdar Trucking, Inc.

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2.) **9.a.** – Retain Sirdar Trucking for mowing and hedging only in Loxahatchee Groves (Vice-Mayor Jarriel).

3.) **9.b.** - All costs incurred with the Sirdar Trucking investigation and termination (example: legal fees, Engineer studies, all investigations by Town Staff & Public Works Director). (*Vice-Mayor Jarriel*) (Costs will be provided at meeting).

**Motion: Councilman Liang made a motion to amend the agenda per Town Manager Kutney’s request. Vice-Mayor Jarriel seconded the motion. Upon vote, the motion passed 5/0.**

## 2. CONSENT AGENDA

- a. Invoice from Goren, Cherof, Doody & Ezrol, P.A.
- b. Minutes for Approval: December 3, 2013
- c. **RESOLUTION NO. 2014-01: Budget Amendment Fiscal Year 2013/2014.**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ADOPTING A BUDGET AMENDMENT FOR THE TOWN’S BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2013 AND ENDING SEPTEMBER 30, 2014; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**Motion: Vice-Mayor Jarriel made a motion to approve the Consent Agenda. Councilman Liang seconded the motion. Upon vote, the motion passed 5/0.**

## 3. PUBLIC COMMENT

Marge Herzog, 966 A Road, wanted to make sure the Town Council Meeting is posted prior to a meeting. She noted that during the LGLA (Loxahatchee Groves Landowners Association) meeting on Thursday, January 23, 2014, the PBSO (Palm Beach County Sheriff’s Office) will provide a Plan of Action Report on the course of action of what happened at the Loxahatchee Groves Plaza.

Phyllis Maniglia, 359 West D Road, appreciated that the golf cart signs have been put up, and would like to have horse caution signs put up as well; maybe combine caution/right-of-way signs for both golf carts and horses and place them at the other end of D Road. On 6<sup>th</sup> Court

North there is a ditch that she does not remember being there, she suggested maybe a culvert and dirt for better access.

#### **4. PRESENTATIONS**

- a. John Carter, Vice-President of Minto Communities and Don Hearing, Co-Owner of Coutler Hearing-Landscape Architects, will provide a power-point presentation on Minto West (Callery Judge) Development.

#### **Councilman Goltzené declared a Conflict of Interest for 4.a.**

Don Hearing, Co-Owner of Coutler Hearing, made introductions, and spoke on the conceptual plan for the Minto West project. The plan will find a program that will fit within the western communities and also provide a non-residential element, and a facility of higher education. There will be two main thoroughfares; one 60<sup>th</sup> Avenue to the north, and a parallel road to the south which will connect Persimmon Boulevard and Orange Grove Boulevard. The concept proposes walking and golf cart pathways, waterways, and bridle trails. The company would like opportunities to work with the Town, and noted they are available to collaborate.

Council discussed different facets of the project with Mr. Hearing and their concerns with density issues, and the impact on Okeechobee Boulevard.

Howard Voren, 1538 E Road, asked Mr. Hearing if he had meetings with any Council Members.

Mr. Hearing stated that during separate individual meetings to look at the property, he met with Vice-Mayor Jarriel, Councilman Goltzene, Councilman Liang, and Town Manager Kutney.

Members of the audience provided opinions on the proposal.

Mr. Hearing noted the property could accommodate a spring training area. Drainage needed to be addressed, and suggested they could return for updates.

- b. Joe Doucette, Chief of Operations, from the Inspector General's Office to provide a PowerPoint presentation to the Town Council concerning contract piggybacking.

Hank Nagel from the Office of the Inspector General (OIG), provided guidance and insight on piggybacking, and provided a basic fundamental element of sound procurement practice. The OIG procurement ordinance covers most all information needed. He suggested the Town review the Palm Beach County Purchasing Code, and provided the theory behind piggybacking on

contracts. The National Association of State Budget Officers (NASBO) created state policy. He noted piggybacking is efficient, and encourages open procurement for transparency. It also saves resources. He encouraged open competition, and recommended getting three (3) to four (4) quotes. If the bids are lower than piggybacking, then go with that. Limit piggybacks to identical items. He provided how to properly piggyback.

Mayor Browning called for a four (4) minute break 7:52 – 8:00.

**5. COMMITTEE REPORTS – NONE**

**6. RESOLUTIONS**

**a. RESOLUTION NO. 2014-02: Acceptance/General Release for Sirdar Trucking:**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, TERMINATING FOR CONVENIENCE THE AGREEMENT FOR MOWING AND VEGETATIVE REMOVAL SERVICES BETWEEN THE TOWN OF LOXAHATCHEE GROVES AND SIRDAR TRUCKING, INC.; PROVIDING FOR DELIVERY OF THIS RESOLUTION; PROVIDING FOR SEVERABILITY, CONFLICT, AND AN EFFECTIVE DATE.**

Town Attorney Doody read title of Resolution No. 2014-02.

Town Manager Kutney explained Resolution for Termination, and included 9.a. and 9.b. of the Agenda to be included in this discussion.

**Motion: Vice-Mayor Ron Jarriel made a motion to approve Resolution No. 2014-02 for termination. Councilman Liang seconded the motion.**

Howard Voren, 1538 E Road, suggested that instead of hedging trees just cut them down.

**Upon vote, the motion was approved 5/0.**

7. **ORDINANCES**

a. **ORDINANCE NO. 2013-11 / FIRST READING / PUBLIC HEARING:**  
**(Historical Legacy):**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO HISTORICAL LEGACY USES AND APPROVALS; AMENDING THE TOWN OF LOXAHATCHEE GROVES UNIFIED LAND DEVELOPMENT CODE (ULDC), TO AMEND SECTION 75-035, ENTITLED “USES AS OF OCTOBER 1, 2006” TO ADD THE TERM HISTORICAL LEGACY TO THE SECTION TITLE; TO SPECIFY THE CATEGORY OF SPECIAL EXCEPTION NECESSARY FOR CERTAIN USES IN THE ZONING CATEGORY; TO REQUIRE THAT THE PROPERTY ON WHICH THE USE IS LOCATED SHALL HAVE BEEN OWNED AND SUBJECT TO A HOMESTEAD EXEMPTION IN THE NAME OF THE OPERATOR OR HIS OR HER DIRECT RELATIVE RELATED BY BLOOD OR MARRIAGE; TO REQUIRE THAT THE USE DOES NOT PRESENT A THREAT TO PUBLIC HEALTH; TO REQUIRE THAT THE USE HAS NO HISTORY OF CODE VIOLATIONS OR THE USE HAS BEEN BROUGHT INTO CODE COMPLIANCE; TO REQUIRE THAT THE OWNER-OPERATOR SUBMIT AN AFFIDAVIT STIPULATING TO COMPLIANCE WITH CERTAIN CONDITIONS; AND TO REQUIRE REVIEW AND INSPECTION BY THE TOWN; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE.**

Town Attorney Doody read the title of Ordinance No. 2013-11.

Jim Fleischmann, Town Engineering Consultant, provided background information.

**Per consensus of Council, better definitions will be included for second reading along with clearer reference to homesteaded properties.**

**Motion: Councilman Goltzené made a motion to approve Ordinance No. 2013-11 on first reading, as amended; simplified, in that Jim Fleischmann will bring about the definition section; reference Palm Beach County Code relevant to junk yards; note businesses must**

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have existed continuously before and still be in business; and owners were and still are residents. Councilman Liang seconded the motion.

Howard Voren, 1538 E Road, discussed with Council public safety, and time frames.

John Ryan, 3508 A Road also discussed with Council having a business and homestead on same property may be impractical.

Dennis Lipp, 13402 North Road, Chair of the Planning & Zoning Board, stated that the Board did not take a close look at the ordinance and too much is being added. If property is sold it will be selling the property not the business. He feels the ordinance should go back to Planning & Zoning for review, prior to second reading.

Council discussed additional changes that might be made.

Council Member Rockett requested that Ordinance No. 2013-11 be brought back to Council with the changes, made by the staff, prior to second reading.

Upon vote, the motion passed 5/0.

**b. ORDINANCE NO. 2014-01 / FIRST READING / (Drysdale – Comprehensive Plan Amendment):**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ADOPTING AN AMENDMENT TO THE TOWN OF LOXAHATCHEE GROVES ADOPTED COMPREHENSIVE PLAN, IN ACCORDANCE WITH CHAPTER 163, FLORIDA STATUTES, CONCERNING A SMALL-SCALE LAND USE PLAN AMENDMENT APPLICATION PROPOSED BY NANCY C. DRYSDALE THE APPLICANT AND PROPERTY OWNER TO CHANGE THE DESIGNATION OF THE SUBJECT USE OF LAND FROM RURAL RESIDENTIAL 5 (1 DU PER 5 ACRES) IN THE TOWN'S ADOPTED PLAN, TO COMMERCIAL LOW (CL) FOR FUTURE DEVELOPMENT OF PROPERTY ON 6.55 ACRES MORE OR LESS LOCATED AT THE NORTHWEST CORNER OF SOUTHERN BOULEVARD AND LOXAHATCHEE AVENUE, LOXAHATCHEE GROVES, FLORIDA (AMENDMENT 2013-02), LEGALLY DESCRIBED AND AS DESIGNATED ON THE MAP ATTACHED AS EXHIBIT "A" TO THIS ORDINANCE; PROVIDING FOR**

**AMENDMENT TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN TO REFLECT SUCH CHANGE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Attorney Doody read the title of Ordinance No. 2014-01.

Jim Fleischmann explained that Ordinance No. 2014-01 and Ordinance No. 2014-02 were related to the same property so he only prepared one staff report. The first Ordinance is for a small scale amendment to the Comprehensive Plan, and the second was for a zoning change. He provided background information on the property.

Council Member Goltzené suggested the Town needed adequate buffering when the site plan is presented in order to not impact the neighborhood, as commercial designation will impact the quality of life.

Town Attorney Doody suggested the Council adopt the Ordinances at first reading and later reconsider the conditions of one (1) thru six (6) on page ninety-three (93).

**Motion: Councilman Rockett made a motion to approve Ordinance No. 2014-01 with exclusion of conditions one (1) thru six (6). Vice-Mayor Jarriel seconded the motion.**

John Ryan, 3508 A Road, wanted to make sure it will be the Town Council's intent that the property owner is responsible for fees incurred from staff time.

**Upon vote, the motion passed 5/0.**

c. **ORDINANCE NO. 2014-02 / FIRST READING: (Drysdale – Zoning Change):**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, PROVIDING FOR THE REZONING OF LAND CONSISTING OF 6.55 ACRES, MORE OR LESS, LOCATED AT THE NORTHWEST CORNER OF SOUTHERN BOULEVARD AND LOXAHATCHEE AVENUE, LOXAHATCHEE GROVES, FLORIDA (REZ 2013-03), LEGALLY DESCRIBED AND AS DESIGNATED ON THE MAP ATTACHED AS EXHIBIT "A" TO THIS ORDINANCE, FROM TOWN OF LOXAHATCHEE GROVES ZONING DESIGNATION AGRICULTURAL**

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**RESIDENTIAL (AR) TO THE TOWN'S ZONING DESIGNATION COMMERCIAL LOW (CL) IN ACCORDANCE WITH A SMALL-SCALE LAND USE PLAN AMENDMENT APPLICATION BY NANCY C. DRYSDALE , THE APPLICANT AND PROPERTY OWNER THROUGH ORDINANCE 2014-01; PROVIDING FOR THE APPROPRIATE REVISIONS OF THE ZONING DISTRICT MAP; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Attorney Doody read the title of Ordinance No 2014-02

**Motion: Councilman Liang made a motion to approve Ordinance No. 2014-02 on first reading. Councilman Rockett seconded the motion. Upon vote, the motion passed 5/0.**

Mayor Browning called for a short break.

**8. ADMINISTRATIVE UPDATE – *Town Manager Kutney***

- a. Representative Pafford Town Hall Meeting.

Town Manager Kutney mentioned that on January 23, 2014, Representative Mark Pafford will be holding a Town Hall Meeting between 6:00 and 7:30 p.m. at the Town of Royal Palm Beach Cultural Center, 151 Civic Center Way. Also Lt. Combs from the Palm Beach County Sheriff's Office (PBSO) requested Town Manager Kutney advise Council that on January 23<sup>rd</sup> the PBSO (Palm Beach County Sheriff's Office) will be conducting a presentation to the Loxahatchee Groves Land Owners Association (LGLA) on the Palms West Project Crime Prevention Efforts, especially concerning issues around the Plaza and the A&G Market area.

- b. December 26, 2014 letter from the Office of the Inspector General (OIG).

Town Manager Kutney reported that Town Council received a letter from the Office of the Inspector General (OIG) on December 26, 2013, due to a complaint they received relative to the December 3, 2013, meeting where Mr. Kutney's credibility was challenged. The letter stated the comments Mr. Kutney made were correct, despite the negative remarks to the contrary.

Council discussed golf cart signage, and restrictions.

Town Manager Kutney responding to a comment by Vice-Mayor Jarriel concerning a letter dated November 19, 2013, from the engineers concerning the red light at D Road and Okeechobee Boulevard, stated that he will send a letter to Palm Beach County to start a dialog on that matter and he will copy the Town Council.

## 9. OLD BUSINESS

- a. Retain Sirdar Trucking for mowing and hedging only in Loxahatchee Groves. (Vice-Mayor Jarriel)
- b. All costs incurred with the Sirdar Trucking investigation and termination (example: legal fees, Engineer studies, all investigations by Town Staff & Public Works Director). (*Vice-Mayor Jarriel*) (Costs will be provided at meeting).
- c. Replacing Culvert on F Road and Compton Road. (*Vice-Mayor Jarriel*) Presentation by Town Engineers, Keshavarz & Associates, Inc. who will be reviewing culvert and roadway conditions on Compton Road.

Town Manager Kutney stated that he had inspected the conditions of Compton Road with members of Keshavarz and Associates, the Town Engineers. He then introduced Maziar Keshavarz, who provided an in-depth report on the findings.

Following the report from Mr. Keshavarz, Council discussed the poor conditions of the Compton Road culvert; and a common theme that poor drainage was causing road deterioration, which was prevalent on all three roads (Compton Road, Bryan Road and Marcella Boulevard); The length of time OGEM has been on these roads, and the cost of Keshavarz fees were also discussed. The application of sealed bids was brought up, along with the names of two local contractors who could do the road work. There were conflicting thoughts as to whether the Town needed an Engineer prior to any actual road work.

The Engineers should provide specs before any road work is commenced. Discussion followed on trimming the thick vegetation along the roadways; one of the reasons water cannot drain.

Members of the audience, suggested to Council that roads flood due to clogged culverts, and the Town's district and non-district roads have never had engineering seals.

Harold Murphy, 13245 Compton Road, said he was the one who said he would fix the culvert but the Town has not done their part yet.

Jeff King, North Florida Emulsions, went to Compton Road, and offered his opinion.

Town Manage Kutney reaffirmed that Council gave him two (2) directives: One to inquire about piggybacking for OGEM surfaces, and he is working with Volusia County for that information; and two, to acquire three (3) quotes to do the culverts.

Discussion ensued concerning public roads verses private property roads and the due process to notify the private owners that the private part of the roads may be resurfaced.

Christine St. John, 14220 43<sup>rd</sup> Road North, did not want the Town to trespass on her private road.

The specifications from the Loxahatchee Groves Water Control District (LGWCD) were discussed as the reference for road evaluation use, instead of hiring an outside Engineering firm.

Members of the Council apologized to Mr. Keshavarz if anything they said may have offended him during the discussion of hiring an Engineer to review the road matters.

- d. Consideration of Contracts with North Florida Emulsions concerning Compton Road, Bryan Road, and Marcella Boulevard. (Vice-Mayor Jarriel) (Documents will be provided by addendum, if time permits.)
- e. Contract with Vacant Registry Company. (Vice-Mayor Jarriel) (Documents will be provided by addendum, if time permits.)

Town Manager Kutney explained the piggybacking contract with Vacant Registry.com (Federal Property Registration Corporation). Wordage for Section 1.e. of the original contract with the City of Lakeland will be modified for the Town of Loxahatchee Groves.

**Motion: Councilman Liang made a motion to accept the agreement with Federal Property Registration Corporation as amended. Councilman Rockett seconded the motion. Upon vote the motion was approved 3/2 with Mayor Browning and Councilman Goltzené casting dissenting votes.**

- f. Discussion of Home Occupations / Home Business / Residential Enterprise - Billy Kline (*Vice-Mayor Jarriel*)

After Town Manager Kutney explained the Billy Kline matter, Councilmembers and members of the audience discussed commodity sales within the residential area; and if there was a possibility that Mr. Kline could sell his product at a commercial storefront or at the Red Bard. The topic of cost recovery can up, and also the fact that Mr. Kline could not fall under the “Historical Legacy” umbrella, since his residency could not been grandfathered in.

Billy Kline, 3191 E Road, stated he was in compliance with the Town. He does not stock items he only orders item.

Town Manager Kutney, per Council's request, will send a letter concerning Highland County and Port St. Lucie's ordinances relating to Home Occupational Licenses to the Planning and Zoning Board for review, to see if the regulations could be applied to the Town of Loxahatchee Groves.

- g. Continued Discussion for Continuance of ULDC (Unified Land Development Code Review Committee).

Town Manager Kutney reported that Council had directed him to return with items that still needed to be addressed by the ULDC. The items left to address are: ULDC Article 75 - Non Conforming Uses; ULDC Article 87 - Native Tree Preservation, Soil Stabilization, and Invasive Exotic Removal, and ULDC Article 90 - Sign Provisions. If Council directs, the two ordinances from Highlands County and Port St. Lucie could be brought before the Board for review as well. He reported the costs.

Council discussed with Town Manager Kutney, whether Article 87 needed to go to the ULDC at all; whether Council or Staff needs to select necessary items for the Committee to review; the review of new shopping center signs; bringing one item at a time to the committee; and to keep the Committee in existence for one year, and have them convene when necessary; and bill hourly.

**Motion: Councilman Rockett made a motion to adopt Resolution No. 2014-03, with changes Council made for the record; to extend the ULDC until December 2014. Councilman Liang seconded the motion.**

Discussion from members of the audience ensued, concerning FEMA, and the number of staff members attending committee meetings.

**Upon vote, the motion passed with changes, 5/0. (Funding on a meeting by meeting basis)**

Councilman Goltzene stated he will be running again for Town Council, and left at 11:30 p.m.

## **10. NEW BUSINESS**

- a. Discussion and direction to the Town Manager, Town Attorney, and Town Staff regarding future hearings related to Minto West.

Town Manager Kutney provided background and what will be required by Council in the future, and that he will keep them informed.

**Motion: Councilman Rockett made a motion to authorize Mayor Browning, to retain the services of the Town Attorney in the amount up to \$20,000 to represent the Town in order to monitor the Minto West project. The motion failed for lack of a second.**

**11. CLOSING COMMENTS**

- a. Public - None
- b. Town Attorney

Town Attorney Doody stated he had no comments, but thank Council for the opportunity to attend the meeting.

- c. Town Council Members

Vice-Mayor Jarriel wished everyone a safe journey home.

Councilman Liang thanked everyone, and hoped they had a Happy Holiday, and Happy New Year.

Councilman Rockett also thanked everyone for coming.

**12. ADJOURNMENT**

The next regular Town Council Meeting is tentatively scheduled for February 4, 2014.

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**Janet K. Whipple, Town Clerk**

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**David Browning, Mayor**

**Comment Cards:** Anyone from the public wishing to address the Town Council must complete a Comment Card before speaking. This must be filled out completely with your full name and address and given to the Town Clerk. During the meeting, before public comments, you may only address the item on the agenda in which is being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.

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***Town Council Minutes***  
***01/14/2014***



# Town of Loxahatchee Groves

## Town Council Meeting

Tuesday, February 4, 2014 at 7:00 p.m.

Loxahatchee Groves Water Control District, 101 West "D" Road

Mayor David Browning (Seat 4)  
Vice Mayor Ronald D. Jarriel (Seat 1)  
Councilman Tom Goltzené (Seat 5)  
Councilman Ryan Liang (Seat 3)  
Councilman Jim Rockett (Seat 2)

Town Manager Mark Kutney  
Town Clerk Janet K. Whipple  
Town Attorney Michael D. Cirullo, Jr.

### MINUTES

#### 1. OPENING

- a. Call to Order & Roll Call

Mayor Browning called the meeting to order at 7:05 p.m. Present were Mayor Browning, Councilmen Tom Goltzené, Ryan Liang, and Jim Rockett. Vice-Mayor Jarriel was not present, (excused absence). Also present were Town Manager Mark Kutney, Town Attorney Mike Cirullo, Town Planning Consultant Jim Fleischmann, and Town Clerk Janet K. Whipple.

- b. Pledge of Allegiance & Invocation – Mayor Browning
- c. Approval of Agenda

**Motion: Councilman Rockett made a motion to approve the agenda as presented. Councilman Liang seconded the motion. Upon vote, the motion passed 4/0.**

#### CONSENT AGENDA

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- a. Invoice from Goren, Cherof, Doody & Ezrol, P.A.

**Motion: Councilman Rockett made a motion to approve the Consent Agenda. Councilman Liang seconded the motion. Upon vote the motion passed 4/0.**

### **3. PUBLIC COMMENTS**

Keith Harris, 2580 C Road, concurs with Virginia Standish's comments during the December Town Council meeting, and her concern with the roads in Loxahatchee Groves. Mr. Harris requested deferment of OGEM for Connecting Canal Road for at least twelve (12) months so that the Town can explore alternative methods of funding.

Howard Voren, 1538 E Road, requested that Council review how the ULDC (Unified Land Development Code) Review Committee is to function, and what it is that they want from the Review Committee.

### **4. PRESENTATIONS**

- a. Tomas Ruiz, Senior Project Engineer; Patrick Leung, Roadway Engineer; and Sandra Hodge, Public Information Officer; all from Stantec, will provide a status update/development briefing on the State Road 80 Design. (*Vice-Mayor Jarriel*)

James Hughes, Florida Department of Transportation (FDOT) Design Project Manager attended the meeting, and made introductions of Patrick Leung, Tom Ruiz, and Sandra Hodge. Mr. Hughes reported the State Road 80 Design would extend from the Lion Country Safari Road, east to Crestwood Boulevard/Forest Hill Road. Drainage will be a concern, so Florida Department of Transportation (FDOT) will be looking at sites for potential drainage ponds. The work should commence late 2017, and should be completed within a couple of years. Flooding concerns were addressed.

Town Manager Kutney read questions sent by Vice-Mayor Jarriel, who was not able to attend the Town Council Meeting. Vice-Mayor Jarriel sent three (3) questions: 1) The exact start date for the Loxahatchee Groves Corridor, which will be the same at 2017; 2) Whether the median at the D Road intersection would be open or closed. It will remain open; and 3) Vice-Mayor Jarriel appreciated the traffic count, and wanted to know how badly the Town missed the figures to warrant a traffic light. Mr. Hughes, from FDOT, stated that it was quite a bit.

Questions were asked, and addressed, about equestrian trails and bus stops.

- b. Shannon Ramsey-Chessman, representing the Government Finance Officers Association (GOAF) will present the Certificate of Achievement for Excellence in Financial Reporting Award for the Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending 2012, to the Town of Loxahatchee Groves.

Town Manager Kutney read a brief biography for Shannon Ramsey-Chessman.

Ms. Ramsey-Chessman presented the CAFR Award for Fiscal Year Ending September 2012, to Mayor Browning. She noted that this was the fifth consecutive year the Town has received this award, and it is a reflection on Town Manager Kutney and Underwood Management for their high standards in Financial Accounting.

## **5. COMMITTEE REPORTS**

- a. Finance Advisory & Audit Committee (FAAC) Report and Approval of the December 2013 Town Council Financial Report, and the September 2013 Revised Town Council Financial Report (*Vice-Chair Elise Ryan*)

Elise Ryan, Vice-Chair Financial Advisory and Audit Committee, presented the December 2013, Town Council Financial Report and the September 2013, Revised Town Council Financial Report. Vice-Chair Ryan noted that all paid invoices are now on the website. The FAAC met January 27, 2014, and the Financials for November and December were approved 5/0. Some reclassifications were needed and Management has agreed to make those changes effective for the January results. The Town's bank balance was \$3.382 million at the end of December. Through December 31<sup>st</sup>, the Town had received twenty-one percent (21%) of the annual revenue budgeted, and spent eight percent (8%) of the expense, and that period was (25%) of the year. The year-to-date revenue exceeded expenses by \$2,089.00. On behalf of the Committee, Vice-Chair Ryan requested that Council direct Management to go out for an RFP (Request for Proposal) to purchase the Town's own accounting software system. Town Management had recommended this in the past, and the Committee agrees that the Town should own its own accounting software. Vice-Chair Ryan stated that the Town needed to start the process now, as there are a number of issues that will need to be considered in making this change.

**Motion: Councilman Liang made a motion to accept the Financial Reports, as presented. Councilman Rockett seconded the motion. Upon vote the motion passed 4/0.**

**Motion: Councilman Liang, relative to the recommendation, made a motion to move forward with the Town purchasing its own accounting software. Councilman Goltzene seconded the motion with the idea that the Financial Advisory Committee will review the**

**proposal more in depth, come up with specifications, and work with Management to accomplish that goal.**

Councilman Rockett suggested the Town move forward and gather information, and go out for an RFP (Request for Proposal) which will meet certain criteria, and meet government requirements. One idea he had, was to consider contacting other municipalities to see if the Town might be able to lease someone else's software. It would be like having multiple clients using the same software. The Town could lease a space, and partially pay for its portion. The Finance Committee should see the proposal at their next meeting, and add or subtract from it.

Councilman Goltzené stated that he was reflecting on the comments from the Finance Committee as to not move forward too quickly and to make sure the Town gets a product that we know we want, and not one to just get it done. He believes that the Town Manager has plenty of tasks already, such as the roads, and also getting other things done right away that he is working on. The Council needs to understand that Staff can only do so much, and there is still some research per Councilman Rockett's suggestions. There are two very different directions, whether to purchase or lease. Councilman Goltzené thinks the Council should decide first.

Mayor Browning feels that the Council should receive a report back first providing the options for cost, and then they can make a decision based on that.

**Upon vote, the motion passed 3/1 with Councilman Rockett casting the dissenting vote.**

## **6. RESOLUTIONS**

### **a. RESOLUTION NO. 2014-04: Bryan Road - Public Road Right-of-Way Easement Dedication for Bryan Road.**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ACCEPTING THE PUBLIC ROAD RIGHT-OF-WAY EASEMENT DEDICATIONS FROM THE PROPERTY OWNERS ALONG BRYAN ROAD; PROVIDING FOR RECORDATION; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

Town Attorney Cirullo read the title of Resolution No. 2014-04.

**Motion: Councilman Liang made a motion to adopt Resolution No. 2014-04. Councilman Rockett seconded the motion.**

Todd McLendon, 3481 D Road, stated that since the Town has been collecting gas tax money for years he wanted to know why the Town needed to do this now.

**Upon vote, the motion passes 4/0.**

**7. ORDINANCES – PUBLIC HEARING**

**a. ORDINANCE NO. 2013-08: CAPITAL IMPROVEMENT TEXT AMENDMENT / SECOND/FINAL READING / PUBLIC HEARING.**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA AMENDING THE TOWN OF LOXAHATCHEE GROVES FLORIDA COMPREHENSIVE PLAN, IN ACCORDANCE WITH SECTION 163.3184(3) FLORIDA STATUTES TO: (1) AMEND THE TRANSPORTATION ELEMENT TEXT; (2) AMEND THE DRAINAGE SUB-ELEMENT TEXT OF THE INFRASTRUCTURE ELEMENT; (3) AMEND THE RECREATION AND OPEN SPACE ELEMENT TEXT; AND (4) AMEND THE CAPITAL IMPROVEMENTS ELEMENT TEXT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Attorney Cirullo read the title of Ordinance No. 2013-08.

Jim Fleischmann, Town Planning Consultant, explained the details behind Ordinance No. 2013-08, and the process it had to go through for approval; not only through the Town, but also the Florida State Department of Economic Opportunity, then back to the Town for final reading.

**Motion: Councilman Liang made a motion to adopt Ordinance No. 2013-08. Councilman Goltzené seconded the motion.**

Council discussed potential changes to the Ordinance No. 2013-08 “Exhibit A”.

Phyllis Maniglia, 359 West D Road, noted months ago, lights for pedestrians and horses to cross B and F Roads were discussed. She also stated that those folks who might have been encroaching on the easements may have to back up a bit so that the trails can be utilized.

Keith Harris, 2580 C Road, stated he is a member of the Town's Planning and Zoning Board and the Roadway, Equestrian Trails, and Greenway Advisory Committee (RETGAC), and wanted to let Council know the Boards work very hard on the projects they receive. He apologized for his actions earlier in the meeting.

**Upon roll call vote the motion passed 4/0.**

Town Attorney Cirullo noted that the only correction was to remove the "or" and add "and" (before bicycle) in Section 2.3.2.

**8. ADMINISTRATIVE UPDATE – *Town Manager Kutney***

- a. IGC Meeting of 01/15/2014 and subsequent meetings.
  - Compton Road Culverts
  - Resurfacing of Compton Road, Bryan Road and Marcella Boulevard roadways.

Town Manager Kutney reported on the IGC (Intergovernmental Coordination Committee) Meeting held at the LGWCD (Loxahatchee Groves Water Control District). Vice-Mayor Jarriel, District Secretary/Treasurer John Ryan, and District Administrator Steve Yohe were present, along with Mr. Kutney. Vice-Mayor Jarriel added the three roads, and culverts, to be discussed at the meeting. On January 16, 2014, all members plus Mike Walker from the Water Control District met on Compton Road to review the issues of OGEM and the culverts. A more comprehensive meeting was held on January 22, 2014, in which the Town's Engineers, Maziar Keshavarz and Randy Wertepny from Keshavarz Associates participated, along with Perla Underwood, representing Underwood Management Services Group. Related to the culverts, all those present came to a consensus that Town Manager Kutney would issue a Notice to Proceed to Keshavarz and Associates. The Firm will go ahead and develop an engineering plan/design specification as it relates to the installation of a culvert. Keshavarz would also move forward on behalf of the Town in submitting an engineer permit to the Loxahatchee Groves Water Control District. The District would then review the plans and specifications; and since the Town has already procured services under and invitation to bid, the Town would then go ahead and allow the LGWCD to do the culvert installation. Also the Town's agreement with the District allows them to subcontract, and they may use the services of John Choquette to clear out some of the vegetation. It was the consensus of the group, that idea was workable. Keshavarz provided the specifications to Mr. Kutney during this meeting of February 4, 2014, so he will issue the Notice to Proceed on the culverts. There was a long discussion on the application of OGEM. It was an agreement of the attendees to have Keshavarz look at all three roadways, and come up with an appropriate set of specifications and plans by which North Florida Emulsions could, if the Town continues on the piggyback process using the specifications, go ahead and properly do the

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roadways. Mr. Kutney stated Keshavarz will be reviewing the three (3) roadways, and developing those specifications. In both the culvert replacements and the OGEM applications on the roadways, Keshavarz will also act as the Town's observers, and engineering inspections that the chain of custody is not violated and all work is done to the Town's satisfaction.

Councilman Goltzene complimented the Town Manager and Staff despite a relentless rush to get the job done.

John Ryan, 3508 A Road, stated that he felt the bottom line in all the discussions was that the interpretation from Council was to bring this issue to a conclusion. It was noted during the meeting that the LGWCD specs were intended for residential culverts only, but they could be used as a starting point.

Mayor Browning asked if the same design could be used or did the design have to be reinvented every time.

Mr. Keshavarz stated the basic design was a general guideline, and may need to be adjusted for each application. He has to do his own research as a chain of custody.

Mayor Browning felt that once the Town has the initial design, he does not see the need to do much customizing.

b. Palm Beach State College Town Forum

Town Manager Kutney reported that Palm Beach State College officials will hold a Town Forum between 6:00 and 8:00 p.m. on Thursday, February 20, 2014, at the Central Palm Beach County Chamber of Commerce Office, to discuss construction plans, and receive comments and suggestions for the new College Campus that is to be built on Southern Boulevard.

Town Manager Kutney sent a letter to Dan Weisberg, Director of the Traffic Division of Palm Beach County, trying to cover two issues: The first is the signal on Okeechobee Boulevard and D Road, and the second is the controlled equestrian crossings that were a recommendation of the RETGAC Committee. The letter expressed the Town's concern about the differences between the strain pole design versus the mast arm. Mr. Kutney is trying to set up a meeting with Mr. Weisberg to discuss those items.

Town Manager Kutney reported the Town of Loxahatchee Groves will not have a Municipal Election this year. At the end of qualifying on February 4, 2014, the only person who qualified was the incumbent Tom Goltzené (Seat 5).

Town Manager Kutney reported on the amount of manure coming into Town. Not looking for action this evening, he reminded Council that the Town had made a number of amendments to the manure ordinance going back to 2012; Town Manager Kutney stated the Council, at that time, was trying to do everything they could to control the amount of manure coming into the Town. On February 5, 2013, Mr. Vilarino, representing Mr. Don Ramon, spoke to Council for bona fide agriculture uses, such as banana farms, and the amount of manure that is needed. At that time Council made a motion and gave Mr. Kutney the discretion to determine whether there was a bona fide “AG” need for the amount of manure, even on residential properties. Two applicants have come in requesting one thousand (1,000) loads of manure each, and based upon the fee schedule in the ordinance, if he were to approve those request, the fees would be \$43,000 times two (2) which he is not willing to do without talking to Council. This matter will be brought before Council during the February 18, 2014 meeting.

Randy Wertepny, Keshavarz and Associates, reported the Town is not far from needing an MS4 Permit.

Council discussed the MS4 Permit, composting, water quality, and discharge.

Town Manager Kutney reported on discussions he and Jim Fleischmann, the Town Planning Consultant, had with Howard Voren concerning the references to the term agriculture (“AG”), and its uses. This information is important and will be included in a final report to Council, as an action item for disposal.

Howard Voren, 1538 E Road, commented on the above discussion.

Councilman Goltzené elaborated on the uses of the “AG” exemption.

Mayor Browning expressed his concerns that the Town is protected; and if “AG” designations have rights for a certain business, then he wants to see the Town residents have the same rights.

John Ryan, 3508 A Road, was also on the ULDC Committee and he recommended that the Town needs a simple disclaimer stating the Town needs to get out of the consulting business with regard to “AG” business, and let Palm Beach County Property Appraiser handle that.

**Mayor Browning called for a 5 minute break 9:17 to 9:24.**

## **9. OLD BUSINESS**

- a. Review: Council requested changes to Historical Legacy Ordinance No. 2013-11.

Jim Fleischmann, Town Planning Consultant, referenced the changes that were made per Council request for Ordinance No. 2013-11. He noted page seventy-nine (79) had the changed items.

Council discussed the changes.

Town Attorney Cirullo provided information whether Council should pull changes from the Consent Agenda as a “*receive and file*”. If an item is pulled, everyone must be treated the same. Will the item be pulled in order to vote on it separately, ask questions, or possible deny it, in which case there needs to be some notice and opportunity to be heard. The item may be a quasi-judicial hearing at the next available date. The process has to be fair.

Council reviewed the possibility of any changes and agreed that all items must be treated equally fair. They had a consensus to leave changes on the Consent Agenda. Having Management address the issue, was a suggestion as well.

Howard Voren, 538 E Road, and Todd McLendon, 3481 D Road, provided their opinions.

Town Attorney Cirullo explained eligibility requirements.

- b. Discussion of speed bumps on OGEM roads which exist, the roads to be resurfaced, and new road projects, especially B Road. (*Councilman Rockett*)

Councilman Rockett reference the speed humps on 44<sup>th</sup> Place North east of 140<sup>th</sup> Avenue, and Sycamore Drive. Basic speed humps are eight hundred (800) to one thousand (1,000) feet apart. The Town needs an established standard, and he does not feel that an Engineer is necessary.

Councilman Goltzené agreed the speed humps should be fewer and farther between, and feels the Engineers should provide a report with acceptable designs.

Town Manager Kutney asked if Council so directs, he would have the Road Engineers prepare a report.

Mayor Browning suggested a table-top style speed hump, rather than an up and down version.

Town Manager Kutney respectfully stated that an Engineer of Record needs to sign and seal construction of the roads.

Council and the Town Attorney discussed rural road standards, and who sets them.

Councilman Rockett would like to make a decision at the next Town Council Meeting.

Councilman Rockett requested specifications on speed humps, and stated that if the Town has an opportunity to move forward on setting standards, either in distance and/or dimensions we have for speed humps, to get those specifications back to Council.

Town Manager Kutney questioned whether Council was asking him to commence a study. He can do a notice to proceed, and contact the Town's Traffic Engineers. He wasn't sure that is where Council wanted him to go yet.

Councilman Rockett felt the Town needed a specification, at least like the one on Sycamore Drive, and have it brought back to Council.

Mayor Browning stated that the Council didn't need that brought back, we will just say we need a speed hump that is profiled like the one there (Sycamore Drive) or the one on 44<sup>th</sup> Place North, he did not care which one. If that is going to be the Town's profile then that will be the Town's profile, and then we determine how far apart we go.

Town Manager Kutney stated that he would then go ahead and put a Notice to Proceed together to have Simmons and White take a look at those two speed humps and he will try to have them get that information back to the Town as soon as they can. If Simmons and White can have the report back by the February 18, 2014, Town Council Meeting, fine; if not, it will be the first meeting in March.

Jorge Perez, 1544 B Road, supports speed humps, especially where children are.

## **10. NEW BUSINESS - NONE**

## **11. CLOSING COMMENTS**

### **a. Public**

Howard Voren, 1538 E Road, reported that Town Manager Kutney mentioned he needed \$1,500 in order to put together a report of all items addressed by the ULDC Committee to date. No one has offered to come up with the money.

Mayor Browning stated Mr. Kutney would be bringing this matter up at the February 18, 2014, Town Council Meeting.

Phyllis Maniglia, 359 West D Road, commented on the PBSO presentation at the Land Owners meeting concerning the trash and drinking at the Plaza, giving Mr. Kutney a little more leeway to speak with Mr. Yee concerning the excess trash. She also mentioned having a single sign welcoming people to the Town.

Town Manager Kutney stated the Town is looking into that matter and trying to determine a funding source, as the signage would not fall under gas tax money. He will bring this item up at the February 18, 2014, Town Council Meeting.

Nina Corning, 2834 E Road, handed out flyers concerning road travels by Minto West. She would like the Town to stay active and direct traffic accordingly.

b. Town Attorney

No Report.

c. Town Council Members

Councilman Goltzené looks forward to serving the Town Council another three years, and he thanked everyone for attending the meeting.

Councilman Liang congratulated Councilman Goltzené, and wished everyone a Happy Chinese New Year.

Councilman Rockett thanked everyone for coming, and wished everyone a good night.

Mayor Browning mentioned an excessive amount of yard waste on D Road being hauled up and down the roads.

Town Manager Kutney stated that if the Mayor would give him direction, he would investigate.

Mayor Browning said he is going to, as the Town needs to, check it out. He also expressed his concern for the amount of dog rescue facilities in Loxahatchee Groves. He thanked everyone for coming, Happy New Year, and congratulation to Councilman Goltzené.

**12. ADJOURNMENT**

There being no further business before the Town Council, the Mayor adjourned the meeting at 10:35 p.m.

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**Janet K. Whipple, Town Clerk**

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**David Browning, Mayor**

**Comment Cards:** Anyone from the public wishing to address the Town Council must complete a Comment Card before speaking. This must be filled out completely with your full name and address and given to the Town Clerk. During the meeting, before public comments, you may only address the item on the agenda in which is being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.

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**Item 6.**

**Resolutions**

**None**

# Underwood Management Services Group, LLC

840 N.E. Stokes Terrace  
Jensen Beach, Florida 34957  
Telephone: 772.233.1511

William F. Underwood, II  
Managing Partner  
Email: umsg@att.net

**TO:** Town Council

**FROM:** Underwood Management Services Group, L.L.C.

**RE:** Ordinance 2013-011: Town Initiated Amendment to the Loxahatchee Groves Unified Land Development Code (ULDC) to Addition of Section 75-035 – *Uses as of October 1, 2006 (i.e. Historical Legacy Uses)*.

**DATE:** November 22, 2013; Rev: December 13, 2013; Rev: January 29, 2014.

**CC:** William F. Underwood, Managing Partner

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## **I. BACKGROUND INFORMATION**

Per Section 05-070, the Town Council may amend the Unified Land Development Code (ULDC) for the purposes of public necessity, convenience, general welfare, or good planning and zoning practice. Any amendment to the ULDC requires a super majority vote of four or more Council members.

The issue of “historical legacy” uses has undergone a lengthy Town review process and morphed from the previously proposed addition to the ULDC of Section 80-60. *Residential Agricultural Sales and Services* to the current proposed revision of ULDC Section 75-035. *Uses as of October 1, 2006*.

The following represents a brief chronology of events leading to the current proposed revisions to ULDC Section 75-030:

- A code enforcement complaint was initially filed against several entities alleging the improper retail sales of hay without appropriate approvals. The complaint was investigated by the Town’s Code Enforcement Staff and it was determined that the three entities were operating in the Agricultural Residential (AR) zoning district without the proper authority and approval.
- At the June 5, 2012 Town Council Meeting, the respondents appeared and requested consideration for their current operations. Town Council deliberated on the matter and directed Town Management Staff and the Town Attorney to review the matter and propose possible remedies that would address the issue.
- At the June 20, 2012 meeting, Town Management Staff presented a strategy including the following elements: Limiting the operation to property residents; restricting the operation to resident owners rather than vesting with the land; requiring a business tax receipt; and other requirements consistent with the intent of the ULDC.

- At the November 8, 2012 meeting, the Planning and Zoning Board (PZB) heard a presentation of proposed ULDC Section 80-60. *Residential Agricultural Sales and Services*. PZB recommended approval of Section 80-60 by a 3-0 vote subject to clarifying that uses be limited to the following: straw, flakes, shaving, pellet shavings, hay, feed and grain. This change was incorporated within the draft by Staff.
- At the November 20, 2012 Town Council meeting, Resolution 2012-19 was passed by the Council creating the Unified Land Development Code Review Committee (ULDC Review Committee) for the purpose of advising the Council on code related matters.
- At the Town Council meeting of December 4, 2012, proposed Ordinance 2012-012 (Hay Sales Ordinance) was heard by the Town Council which voted to continue the item to the January 15, 2013 meeting by a 4-1 vote to allow more time for review.
- At the Town Council meeting of January 15, 2013, Council voted to approve Ordinance 2012-012 on first reading by a 3-2 vote subject to the following changes to the Staff proposal:
  - Strike the requirement for special exception approval for semi-truck deliveries.
  - Strike the provision regarding limiting the number of employees to two persons.
  - Change hours of operation to: 8:00 a.m. – 8:00 p.m. five days a week, and on Saturday; Sunday hours – 12:00 p.m. to 5:00 p.m.

Public discussion centered around the need to adopt an ordinance that encompassed all “mom and pop” organizations that existed prior to incorporation rather than focusing on hay sales.

- At the February 5, 2013 meeting, Ordinance 2012-012 was continued to the March 5, 2013 meeting, as language revisions approved by the Council at its January 5, 2013 meeting was not included in the current draft.

The Council also directed staff to have Ordinance 2012-012 reviewed by the ULDC Review Committee at its February 21, 2013 meeting. The Town Manager noted that if the title of the ordinance was changed as a result of ULDC Committee review, it would have to come back to Council for a new first reading.

- Ordinance 2012-012 was reviewed at the February 21, 2013 ULDC Review Committee. There was considerable discussion as to whether or not the ordinance should be limited to hay sales or expanded to include all “historical legacy” businesses. A motion was made and passed, by a 5-0 vote, to incorporate the pre-existing business intent of proposed Ordinance 2012-012, expanded to include the concept of businesses classified as “historical legacies”, within Section 75-035. *Uses as of October 1, 2006* of the ULDC.

- At the March 5, 2013 Town Council meeting, Ordinance 2012-012 was considered on second reading. A motion to table Ordinance 2012-012 and suspend code enforcement on any use that would fall under the concept of historical legacy, as presented to the ULDC Committee was made and passed by a 5-0 vote.

A second motion was made and passed, by a 5-0 vote, directing Staff to process an ordinance addressing the “historical legacy” issue.

- ULDC Article 75, including Section 75-035. *Uses as of October 1, 2006*, was included on the ULDC Committee agendas of March 21, 2013, April 18, 2013, May 16, 2013, September 19, 2013 and October 3, 2013. The item was continued at each meeting due to the length of discussions on prior agenda items.
- ULDC Article 75. *Nonconforming Uses, Structures and Plots*, including Section 75-035. *Uses as of October 1, 2006*, was discussed by the ULDC Review Committee at its meeting on October 17, 2013. The Committee recommended approval, by a 5-0 vote, of Staff proposed Article 75 revisions, subject to several conditions. Recommended conditions of approval for Section 75-035 include the following:
  - The “historical legacy” use will not be allowed to continue in the event of a sale of the business or the property on which it is located.
  - A “historical legacy” business may continue if previous code violations have been brought into compliance with the ULDC.
  - A “historical legacy” business may not be diversified (i.e. add a new business operation).
  - The owner-operator must undergo an inspection and review by the Town to determine compliance with Sections 75-035 (A) – (F).

Each of the above recommendations have been incorporated within the current Staff recommendation.

## **II. GENERAL INFORMATION**

**A. APPLICANT:** Town of Loxahatchee Groves.

**B. PURPOSE:** Incorporate revisions to the Unified Land Development Code (ULDC) revising Section 75-035. *Uses as of October 1, 2006* to:

1. Expand the title to read: Section 75-035. *Historical Legacy Uses as of October 1, 2006*.
2. Require an applicant to apply for a Category B Special Exception.
3. Require that the applicant comply with a list of stated conditions.

4. Require that the applicant undergo a review and inspection by the Town to determine compliance with the list of stated conditions.

5.

### **III. REQUESTED ULDC AMENDMENTS**

The final proposed amendment to ULDC Section 75-035 is included as Exhibit A of proposed Ordinance 2013-11. Exhibit A of the Ordinance differs somewhat from Attachment A of this staff report, as some of the ULDC Review Committee revisions were further revised by the Local Planning Agency (LPA). The LPA recommendation represents the final staff recommendation, per Exhibit A of Ordinance 2013-11. Revisions proposed by the ULDC Review Committee as further revised by the LPA can be tracked in Attachment A of this staff report.

### **IV. STAFF ANALYSIS**

The proposed text amendment is reviewed in accordance with the following criteria, as listed in Section 160-020 of the ULDC.

#### **A. REASON AND/OR NEED FOR THE PROPOSED TEXT CHANGE:**

The basic purpose of the proposed amendment is to implement Town Council direction to process an ordinance addressing the “historical legacy” land use issue.

#### **B. REASON THE PRESENT TEXT IS INVALID OR INAPPROPRIATE:**

The current text of the ULDC is not necessarily invalid or inappropriate; however, current Code language does not permit a use existing as of October 1, 2006 to continue to exist if the applicant had not filed an application for Special Exception approval within eight months of the effective date of the ULDC (i.e. November 2010). In effect, existing ULDC language prohibits any use in the AR District that was in existence on October 1, 2006, but not listed as a “permitted use” in Section 20-015 of the ULDC, from continuing to exist. The proposed ULDC text amendment will provide an opportunity for qualified longstanding non-conforming land uses (i.e. Historical Legacy uses) to gain permitted use status, provided that specified conditions are met and verified by the Town.

#### **C. HOW DOES THE PROPOSED TEXT AMENDMENT FURTHER THE PURPOSES OF THE COMPREHENSIVE PLAN OR OTHER TOWN CODES, REGULATIONS OR PLANS DESIGNED TO IMPLEMENT THE COMPREHENSIVE PLAN:**

The proposed ULDC revisions, which allow and regulate uses in the AR zoning district that were in existence at the time of incorporation of the Town, are consistent with the following general Future Land Use Element Comprehensive Plan directives:

1. Policy 1.1.4(h): Create codes allowing diverse low impact home-based businesses.
2. Policy 1.1.6: The Town shall encourage the use of innovative land development regulations that enhance the rural atmosphere, reduce energy usage, and reduce greenhouse gas emissions.
3. Policy 1.1.8.5: Maintain specific regulations to restrict the types of non-residential and nonagricultural uses allowed and promote the rural character and design.

4. Policy 1.1.8.6: Allow home occupation uses that will not degrade the rural character of the area.
5. Policy 1.1.8.7: Include provisions for legal non-conforming agricultural uses consistent with this Plan, while not violating the Right-to-Farm Act.
6. Policy 1.11.2: The Town shall adopt and maintain land development regulations which protect the rights of property owners to continue non-conforming uses, but which, at a minimum, provide for the termination of such rights upon the abandonment of a non-conforming use for an extended period of time.
7. Policy 1.12.4: The Town will continue to allow home based businesses to the extent that impacts are compatible with an agricultural/residential community.

**D. IS THERE AN ERROR OR AMBIGUITY TO BE CORECTED:** There are no identified errors or ambiguities identified in the Town’s current ULDC regarding the issue. Rather, the proposed amendments provide an opportunity to allow longstanding non-conforming uses the opportunity to legally continue consistent with the direction of the Town’s Comprehensive Plan.

**V. STAFF FINDINGS:** Planning staff finds the proposed ULDC revisions to be consistent with the intent and direction of the Loxahatchee Groves Comprehensive Plan and the review criteria for a text amendment listed in Section 160-020 of the ULDC.

**VI. STAFF RECOMMENDATION:** Staff recommends approval of the proposed ULDC revisions to ULDC Section 75-035 as presented in Exhibit A of proposed Ordinance 2013-11. Revisions recommended by both the ULDC Review Committee and the Local Planning Agency are presented in Attachment A of this staff report. Revisions proposed by the LPA, including a majority if those revisions proposed by the ULDC Review committee, constitute the staff recommendation.

**VII. ULDC COMMITTEE ACTION:** The Committee recommended approval, by a 5-0 vote, of Staff proposed Section 75-035 include the following:

- The “historical legacy” use will not be allowed to continue in the event of a sale of the business or the property on which it is located.
- A “historical legacy” business may continue if previous code violations have been brought into compliance with the ULDC.
- A “historical legacy” business may not be diversified (i.e. add a new business operation).
- The owner-operator must undergo an inspection and review by the Town to determine compliance with Sections 75-035 (A) – (F).

Each of the above recommendations have been incorporated within the Staff recommendation presented in Attachment A of Ordinance 2013-11.

**VIII. LOCAL PLANNING AGENCY (LPA) ACTION:** The LPA, at its meeting of December 12, 2013, recommended that the Council approve proposed Ordinance 2013-11, by a 3 – 0 vote, subject to revisions highlighted in Attachment A of the staff report dated December 13, 2013.

**IX. TOWN COUNCIL ACTION:** The item appeared on the Town Council agenda of March 5, 2013 in its previous form (i.e. Ordinance 2012-012 - “Hay Sales Ordinance”). At the meeting, a motion was made and passed, by a 5-0 vote, directing Staff to process an ordinance addressing the more general issue of “historical legacy”, as opposed to focusing solely upon hay sales.

Ordinance 2013-11, reflecting ULDC Committee and Planning and Zoning Board recommendations (Ref: Attachment A of the staff report dated December 13, 2013), was presented to the Town Council at its January 14, 2014 meeting. The Town Council approved Ordinance 2013-11, by a 5 – 0 vote, subject to the following revisions:

1. Definitions need to be created for undefined terms in Section (H) of the ordinance.
2. Revise the ordinance to allow historical legacy businesses to continue: (1) on a property owned by a resident with a homestead exemption; or (2) on an off-site property, either contiguous or non-contiguous to the homesteaded property. In either case, the business owner’s homestead exemption and the business shall have been in continuous operation since October 1, 2006.

Further, based upon Town Council discussion, staff has revised Section(E) to read as follows:

“(E) The property upon which the use is located is not currently the subject of a Town code enforcement action”.

Staff’s response to Council’s direction is incorporated within the proposed ULDC revisions presented in Exhibit A of Ordinance 2013-11.

**TOWN OF LOXAHATACHEE GROVES**

**ORDINANCE NO. 2013-11**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO HISTORICAL LEGACY USES AND APPROVALS; AMENDING THE TOWN OF LOXAHATCHEE GROVES UNIFIED LAND DEVELOPMENT CODE (ULDC), TO AMEND SECTION 75-035, ENTITLED “USES AS OF OCTOBER 1, 2006” TO ADD THE TERM HISTORICAL LEGACY TO THE SECTION TITLE; TO SPECIFY THE CATEGORY OF SPECIAL EXCEPTION NECESSARY FOR CERTAIN USES IN THE ZONING CATEGORY; TO REQUIRE THAT THE PROPERTY ON WHICH THE USE IS LOCATED SHALL HAVE BEEN OWNED AND SUBJECT TO A HOMESTEAD EXEMPTION IN THE NAME OF THE OPERATOR; TO REQUIRE THAT THE USE DOES NOT PRESENT A THREAT TO PUBLIC HEALTH; TO REQUIRE THAT THE USE HAS NO HISTORY OF CODE VIOLATIONS OR THE USE HAS BEEN BROUGHT INTO CODE COMPLIANCE; TO REQUIRE THAT THE OWNER-OPERATOR SUBMIT AN AFFIDAVIT STIPULATING TO COMPLIANCE WITH CERTAIN CONDITIONS; TO REQUIRE REVIEW AND INSPECTION BY THE TOWN; PROVIDING THAT CERTAIN USES ARE NOT ELIGIBLE FOR APPROVAL UNDER THIS SECTION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council has directed staff and the Unified Land Development Code (ULDC) Review Committee to prepare corrective amendments to Section 75-035 that will result in a process to permit “historical legacy” uses in the Agricultural Residential (AR) zoning district.

**WHEREAS**, In response to the Council directive the Town’s staff has prepared proposed amendments to the Town’s Unified Land Development Code (ULDC) and,

**WHEREAS**, the Town’s ULDC Review Committee considered the proposed ULDC amendments at its October 17, 2013, meeting and recommended that the Town Council approve the amendments to the ULDC proposed by staff subject to revisions which have been incorporated in Exhibit A hereto; and,

**WHEREAS**, the Town’s Planning and Zoning Board considered the proposed ULDC amendments at its December 12, 2013, meeting and pursuant to Chapter 163, Part

II, Florida Statutes, recommended that the Town Council approve the amendments to the ULDC as worded in Exhibit A hereto; and,

**WHEREAS**, the Town Council of Town of Loxahatchee Groves finds that the adoption of this ordinance, to revise Section 75-035, entitled “Uses as of October 1, 2006”, is consistent with the Town’s Comprehensive Plan, and in the best health and welfare interests of the Town, its property owners and residents.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA:**

**Section 1:** That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

**Section 2:** That the Town Council of the Town of Loxahatchee Groves, hereby amends the Town’s Unified Land Development Code (ULDC) by amending Section 75-035, entitled “Uses as of October 1, 2006” , as fully set forth in **EXHIBIT “A”**, and incorporated herein by reference.

**Section 3: Conflicts.** All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4: Severability.** If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

**Section 5: Codification.** The Town Clerk shall cause this ordinance to be codified as a part of the ULDC.

**Section 6: Effective Date.** This ordinance shall take effect immediately upon adoption.

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 14th DAY OF JANUARY, 2014.**

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

**TOWN OF LOXAHATCHEE GROVES,  
FLORIDA**

ATTEST:

\_\_\_\_\_  
Mayor David Browning

\_\_\_\_\_  
Janet K. Whipple, MMC  
Town Clerk

\_\_\_\_\_  
Vice Mayor Ron Jarriel

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Council Member Tom Goltzené

\_\_\_\_\_  
Office of the Town Attorney

\_\_\_\_\_  
Council Member Ryan Liang

\_\_\_\_\_  
Council Member Jim Rockett

**EXHIBIT A**

**Historical Legacy Amendments**

**(Ref: Following Page)**

**Amendments to the following ULDC Section:**

1. Section 75-035. *Uses as of October 1, 2006*

**NOTE:** Underlined text is an addition to Section 75-035 and ~~struck through text~~ is a deletion to Section 75-035.

**Section 75-035. - Historical Legacy Uses as of October 1, 2006.**

Certain uses that were in existence as of October 1, 2006 are not contained in the table of permitted uses for the Agricultural Residential (AR) zoning district. Such uses, referred to as "Historical Legacy Uses", but may be allowed to continue to exist, subject to following:

- (A) The applicant shall have the burden of proof to demonstrate that the use was in existence on the property as of October 1, 2006; and
- (B) The applicant shall apply for a Category B Special Exception pursuant to Section 170-010(B) of this Code; and
- (C) ~~The application for the Special Exception shall be filed within eight months of the effective date of these regulations.~~ A historical legacy use shall comply with either of the following criteria: (1) Be located on a property owned by a resident with a homestead exemption; or (2) be located on a separate property, either contiguous or non-contiguous to the homesteaded property. In either case, the business owner's homestead exemption shall have been in effect and the historical legacy business shall have been in continuous operation since October 1, 2006.
- (D) The use does not present a threat to public health or safety..
- (E) The property upon which the use is located is not currently the subject of a Town code enforcement action, with the exception of a property containing a use that qualifies for a Historical Legacy Category B Special Exception.
- (F) The owner-operator has submitted an affidavit: (1) certifying compliance with Sections (A) –(E) above (2) limiting the continued operation of the use to both the Parcel Control Number (PCN) and operator; (3) agreeing not to diversify the existing business; (4) agreeing that no signs visible from the road which advertise or promote the use will be erected on the property; (5) agreeing to maintain, and provide a copy to the Town, an active annual local business tax receipt; (6) acknowledging that, in the event of the transfer of the property to a new owner the right to operate the use shall cease; and (7) agreeing to conditions imposed by Town Staff including, but not limited to, access, parking, hours of operation, noise generation, location of the business activities upon the property, number of on-site employees, clients or customers allowed, deliveries, waste disposal, proof of insurance, etc.

(G) The owner-operator has undergone a review and inspection by the Town to determine compliance with Sections (A) – (F) above.

(H) The following uses are not eligible for approval under this section:

(1) Adult entertainment establishment, as defined in Section 10-015: *Definitions*.

(2) Recreational vehicle or mobile home park, where parking spaces are rented or sold and provided with one or more of the following services: potable water, electrical and/or sewage disposal.

(3) Junk dealer, as defined in Section 17-75(a) of the Palm Beach County Code of Ordinances.

(4) Additional uses determined by Town staff to be non-compliant with Articles 45: *Property Maintenance* and Article 50: *Public Nuisances*.



**Item 8. a. b.**

**Administrative Update**

**No Backup Information**



**Item 9. a.**

**Old Business**

**Reconciliation of ULDC Work Authorization**



TOWN OF LOXAHATCHEE GROVES  
OFFICE OF THE TOWN MANAGER  
AGENDA REPORT

**TO:** Mayor and Town Council

**FROM:** Mark A. Kutney, Town Manager, AICP, ICMA-CM

**DATE:** February 12, 2014

**SUBJECT:** Town Management Company Work Authorizations- ULDC/Historical Legacy

**I. BACKGROUND/HISTORY**

The Town Council has deliberated on this matter of Work Authorizations (related to ULDC Review Committee activities) on November 5, 2013, December 3, 2013, January 14, 2014, and February 4, 2014; the last meeting as a result of a board member inquiry and as part of the Administrative Update. Relative to these meetings, it was determined that the ULDC Review Committee would continue for another year, however, their meetings would occur on a Town Council requested basis and the Town Management Company would bill by the meeting. The one matter that was not decided was the issue regarding the allocation of additional funds for the Management Company to prepare the Annual Report Summary of the ULDC Review Committee Motions and Recommendations for the entire calendar year of 2013. This matter was raised by ULDC Review Committee Member Howard Voren and addressed by the Town Manager under the Administrative Update.

In a second matter, the Historical Legacy Work Authorization was the only assignment that did not require additional funds to complete the assignment. However, due to several requested rewrites, and a couple of additional meetings not envisioned, this work authorization has fallen into arrears and currently has a negative balance of \$222.50.

**II. DISCUSSION**

In the previous agenda reports provided by the Town Manager, the additional requested funds included estimates to cover the expense of additional ULDC Review Committee Meetings, and the Annual Summary Report. Council's determination for the extension of the ULDC Review Committee did not address the issue of the additional funding for the Annual Summary Report. Town Management Staff has estimated that completion of the Annual Summary Report will cost \$1,500.00.

In terms of the Historical Legacy, this matter is scheduled for second reading and should be concluded at this meeting. Therefore, the Town Management Company is respectfully requesting that Town Council authorize the funds to cover the aforementioned overages indicated earlier in this report and any expenses occurred during Town Council deliberation on February 18, 2014.

### **III. FISCAL IMPACT**

Funds are available to cover the requested funds

### **IV. ATTACHMENTS**

None

### **V. REQUESTED ACTION**

A motion by Town Council to approve \$1,500.00 for the completion of the ULDC Review Committee Annual Summary Report and a second motion to approve the additional funds to address the overages in Historical Legacy, including additional costs incurred during the February 18, 2014, Town Council Meeting.



**Item 9.b.**

**Old Business**

**Discussion of Manure Ordinance No. 2012-03**



TOWN OF LOXAHATCHEE GROVES  
OFFICE OF THE TOWN MANAGER  
AGENDA REPORT

**TO:** Mayor and Town Council

**FROM:** Mark A. Kutney, Town Manager, AICP, ICMA-CM

**DATE:** February 12, 2014

**SUBJECT:** Future Revisions to Ordinance 2012-03 Dumping of Manure

## **I. BACKGROUND/HISTORY**

On April 3, 2012, Town Council adopted Ordinance 2012-03, related to dumping of manure and horse bedding within the Town. This ordinance amended a 2010 Ordinance on the same subject matter, and among other revisions added setback requirements, spreading requirements, load limitations, related fees, and penalties when warranted. At that point in time, all efforts by the Town were directed at controlling and limiting the amount of manure dumped in the Town. However, on February 5, 2013, an item was placed on the agenda regarding the manure ordinance. In summary, Town Council heard from Ramon Vilarino, a farmer who indicated that the farmers needed a relaxation to the Ordinance requirements that mandated additional fees after 20 loads. Apparently, the haulers were attempting to pass the additional fees onto the receiver properties.

After hearing the public comment, Councilman Goltzene made a motion to amend the ordinance to allow hauling within Loxahatchee Groves by noncommercial growers, and to allow Town Management discretion at the time of permitting, that if a bona fide “ag” demonstrates a need, they be allowed to do that. The motion was seconded by Councilman Jarriel, and the motion passed by a 5/0 vote.

## **II. DISCUSSION**

Since that meeting, Town Management Staff has attempted to administer the ordinance under that direction. Staff was not able to produce any proposed amendments to the current ordinance. There is concern that there may be abuses by haulers/receivers related to the direction rendered in 2013. At present, the Town is receiving many complaints regarding dumping after hours, and the amounts being dumped. Town Management Staff believes that before any further

amendments are proposed to the ordinance, Town Council and Staff need to have further discussions to ascertain the correct posture of the Town regarding this issue.

### **III. FISCAL IMPACT**

As currently constituted, the Town may be losing large amounts of required fees by permitting the relaxation of such in accord with the action taken on February 5, 2013.

### **IV. ATTACHMENTS**

Ordinance 2012-03

### **V. REQUESTED ACTION**

Town Council should revisit this issue and provide direction to Town Management Staff relative to future ordinance changes and administrative discretion regarding the implementation thereof.

**TOWN OF LOXAHATCHEE GROVES**

**ORDINANCE NO. 2012-03**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING AND RESTATING ORDINANCE 2010-003, RELATING TO DUMPING OF MANURE AND HORSE BEDDING WITHIN THE TOWN; PROVIDING THAT ONLY THOSE PROPERTIES DESIGNATED AGRICULTURE OR IN THE PROCESS OF APPLYING FOR SUCH, OR DESIGNATED RESIDENTIAL, ON PROPERTY TAX RECORDS MAY RECEIVE MANURE AND HORSE BEDDING FOR AGRICULTURAL USE ON THE PROPERTY; AMENDING THE PERMITTED HOURS FOR DEPOSITING MANURE AND HORSE BEDDING; AMENDING PERMIT APPLICATION REQUIREMENTS FOR PROPERTY OWNERS AND HAULERS; ADDING PROVISIONS ON THE LOCATION OF DUMPING ON PROPERTY; AMENDING PROVISIONS RELATING TO HAULER PERMIT FEES; PROVIDING THAT EXCEPT AS AMENDED HEREIN, ORDINANCE 2010-003 IS RESTATED AND IN FORCE AND EFFECT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on April 6, 2010, the Town Council of the Town of Loxahatchee Groves adopted Ordinance 2010-003, to provide requirements for permits by landowners and transporters of manure and horse bedding in the Town; and,

**WHEREAS**, the Town Council believes that Ordinance 2010-003 should be amended to provide for additional items relating to permit requirements and fees; and,

**WHEREAS**, except as amended herein, Ordinance 2010-003 shall remain in full force and effect in the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:**

**Section 1.** The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof. Ordinance 2020-003 is amended as set forth herein.

## TOWN OF LOXAHATCHEE GROVES

### ORDINANCE NO. 2012-03

**Section 2.** It shall be prohibited for a property owner to permit the depositing of Manure and Horse Bedding onto real property within the Town except when the Manure and Horse Bedding is being used by the property owner for bona fide agricultural purposes in appropriately limited quantities after obtaining a permit from the Town.

**Section 3.** It shall be prohibited for any person to deposit Manure and Horse Bedding on any property within the Town, regardless of the consent of the property owner, unless such person, and the property owner, has obtained a permit from the Town confirming that the Manure and Horse Bedding is to be used for bona fide agricultural purposes; and, in no case may the amount of Manure and Horse Bedding deposited exceed the amount set forth in the permit issued to the Property Owner by the Town. With the exception of a Town Manager-approved permit for residential property hereinafter provided, the property on which the Manure and Horse Bedding is to be deposited must be designated as agricultural by the Palm Beach County Tax collector for property tax purposes; provided that when a property owner applies for the first time for a permit, the property owner may obtain its initial permit notwithstanding not having the agricultural use tax designation when the property owner certifies to the Town Manager that the property owner is making a good faith effort to obtain the agricultural use tax designation. This exception shall not apply to subsequent years. Property owners of property designated as residential by the Palm Beach County Tax Collector may obtain a permit from the Town Manager when the property owner of the residential property demonstrates to the Town Manager that the Manure and/or Horse Bedding is solely for private, personal use on-site. The Town Manager shall advise the Town Council of all permits approved for residential properties. The determination of the appropriate quantity of Manure and Horse Bedding for use for bona fide

# TOWN OF LOXAHATCHEE GROVES

## ORDINANCE NO. 2012-03

~~agricultural purposes shall be based upon uses and custom associated with the specific agricultural use on the property, which may include recognized formulas of government agencies or published studies. A permit issued to a property owner pursuant this Ordinance is limited to one transporter, and a property owner may have only one permit at a time.~~

**Section 4.** Notwithstanding the issuance of a permit, the depositing of manure and horse bedding shall be prohibited between the hours of ~~sunset and sunrise~~7:00 p.m. and 7:00 a.m. on Mondays through Saturdays, and prohibited at all times on Sundays. A hauler shall not dump Manure and Horse Bedding within fifty (50) feet of the property line or within seventy five (75) feet of any well on the property. The limitations in this Section do not apply to the spreading or use of the manure and horse bedding.

**Section 5.** The Town Council hereby finds that a violation of this ordinance presents a public nuisance for purposes of enforcement of Section 403.413, Florida Statutes, and law enforcement officers charged with the enforcement of state and local laws within the Town shall strictly enforce Section 403.413, Florida Statutes.

**Section 6.** The Town Administration is authorized to use the Town's Code Enforcement process to enforce violations of this ordinance where a law enforcement officer has not otherwise issued violations of Section 403.413, Florida Statutes. In such instances, the fine shall be \$250 for the initial violation and \$500 for each subsequent violation, with each load or each day being a separate violation. Each day a violation remains, and each haul for which there is no permit, constitutes a separate violation of this ordinance.

**Section 7.** Upon the issuance of a violation notice under Section 403.413, Florida Statutes, or this ordinance, any permits issued by the Town shall be suspended and all Manure

## TOWN OF LOXAHATCHEE GROVES

### ORDINANCE NO. 2012-03

and Horse Bedding deposit activity stopped until such time as a hearing is conducted or the fines paid. Should a person violate this ordinance on more than one (1) occasion during a calendar year, that person shall not be granted a permit from the Town for a period of one (1) calendar year from the date of the last violation.

**Section 8.** Permits shall be obtained by both property owners and transporters from the Town.

a. Property Owners shall obtain a permit from the Town for each use of manure or horse bedding, regardless of the number of loads, during which time the Property Owner shall advise in writing: (1) whether the real property on which the manure and/or horse bedding is to be dumped is designated agriculture or residential on the tax roll for property tax purposes; (2) the volume being used under the permit; (3) and the transporter for the material; (4), and will certify that the manure or horse bedding is being used for bona fide agricultural purposes, and for residential properties include sufficient information to enable the Town Manager to determine whether the use is for private, personal use on site; (5) confirming through a property site drawing or layout that the manure and horse bedding will not be dumped within fifty (50) feet of the property line or within seventy five (75) feet of any well on the property; and (6) that the property owner has verified that the transporter for the materials has a permit from the Town. One of the conditions on the issuance of a permit to a property owner is that it shall provide consent for a Town representative to inspect the property solely for purposes of ensuring compliance with the terms of the permit. There shall be no charge for a Property Owner Permit. The Property Owner shall spread the manure and horse bedding within seventy-two (72) hours of receipt of the materials.

**TOWN OF LOXAHATCHEE GROVES**

**ORDINANCE NO. 2012-03**

b. Transporters shall obtain an annual permit from the Town for the deposit of up to twenty (20) loads of Manure and Horse Bedding within the Town. For purposes of this ordinance, a “load” shall be approximately twenty (20) to twenty-five (25) cubic yards. In obtaining the permit, the transporter will acknowledge that it is aware of the Town’s regulations relating to the deposit of manure and horse bedding, and that it will confirm upon receipt of a request for materials from a property owner within the Town that the purpose for such manure and horse bedding is for bona fide agricultural purposes, and that the property owner has obtained the necessary permit from the Town. All permits for transporters shall expire each September 30 regardless of the date of issuance. Transporters are responsible for the timely renewal of its annual permit. The annual permit fee shall be Five Hundred Dollars (\$500.00). A hauler may exceed twenty (20) loads permitted that it pays, in advance, an additional fee of forty dollars (\$40.00) per load. A transporter who applies for an application subsequent to transporting manure into the Town shall be charged a fee of Two Thousand Dollars (\$2,000.00), and for permitted haulers that exceed the permitted number of loads and do not pay in advance for additional loads, the cost per additional load shall be one hundred dollars (\$100.00); The application fees set forth herein ~~which~~ may be adjusted by the Town Council by resolution. No permit shall be issued to a transporter who has not remedied previous violations of this Ordinance.

**Section 9.** As used in this ordinance “bona fide agricultural purposes” means farming, pasture, grove, or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee and aquaculture, consistent with Section 823.14, Florida Statutes (Right to Farm) and Section 570.02, Florida Statutes (Agriculture).

**TOWN OF LOXAHATCHEE GROVES**

**ORDINANCE NO. 2012-03**

**Section 10.** **Effect on Ordinance 2010-003.** Except as amended herein, Ordinance 2010-003 remains in full force and effect.

**Section 11.** **Repeal of Laws in Conflict.** All Ordinances or part of Ordinances in conflict herewith are in the same are hereby repealed to the extent of such conflict.

**Section 12.** **Severability.** If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

**Section 13.** **Codification.** It is the intention of the Town Council of the Town of Loxahatchee Groves that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Loxahatchee Groves, Florida, and that the Sections of this ordinance may be re-numbered, re-lettered, and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

**Section 14.** **Effective Date.** This Ordinance shall become effective immediately upon its passage and adoption.

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 6<sup>th</sup> DAY OF march, 2012.**

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS 3<sup>rd</sup> DAY OF April, 2012.**

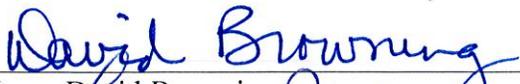
**TOWN OF LOXAHATCHEE GROVES,  
FLORIDA**

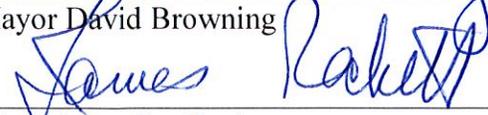
TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2012-03

ATTEST:

  
Janice M. Moore, Town Clerk

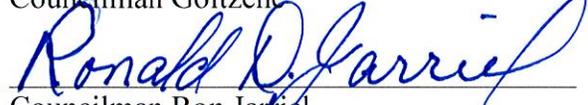
  
Mayor David Browning

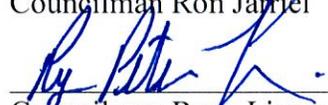
  
Vice Mayor Jim Rockett

APPROVED AS TO LEGAL FORM:

  
Michael D. Cirullo, Jr., Town Attorney

*not present*  
Councilman Goltzené

  
Councilman Ron Jarriel

  
Councilman Ryan Liang

MDC:aw

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**Item 10.a.**

**New Business**

**Discussion of:**

**Town Management/ Council Priorities/Business Plan Initiatives**



TOWN OF LOXAHATCHEE GROVES  
OFFICE OF THE TOWN MANAGER  
MEMORANDUM

**TO:** Mayor and Town Council

**FROM:** Mark A. Kutney, Town Manager, AICP, ICMA-CM

**DATE:** July 15, 2013 (Red = Revised February 12, 2014)

**SUBJECT:** Town Management/Council Priorities/Business Plan Initiatives

Please allow this memorandum to serve as a continued update to previous correspondence related to Business Plan Initiatives/Work Priorities. Town Management will be spending the majority of time on the First Tier identified; however, Town Management Staff would appreciate any Town Council input relative to the ranking of these work priorities. (Town Council had previously directed Town Management to develop the priorities for these initiatives). As items are completed, other initiatives will be moved up the priority list. In a similar fashion, should new assignments be added to the list, those assignments will be prioritized in accordance with importance to the Town. Please note that items **in red** are amendments or adjustments from the July 15, 2013, Memorandum. Town Management would appreciate Town Council providing input at the February 18<sup>th</sup> or March 4<sup>th</sup> Town Council Meetings.

**BUSINESS PLAN INITIATIVES/PRIORITIES FIRST TIER**

1. 2014-2015 Budget/ CIP/NAV
2. **Comprehensive Annual Financial Report (CAFR)**
3. Work Authorizations (UMSG)
  - A. Amendments to Comprehensive Plan (Okeechobee and Southern Boulevards)
  - B. Capital Improvements Element Update (**note: will be completed soon**)
  - C. ULDC Review Committee Activities and Meetings **and 2013 Annual Report**
  - D. ULDC Text Amendment Hay Sales/Historical Business Legacy (**note: will be completed soon**)
4. **Debris Management Procurement/Purchasing**
5. **Annual Financial Report (AFR)**
6. FEMA Flood Zone Mapping/Designations
7. **Compton Road/ Marcella Blvd/Bryan Road OGEM Applications /Compton Culvert Replacement**
8. PUD Processing for Lox Groves Commons and Lox Groves Center with Multiple Parties  
Agreements for Off-site Road Improvements

9. Okeechobee Blvd Traffic Signal
10. Speed Hump Study

### **BUSINESS PLAN INITIATIVES/PRIORITIES SECOND TIER**

1. 6<sup>th</sup> Street Culvert Connection/Easement 6<sup>th</sup> Court C Road to A Road
2. Auditing Procurement/Purchasing
3. Collecting Canal Road OGEM Project
4. Revisions to Manure Ordinance
5. Codification of Town Ordinances with Muni Code
6. 2013 Interlocal Agreement for Road/Canal Maintenance Funding with LGWCD
7. Comprehensive Emergency Plan Revisions (CEMP)
8. Roadway/Hedging Procurement/Purchasing
9. Cost Recovery Program Revisions
10. Town Road Surveys/ OGEM Project

### **BUSINESS PLAN INITIATIVES/ PRIORITIES THIRD TIER**

1. All Town Legal Matters (Day, McLendon, Smiley, etc.)
2. Shopping Center Improvements at Palms West Plaza
3. OGEM Treatment for D Road/Southern Blvd Traffic Signal
4. OGEM Roads Transfer to Town
5. Accounting Software Procurement/Purchase
6. Manure/Testing
7. Legislative Acts
8. Exotic and Invasive Vegetation Ordinance
9. Western Communities Council State Road 7 Lobbyist
10. Foreclosure Matters

### **BUSINESS PLAN INITIATIVES/PRIORITIES FOURTH TIER**

1. Non-Town Development Activity (Minto/Highland Dunes, etc.)
2. Code Enforcement Procurement/Purchasing
3. Charter Amendments (Canvassing Board, etc.)
4. Ethics Training Schedule
5. Procurement Code Revisions
6. ULDC Amendments Resulting From ULDC Committee Review
7. ULDC Amendment to Pools/Structural Setbacks
8. Town Hall Alternatives
9. White Paper on Treatment of Agricultural Uses
10. Banking Services

The listing above does not include the work activities that occur on a continuing and yearly basis including, but not limited to; election activities, erection of traffic control signage, road grading requests, lien searches, building permit reviews, public record requests, and continued support to the Town's Boards and Committees. Should you have any questions or need further information related to the above, please contact me.



**Item 10.b.**

**New Business**

**Discussion of:**

**Bernardo Alzate Nursery  
Request-to end one year permit restrictions**



TOWN OF LOXAHATCHEE GROVES  
OFFICE OF THE TOWN MANAGER  
AGENDA REPORT

**TO:** Mayor and Town Council

**FROM:** Mark A. Kutney, Town Manager, AICP, ICMA-CM

**DATE:** February 13, 2014

**SUBJECT:** Bernardo Alzate Nursery Request to End the 1 Year Permit Restriction for Property Owner Manure Permit per Ordinance 2012-03

### **I. BACKGROUND/HISTORY**

Attached is a February 4, 2014, letter from Alex Rios representing Bernardo Alzate Nursery, Inc. The permit for the receipt of livestock waste was rescinded by Town Council and the Town Manager informed Mr. Alzate in writing (copy of letter also attached) on March 20, 2013. Town Council took this action based upon several complaints and an incident report filed with the Palm Beach County Sheriff's Office.

### **II. DISCUSSION**

Section 7 of Ordinance 2012-03 states, "Should a person violate this ordinance on more than one (1) occasion during a calendar year, that person shall not be granted a permit for a period of one (1) calendar year from the date of the last violation." Mr. Rios is requesting the ability to file for a new permit immediately as opposed to waiting until March.

### **III. FISCAL IMPACT**

There would be no fiscal impact to the Town at this time

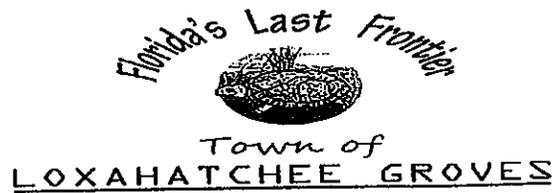
### **IV. ATTACHMENTS**

February 4, 2014, Letter to Mark Kutney from Alex Rios on behalf of Bernardo Alzate Nursery, Inc.

March 20, 2013 Letter to Bernardo Alzate from Mark Kutney

## **V. RECOMMENDATION**

At this time, Town Management is making no recommendation due to the scheduled discussions regarding Manure at the February 18, 2014 Meeting.



Wednesday March 20, 2013

Bernardo Alzate  
9758 Scribner Ln.  
Wellington, FL 33414

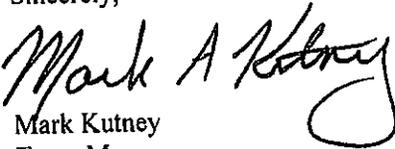
Mr. Alzate,

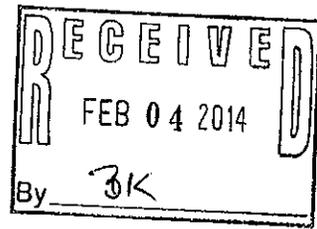
Please be advised that your permit for the receipt of livestock waste on the property located at 15405 North Road (PCN: 41-41-43-07-00-000-5000) has been rescinded. Town Management has been made aware that the aforementioned property is in violation of the conditions of the Property Owner Manure Permit. The General Manager of Bernardo Alzate Nursery, Alex Rios, received a verbal warning regarding reported violations on the property on March 5<sup>th</sup>, 2013. Compliance was promised by Mr. Rios, and a letter regarding the legitimacy of the bona fide agricultural practices on the property was provided to the Town Office. On March 15<sup>th</sup> there was an incident report filed with the Palm Beach County Sheriff's Office indicating a violation of Section 4 of Ordinance 2012-03: "Notwithstanding the issuance of a permit, the depositing of manure and horse bedding shall be prohibited between the hours of sunset and sunrise on Mondays through Saturdays, and prohibited at all times on Sunday."

As a result of continued violations, Town Management has been directed by the Town Council to rescind the Property Owner Manure Permit issued to Bernardo Alzate, 15405 North Road. Please also be advised that you are not allowed to apply for another receiver permit for one (1) full year, effective Wednesday March 20<sup>th</sup>, 2013 as per Section 7 of Ordinance 2012-03: "Should a person violate this ordinance on more than one (1) occasion during a calendar year, that person shall not be granted a permit from the Town for a period of one (1) calendar year from the date of the last violation."

If you have any questions regarding this notice, you may contact Braeden Garrett by phone: (561) 793-2418 or email: [bgarrett@loxahatcheegrovesfl.gov](mailto:bgarrett@loxahatcheegrovesfl.gov).

Sincerely,

  
Mark Kutney  
Town Manager



To: Town of Loxahatchee Groves

Attn Mr. Mark A. Kutney, Town Manager

From: Bernardo Alzate Nursery, Inc

Date: February 4, 2014

Ref: Parcel Id: 41414307000005000

As per our conversation earlier today and following your recommendation, I am writing this letter in regards to the restriction that we currently have at our property 15405 North Rd, to bring in manure. This restriction is until March 20<sup>th</sup>, 2014. We want to request the Town of Loxahatchee Groves to consider an early termination to this restriction. We based our request on having a bona fide agricultural operation. We fully completed our banana fruit planting as it was informed to the Town over one year ago and that is proof of our commitment to the agricultural growth of the Town. We currently have a stock of more than 1500 banana plants that need to be planted within the next 2 months and in order to do that we need to prepare the soil. We need to have the manure in place so it can be cooler when we start planting the Banana plants. This cooling process along might take 2 to 3 months, depending on weather conditions. All this needs to be completed in a timely matter for the plants to be established in the soil on time before the next winter.

Unfortunately, and due to circumstances out of our control, almost one year ago, the company bringing the manure (hauler), incurred in some violations that affected us directly and for the last 10 and a half months our operation have suffered the consequences of this restriction. We noticed a big positive difference on the quality and size of our banana fruit in the areas of the farm that have the manure applied.

In order to avoid a situation like the one mentioned above, we have implemented the following practices:

- One of our employees will be in the property Monday-Saturday from 7:30am to 5pm to control the access of trucks that bring the manure. After 5pm the gates will be closed with a lock. We will handle the keys to the locks. If we don't have an employee at the property no manure will be accepted.
- We will be responsible for spreading the manure on a timely manner.
- As we have always done it, we will follow the conditions in Ordinance 2010-003 from the Town.

As it was stated on our letter dated March 5<sup>th</sup>, 2013, we are a natural operation and rely 100% on the organic matter we can bring in for our crops. One of our goals is to be USDA Certified Organic. We do not use pesticides, insecticides or herbicides and try to base our agricultural practices on nutrition rather than chemical applications. We are true believers that the use of all these chemicals is harmful for the environment and the people in the area.

Thank you for your attention to this important matter.

Sincerely,

Alex Rios

Bernardo Alzate Nursery, Inc

561 386 5275