



TOWN OF LOXAHATCHEE GROVES
TOWN COUNCIL MEETING AGENDA
TUESDAY, JUNE 3, 2014

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 of Loxahatchee Groves

Town Council Meeting

Tuesday, June 3, 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. Invoice from Goren, Cherof, Doody & Ezrol, P.A.
- b. Minutes for Approval: **May 6, 2014, Town Council Meeting**
- c. Approval of Connection of New Potable Water Service with Palm Beach County, Norma Davis – 14685 40th Street N., Loxahatchee Groves, FL 33470

3. PUBLIC COMMENT

4. PRESENTATIONS

- a. Representative Mark S. Pafford, Florida House of Representative, District 86, to provide Legislative Update.
- b. Phyllis Maniglia, representing the Loxahatchee Groves Land Owners Association, is requesting consideration of a monetary donation from the Town, as a sponsor for her attendance to the 2014 Florida Neighborhoods Conference in Orlando, July 11th and 12th, 2014.
- c. Jim Fleischmann, Town Planning Consultant, to present the Unified Land Development Code Review Committee Summary Report.

5. COMMITTEE REPORTS

Elise Ryan, Chair for the FAAC (Financial Advisory and Audit Committee), to provide Financial Report ending April 2014.

6. RESOLUTIONS

RESOLUTION NO. 2014-05 (Opposition to Minto West Development Amendments):

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, OPPOSING THE AMENDMENTS TO THE PALM BEACH COUNTY COMPREHENSIVE PLAN PROPOSED FOR THE MINTO WEST DEVELOPMENT ON PROPERTY ABUTTING THE TOWN OF LOXAHATCHEE GROVES AND FORMERLY REFERRED TO AS CALLERY JUDGE GROVES; URGING THE PALM BEACH COUNTY COMMISSION TO DENY THE PROPOSED AMENDMENTS; PROVIDING FOR COPIES OF THIS RESOLUTION TO BE DISTRIBUTED TO AFFECTED ENTITIES; AND PROVIDING FOR AN EFFECTIVE DATE.

7. ORDINANCES

- a. **ORDINANCE NO. 2014-04 2nd / FINAL READING / PUBLIC HEARING (Livestock Waste – Property Owners).** (rev 05/15/2014)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO THE USE OF LIVESTOCK WASTE WITHIN THE TOWN; AMENDING THE TOWN'S UNIFIED LAND DEVELOPMENT CODE BY AMENDING PART III ENTITLED "SUPPLEMENTAL REGULATIONS," ARTICLE 50

ENTITLED “PUBLIC NUISANCES” BY ADDING A NEW SECTION 50-035 TO BE ENTITLED “USE OF LIVESTOCK WASTE;” PROVIDING FOR DEFINITIONS; PROVIDING THAT THE USE OF LIVESTOCK WASTE IS A PUBLIC NUISANCE EXCEPT AS PROVIDED BY THIS SECTION; PROVIDING FOR REGISTRATION AND PERMITS, REQUIREMENTS AND LIMITATIONS ON THE DELIVERY AND USE OF LIVESTOCK WASTE; PROVIDING FOR REPORTING AND NOTICE REQUIREMENTS; PROVIDING FOR REVOCATION OF PERMITS AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

b. ORDINANCE NO 2014-05: 2ND / FINAL READING / PUBLIC HEARING (Guns, Firearms, Gun Ranges).

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING THE TOWN’S UNIFIED LAND DEVELOPMENT CODE TO ELIMINATE REGULATIONS RELATING TO GUNS, FIREARMS AND GUN RANGES TO ADDRESS STATE PREEMPTIONS OF THE REGULATION OF THESE SUBJECTS; PROVIDING FOR INTENT OF THE TOWN TO COMPLY WITH THE STATE’S PREEMPTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

8. ADMINISTRATIVE UPDATE – *Town Manager Kutney*

9. OLD BUSINESS - *NONE*

10. NEW BUSINESS

- a. Florida Fish and Wildlife Conservation Commission Office of the General Counsel, re Local Ordinances and the Regulations of Captive Wildlife. (*Councilman Goltzené*)
- b. Code Enforcement PowerPoint Presentation (*Town Manager Kutney – Receive and File*)

11. CLOSING COMMENTS

- a. Public
- b. Town Attorney

c. Town Council Members

12. ADJOURNMENT

The next regular Town Council Meeting is tentatively scheduled for July 1, 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.



Item 2.a.

Consent Agenda

Attorney Invoice

GOREN, CHEROF, DOODY & EZROL, P.A.
Attorneys at Law
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Telephone (954) 771-4500

TOWN OF LOXAHATCHEE GROVES
14579 Southern Boulevard
Suite 2
Loxahatchee Groves FL 33470

Page: 1
05/28/2014
ACCOUNT NO: 1574-0702400R
STATEMENT NO: 93

Attn: Mark Kutney, Town Manager

General Matters



			HOURS
04/29/2014	MDC	Telephone call with MK; review and revise four Disaster Agreements (TAC, C & C, Bergeron, O'Brien).	1.10
04/30/2014	BAM	Review correspondence from Mark Kutney re: Waste pro contract provisions in "dispute".	0.30
	MDC	Review materials; correspondence - Waste Deposit Ordinance (ULDC); review PZ minutes; revise Ordinance; telephone call with MK on agenda items; miscellaneous telephone calls with Council.	2.20
05/01/2014	DJD	Address issue of terms of Town Manager Contract.	0.20
	MDC	Miscellaneous telephone calls on agenda items.	0.50
05/02/2014	SRW	Draft e-mail re: Pearl Rauberts zoning. Discussion with MDC re: same. Telephone conference call with Braedon. E-mail correspondence re: same.	0.50
	MDC	Review agenda materials for 5/6 meeting; telephone call with MK on contract issues with foreclosure registry.	0.60
05/05/2014	MDC	Telephone call with MK on agenda, PZ Board, contract matters; miscellaneous telephone calls with council members on May 6, 2014 meeting item.	0.70
05/06/2014	MDC	Miscellaneous telephone calls with Council (DB, JR, RJ); prepare for, attend Council meeting.	3.50
05/07/2014	MDC	Follow up on items from 5/6 meeting; telephone call with MK, BT on code cases; telephone call with JR; review correspondence on livestock waste ordinance.	0.60
05/12/2014	MDC	Review Yee lease; telephone call with MK re: gun ordinance; begin Memo to PZ Board.	0.40
05/13/2014	MDC	Review and revise memo to PZ Board; telephone call with MK; telephone call with JF on PZ Board items; telephone call with PU on Yee lease and budget schedule; revise Yee lease; forward to PU to review.	1.40
05/14/2014	MDC	Review correspondence; telephone call with J. Fleischman on PZ Board meeting.	0.40

General Matters

			HOURS		
05/15/2014	MDC	Telephone conference call with MK on agenda matters; review agenda for 5/20 meeting.	0.40		
05/16/2014	MDC	Review agenda materials for 5/20 meeting; telephone call with JF on PZ Board action on gvn ordinance.	0.90		
05/19/2014	MDC	Telephone call with JF on gun ordinance, options for 5/20 meeting.	0.30		
05/20/2014	MDC	Review materials for meeting; telephone call with MK on meeting issues, roadway matters; review NFE contract re: potential change orders; telephone call with JR; telephone call with RJ; attend Council meeting.	4.80		
05/22/2014	MDC	Review drafts of notices for public hearings; review revisions to gun ordinance.	0.50		
05/23/2014	MDC	Telephone call with MK; prepare Minto resolution.	1.30		
05/27/2014	MDC	Review Charter for quorum, voting requirements.	0.30		
FOR CURRENT SERVICES RENDERED			20.90	3,866.50	

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
D.J. DOODY	0.20	\$185.00	\$37.00
MICHAEL D. CIRULLO	19.90	185.00	3,681.50
STACEY R WEINGER	0.50	185.00	92.50
BRAM A. MARAVENT	0.30	185.00	55.50

COPYING COST	135.45
TOTAL EXPENSES THRU 05/27/2014	135.45
TOTAL CURRENT WORK	4,001.95
BALANCE DUE	\$4,001.95

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

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Attn: Mark Kutney, Town Manager

Equestrian Partners Land Use Amendment (Solar
 Sportsystems, Inc.)

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 05/28/2014
 ACCOUNT NO: 1574-1004800R
 STATEMENT NO: 21

			HOURS	
05/19/2014	MDC	Review revised document re: B Road.	0.30	
05/22/2014	MDC	Review proposed revised conditions from MP; telephone call with MK, JF; update Marty Perry.	1.00	
05/23/2014	MDC	Telephone call with MP on status of project.	0.30	
		FOR CURRENT SERVICES RENDERED	1.60	<u>296.00</u>

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
MICHAEL D. CIRULLO	1.60	\$185.00	\$296.00

TOTAL CURRENT WORK 296.00

BALANCE DUE \$296.00

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

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Attn: Mark Kutney, Town Manager

adv. Day, Willie and Frankie

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 05/28/2014
 ACCOUNT NO: 1574-1107562R
 STATEMENT NO: 23

			HOURS	
05/05/2014	MDC	Review correspondence on mediation; forward to council.	0.20	
05/06/2014	MDC	Review materials; prepare for shade meeting; attend shade meeting with Council.	1.30	
05/07/2014	MDC	Telephone call with Mike Burke to follow up on meeting; telephone call with TG.	0.30	
FOR CURRENT SERVICES RENDERED			1.80	333.00

		RECAPITULATION		
<u>TIMEKEEPER</u>		<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
MICHAEL D. CIRULLO		1.80	\$185.00	\$333.00

TOTAL CURRENT WORK 333.00

BALANCE DUE 333.00

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

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TOWN OF LOXAHATCHEE GROVES
 14579 Southern Boulevard
 Suite 2
 Loxahatchee Groves FL 33470

Attn: Mark Kutney, Town Manager

Wellington Edge Code Matter

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 05/28/2014
 ACCOUNT NO: 1574-1107564R
 STATEMENT NO: 16

				HOURS	
05/01/2014	MDC	Review order from appellate court, status of case; prepare memo to update Town.		0.30	
		FOR CURRENT SERVICES RENDERED		0.30	55.50
RECAPITULATION					
	<u>TIMEKEEPER</u>		<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
	MICHAEL D. CIRULLO		0.30	\$185.00	\$55.50
		TOTAL CURRENT WORK			55.50
		BALANCE DUE			<u>\$55.50</u>

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE

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 14579 Southern Boulevard
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 Loxahatchee Groves FL 33470

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 05/28/2014
 ACCOUNT NO: 1574-1107579R
 STATEMENT NO: 6

Attn: Mark Kutney, Town Manager

adv. McLendon, Todd (USDC Case)

		HOURS	
04/29/2014	MDC Review correspondence forwarded by MB.	0.20	
05/02/2014	MDC Review correspondence; telephone call with MB, MK on status of case; update Council.	0.70	
	FOR CURRENT SERVICES RENDERED	0.90	166.50
RECAPITULATION			
<u>TIMEKEEPER</u>		<u>HOURS</u>	<u>HOURLY RATE</u>
MICHAEL D. CIRULLO		0.90	\$185.00
			<u>TOTAL</u>
			\$166.50
	TOTAL CURRENT WORK		166.50
	BALANCE DUE		<u>\$166.50</u>

MDC

AMOUNTS PREVIOUSLY BILLED NOT INCLUDED ABOVE



Item 2.b.

Consent Agenda

Minutes

May 6, 2014



Town of Loxahatchee Groves

Town Council Meeting

Tuesday, May 6, 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 David Browning, Vice-Mayor Ron Jarriel, Councilmen Tom Goltzené, Ryan Liang and Jim Rockett. Also present were Town Manager Mark Kutney, Town Attorney Mike Cirullo, Town Planning Technician Braeden Garrett, and Town Clerk Janet K. Whipple.

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

Vice-Mayor Jarriel requested to remove 2.a.1, Amendment No. 2 of the Professional Service Agreement Extension of Underwood Management Services Group, LLC. (UMSG) from the Consent Agenda, and the Agenda, in order to allow Council time to review with the Underwood Management Services Group issues of concern within the contract.

Town Attorney Cirullo advised Vice-Mayor Jarriel to pull the item from the Consent Agenda, move it to a Regular Agenda item following the Consent Agenda, then address the Agreement at that time.

Councilman Goltzené requested to remove 2.a.2 Approval of piggybacking contract with North Florida Emulsions for Micro Surfacing (not OGEM), from the Consent Agenda, to be placed as a Regular Agenda item.

Councilman Rockett corrected the date for the minutes to be approved as April 15, 2014 not April 10, 2014.

Motion: Councilman Goltzené moved to approve the Agenda as amended. Councilman Liang seconded the motion. Upon vote, the motion passed 5/0.

2. CONSENT AGENDA

a. Authorization for execution of contracts by Mayor Browning:

- 1) Approval of Amendment No. 2 - Professional Service Agreement. Extension of Underwood Management Services Group, LLC (UMSG), of initial term, for an additional one (1) year renewal term. (*Pulled from Consent Agenda*)
- 2) Approval of piggybacking contract with North Florida Emulsions for Micro Surfacing (not OGEM). (*Pulled from Consent Agenda*)
- 3) Approval of renewal agreement with Bergeron Emergency Services, Inc. Disaster Recovery Services (RFQ No 2011-03).
- 4) Approval of renewal agreement with C & C Loader Services, Inc. Disaster Recovery Services (RFQ No. 2011-03).
- 5) Approval of renewal agreement with TAG Grinding Services, Inc. Disaster Recovery Services (RFQ No. 2011-03).
- 6) Approval of renewal agreement with O'Brien's Response Management, LLC Disaster Debris Monitoring Services (RFQ No. 2011-04).

b. Invoice from Invoice from Goren, Cherof, Doody & Ezrol, P.A.

Note: Minutes for Approval: (*The minutes will come as an addendum prior to the meeting.*)

- **April 1, 2014**
- **April 10, 2014 (corrected to read April 15, 2014)**

Approval of Amendment No. 2 - Professional Service Agreement, extension of Underwood Management Services Group, LLC (UMSG), of initial term, for an additional one (1) year renewal term. (*Pulled from Consent Agenda*)

Motion: Vice-Mayor Jarriel made a motion to pull Underwood Management Services Group Agreement from the Agenda, in order to allow the management company to sit with each Council member to discuss items of concern in the contract. He does not want to vote on this matter tonight as there are five (5) months before the contract expires. Councilman Liang seconded the motion.

Mayor Browning was under the assumption that Council had voted to renew to contract for one year.

Councilman Goltzené stated that his original motion on April 15, 2014, was to renew the contract for one year.

Town Attorney Cirullo clarified that the original motion renewed the contract for one (1) year; Council would sit down with Underwood to discuss any matters of concerns at other times.

Councilman Rockett suggested that Vice-Mayor Jarriel modify his motion, including Councilman Liang's second, to move this item to the first Town Council Meeting in June, (June 3, 2014).

Vice-Mayor Jarriel agreed to modify his motion to pull the contract from the agenda and postpone re-approval of the Underwood Management Services Group Contract until first meeting in June. Councilman Liang agreed to modify his second.

Bill Underwood, Underwood Management Services Group, expressed his concerns that by postponing the approval of the contract, the current employees may not have enough time to look for other jobs. Mr. Underwood also stated the Management Company would not be participating in future negotiations.

Mayor Browning stated he felt the deal had already been made and Council had agreed to renew the Underwood Contract for one year. He suggested Council meet with the management company to discuss matters of concern within the contract.

Town Attorney Cirullo stated that since Vice-Mayor Jarriel was on the prevailing side of the vote to renew the contract then it was his choice to bring the matter back to Council.

Vice-Mayor Jarriel reported the Management Contract allows for a sixty (60) to ninety (90) day notification of renewal.

Bill Underwood confirmed that, as owner of the company, he did not mind sitting down with each Council Member to review particular items in the contract, as there is a lot of garbage. However, without a commitment from Council to move forward, there is no reason for him to sit

down and discuss contract items of concern. He is willing to help with the next Management Company, and the changes needed in the contract, but he will not be held hostage for another month for a vote that has already occurred.

Upon vote to pull Underwood Management Services Group from the agenda, the motion failed 2/3 with Councilman Goltzené, Councilman Liang, and Mayor Browning casting dissenting votes.

Town Attorney Cirullo stated further action is needed.

Motion: Councilman Goltzené made motion to adhere to his original motion to renew for one (1) year; authorize the Mayor to execute the contract, and keep on agenda. Councilman Liang seconded the motion. Upon vote, the motion passed 5/0.

Approval of piggybacking contract with North Florida Emulsions for Micro Surfacing (not OGEM). *(Pulled from Consent Agenda)*

Councilman Goltzené stated he objects to the piggybacking method for construction projects. Council can proceed.

Motion: Councilman Goltzené made a motion to not approve the piggybacking contract with North Florida Emulsions. The motion dies for lack of a second.

Motion: Vice-Mayor Jarriel made a motion to approve the piggybacking contract with North Florida Emulsions and authorize the Mayor to execute the contract. Councilman Rockett seconded the motion. Upon vote, the motion passed 4/1 with Councilman Goltzené casting the dissenting vote.

3. PUBLIC COMMENT

David Self, 161st Terrace North, explained some of the problems that were arising from the use of cut throughs on A Road to 161st Terrace North; along with noise on 161st Terrace North and the Rayside Property. He thanked Staff for their help.

Neil Enos, 3989 161st Terrace North, also discussed the cut throughs as illegal road access.

Vice-Mayor Jarriel read a letter from David Self into the record.

4. PRESENTATIONS

- a. Terry Morton, Nowlen, Holt and Miner P.A., to provide a presentation on the Town of Loxahatchee Groves Comprehensive Annual Financial Report (CAFR) Fiscal Year Ending September 2013.

Bill Underwood, Underwood Management Services Group, introduced Mr. Morton.

Terry Morton, Nowlen Holt and Miner, P.A. provided a letter of auditing standards and stated that Loxahatchee Groves had achieved the Financial Award for Fiscal Year Ending September 2013. Mr. Morton reviewed basic point of the Comprehensive Annual Financial Report CAFR), and reported the Town had a clean Audit.

Council discussed with Mr. Morton, Mr. Underwood and Town Manager Kutney various components of the Audit.

5. COMMITTEE REPORTS

- a. Elise Ryan, Financial Advisory and Audit Committee (FAAC) Board Member, to provide Financial Report Ending April 2014, for approval.

Virginia Standish, FAAC Board Member, provided the Financial Report Ending April 2014. She also stated new appointments were held on Monday, April 28, 2014, and Elise Ryan was selected as the new Chair and Cheryl Miller as the new Vice-Chair of the FAAC.

Motion: Councilman Rockett made a motion to accept the Financial Report Ending April 2014, as presented. Councilman Liang seconded the motion. Upon vote, the motion passed 5/0.

RESOLUTIONS - NONE

7. ORDINANCES

ORDINANCE NO. 2014-04: 1ST READING/PUBLIC HEARING (Livestock Waste – Property Owners)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO THE USE OF LIVESTOCK WASTE WITHIN THE TOWN; AMENDING THE TOWN'S UNIFIED LAND DEVELOPMENT CODE BY AMENDING PART III ENTITLED "SUPPLEMENTAL REGULATIONS," ARTICLE 50 ENTITLED "PUBLIC NUISANCES" BY ADDING A NEW SECTION 50-035 TO BE ENTITLED "USE OF LIVESTOCK WASTE;" PROVIDING FOR DEFINITIONS; PROVIDING THAT THE USE OF LIVESTOCK WASTE IS A PUBLIC NUISANCE EXCEPT AS PROVIDED BY THIS SECTION; PROVIDING FOR REGISTRATION AND PERMITS, REQUIREMENTS AND LIMITATIONS ON THE DELIVERY AND USE OF LIVESTOCK WASTE; PROVIDING FOR REPORTING AND NOTICE REQUIREMENTS; PROVIDING FOR REVOCATION OF PERMITS AND

ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney Cirullo read the title of Ordinance No. 2014-04, and noted the Ordinance in the packet included the comments made by the Planning and Zoning Board.

Councilman Goltzené felt the underlying wordage in Ordinance No. 2014-04 was excessive and restrictive for the residents to adhere to. He agreed, hauling into the Town is illegal, but not to address each person's property, as it is an invasion on their agriculture status.

Motion: Councilman Rockett made a motion to approve Ordinance No. 2014-04 on First Reading, as amended. Vice-Mayor Jarriel seconded the motion. Upon vote, the motion passed 3/2 with Councilman Goltzené and Mayor Browning casting dissenting votes. The Second Reading will be during the June 17, 2014, Town Council Meeting.

8. ADMINISTRATIVE UPDATE – *Town Manager Kutney*

- a. IGC- Items from Steve Yohe, Loxahatchee Groves Water Control district (LGWCD) Administrator from the IGC (Intergovernmental Coordination Meeting will be brought to Council during the May 20 2014 Town Council Meeting.
- b. Town Manage Kutney reported the Palm Beach County League of Cities Annual GALA will be held on May 21, 2014. He will RSVP if Council would like to attend. It was the consensus of Council to send Town Manage Kutney as the Town's representative.
- c. The Tax Map letter was sent to Palm Beach County on April 29, 20014. The deadline was April 30, 2014.
- d. Roundabouts were discussed during the Roadway, Equestrian Trails, and Greenway Committee (RETGAC). This topic should be looked at again during a Joint Workshop between Planning and Zoning and RETGAC on May 15, 2014, so that it can be brought back to Council during the May 20, 2014 Town Council Meeting.
- e. Mr. Kutney reported the new officers for the Roadway, Equestrian Trails, and Greenway Committee; Chair Keith Harris, Vice-Chair Jo Siciliano; and for the Financial Advisory and Audit Committee; Chair Elise Ryan, Vice-Chair Cheryl Miller.

Council questioned why the Planning and Zoning Board tabled Ordinance No 2014-05 (guns, firearms, and gun ranges).

Town Manager Kutney explained the concerns of the Planning and Zoning Board relative to the Florida Statutes.

Council discussed the references to guns, firearms and gun ranges within the ordinance, and the need to make decisions.

It was the consensus of Council to send Ordinance No. 2014-05 back to the Planning and Zoning Board for a second review; then bring the Ordinance to Council for first reading during the Town Council Meeting on June 3, 2014, and for second reading on June 17, 2014.

Town Manager Kutney and Town Attorney Cirullo were in agreement, and those dates would comply with the required legal advertisement dates.

9. OLD BUSINESS

- a. Reconsideration of items missing from motion concerning speed humps spacing of one-thousand feet (1,000) feet, which was approved 5/0 during the April 15th Town Council Meeting. The motion should include one-hundred (100 feet) from the end of a street to facilitate safe turns - no further than three-hundred (300) feet. Spacing of speed humps should be within a range of five hundred (500) to one thousand (1,000) feet to allow for more speed humps on higher traffic roads, i.e. B Road. *(Councilman Rockett)*

Motion: Councilman Rockett made a motion to revise the original motion concerning speed humps made during the May 6, 2014 Town Council Meeting so the information is more inclusive. Councilman Liang seconded the motion.

Council discussed the various distances between speed humps, cost, range, and the need for speed humps.

Councilman Rockett then refined his motion to install speed humps no shorter than one-hundred (100) feet, and no further than three-hundred (300) feet from the end of the road; and to place the distance between speed humps from five-hundred (500) feet up to one-thousand (1,000) feet depending on the traffic volume of the road. Councilman Liang maintained his second. Upon vote, the motion passed 4/1 with Councilman Goltzene casting a dissenting vote.

10. NEW BUSINESS

- a. Consideration of Interlocal Agreement between the Town of Loxahatchee Groves and the Loxahatchee Groves Water Control District (LGWCD) for a transfer of funds in the amount of \$40,000 for Equestrian Trails Improvements.

Town Manager Kutney provided a brief background on the Loxahatchee Groves Water Control District (LGWCD) Interlocal Agreement.

Motion: Councilman Liang made a motion to approve the agreement between the Town of Loxahatchee Groves and the LGWCD for transfer of funds in the amount of \$40,000 for Equestrian Trails Improvements and to authorize the Mayor to sign. Councilman Rockett seconded the motion. Upon vote the motion passed 5/0.

- b. Neil Enos discussing issues regarding cut through roads – 161st to 162nd and 161st to 160th Road. (*Ron Jarriel*) (*Mr. Enos made his presentation during the beginning of the meeting.*)

Council discussed with Town Manager Kutney the problems occurring around the cut through roads of 161st to 162nd and 161st to 160th. The Town needs to work with Staff, and the Palm Beach County Sheriff's Office (PBSO) to notify property owners that their property is being trespassed upon and subject to abuse, vandalism, illegal dumping, and partying. At this time the PBSC cannot get involved, and the Town could be liable if something happens and nothing has been done to remedy the concerns.

Town Attorney Cirullo advised Council to step aside and allow Town Manager Kutney to handle the situation.

Council discussed the alternatives.

11. CLOSING COMMENTS

- a. Public

No further comments from the Public.

- b. Town Attorney

No further comments from the Town Attorney.

- c. Town Council Members

Councilman Rockett thanked everyone for coming.

Councilman Liang thanked everyone for a short meeting and for coming.

Council Goltzene thanked everyone for being at the meeting.

Mayor Browning has an applicant for the Roadway, Equestrian Trails and Greenway Committee (RETGAC). He will call her this week to see if she is still interested, and if so he will make his appointment during the next Town Council Meeting.

12. ADJOURNMENT

There being no further business to come before the Council, Mayor Browning adjourned the meeting at 8:32 p.m.

Janet K. Whipple, Town Clerk

David Browning, Mayor



Item 2.c.

Consent Agenda

Water Connection

Norma Davis

TOWN OF LOXAHATCHEE GROVES
OFFICE OF THE TOWN MANAGER
AGENDA REPORT

TO: Mayor and Town Council

FROM: Braeden Garrett, Town Planning Technician

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

DATE: May 28, 2014

SUBJECT: Norma Davis – 14685 40th Street N., Loxahatchee Groves, FL 33470,
Connection of New Potable Water Service with Palm Beach County

I. BACKGROUND/HISTORY

In accordance with the Town of Loxahatchee Groves' Comprehensive Plan, Infrastructure Element 3-3, and Chapters 166 and 180, Florida Statutes, the Town is authorized to provide utility service within the Town's municipality limits. In order to avoid the duplication of pipelines and other facilities, the Town has agreed to allow the County to provide potable water, wastewater, and reclaimed water services within the Town's municipal limits. Property owners along Southern Boulevard, Okeechobee Boulevard and 40th Street, who are adjacent to these water mains, may request connection with the permission of the Town Council.

II. DISCUSSION

Norma Davis is requesting approval for water connection service at 4685 40th Street N.

III. FISCAL IMPACT

- N/A

IV. ATTACHMENTS

- Application

V. RECOMMENDATION

Motion by Town Council to approve the application.



Item 4.b.

PRESENTATIONS

Phyllis Maniglia

2014 Florida Neighborhoods Conference

Orange County, Florida



Registration Booklet



www.ocfl.net  

Conference At-A-Glance

FRIDAY, JULY 11

SESSION I

9:30 a.m. - 10:45 a.m.
Workshops 1-6

Workshop #1:	How Did You Do That? A Best Neighborhood Practices Roundtable
Workshop #2:	Engaging Florida's Increasing Diverse Cultural and Ethnic Communities
Workshop #3:	Creating and Organizing Ad Hoc Groups
Workshop #4:	Help! My Meetings Are Out of Control
Workshop #5:	Legislative Updates
Workshop #6:	CPTED - Crime Prevention Through Environmental Design

SESSION II

1:00 p.m. - 2:15 p.m.
Workshops 7 - 12

Workshop #7:	Are You a Can Do Neighborhood?
Workshop #8:	Understanding Your Leadership Style
Workshop #9:	Jupiter BEAT
Workshop #10:	Fundraising 101
Workshop #11:	HOAs and Condominium Associations and the Fair Housing Act
Workshop #12:	Your Community Needs You Right Now!

SESSION III

2:30 p.m. - 3:45 p.m.
Workshops 13 - 18

Workshop #13:	Finding Your Happy Places
Workshop #14:	Neighborhood Centers for Families
Workshop #15:	Improving Your Credit Score
Workshop #16:	ABCs of HOAs
Workshop #17:	Youth Initiatives 101: How to Start and Sustain Programs
Workshop #18:	Social Media

Bus Tours 1 - 5 - 4:30 p.m. - 7:00 p.m.

SATURDAY, JULY 12

SESSION IV

9:15 a.m. - 10:30 a.m.
Workshops 19 - 23

Workshop #19:	Create a Successful Neighborhood Watch
Workshop #20:	Continuum Centers 101
Workshop #21:	Digging The Down and Dirty in Community Gardens
Workshop #22:	Legislative Updates
Workshop #23:	Recharge, Renew, and Rejuvenate: Avoiding Leadership Burnout

SESSION V

10:45 a.m. - 12:00 p.m.
Workshops 24 - 28

Workshop #24:	CPTED - Crime Prevention Through Environmental Design
Workshop #25:	Are You a Can Do Neighborhood?
Workshop #26:	Roadmap to Effective Board Members
Workshop #27:	Healthy Neighborhoods
Workshop #28:	Sustainability 101

Conference Registration

LOCATION: Loews Royal Pacific Hotel, 6300 Hollywood Way, Orlando, FL 32819

Please Print

First Name _____ MI _____ Last Name _____

Email Address _____ Phone Number _____

Name Preferred for Name Tag _____ Municipality or County _____

Street Address _____

City _____ State _____ Zip Code _____

Organization Affiliation _____

Select a T-shirt Size

Small Medium Large X-Large 2X-Large 3X-Large

Registration Fees

- Workshops and tours will be filled on a first come, first-serve basis.
- An acceptable registration is one that includes a completed registration form and payment in full.
- Basic registration fees cover all events, excluding the tours.
- No refunds will be granted for conference registration fees. In consideration of all conference attendees, no children under 15 years of age in workshops or on tours, please.

	Postmarked by 6/18/14	Postmarked after 6/18/14
Registration	<input type="checkbox"/> \$55	<input type="checkbox"/> \$110
One Day Registration	<input type="checkbox"/> \$30	<input type="checkbox"/> \$55
Neighborhood Tours (Friday only)	<input type="checkbox"/> \$5	<input type="checkbox"/> \$10
Total Payment \$	_____	

Payment Method: Registration may be paid online by Mastercard or Visa by **June 18, 2014** to receive the early conference rate. Online registrations after June 18, 2014 will pay late fee. You may also mail your completed registration form with check/money order made payable to Florida Neighborhoods Conference, Inc.; FNC P.O. Box 2812, Orlando, FL 32802. Check/money order payments must be received no later than **June 18, 2014** to receive the early conference rate.



www.floridaneighborhoodsconference.org

Hotel Accommodations

UNIVERSAL'S Cabana Bay BEACH RESORT

6550 Adventure Way, Orlando, FL 32819

Universal Orlando's newest and largest on-site hotel, opening early 2014, offers endless family fun and exclusive theme park benefits. From the moment you arrive you'll be taken back to the iconic beach resorts of the 1950's and 60's.

EXCLUSIVE THEME PARK BENEFITS

- **Early Park Admission*** to The Wizarding World of Harry Potter*, one hour before the theme park opens (valid theme park admission required)
- **Complimentary shuttle buses** and walking paths to both Universal Orlando theme parks and Universal CityWalk*
- **Complimentary delivery of merchandise** purchased throughout the resort to your hotel
- **Resort-wide charging privileges** with your room key card
- **Complimentary scheduled transportation*** to nearby Wet 'n Wild*, Orlando waterpark, SoaWorld*, and Aquatica™
- **Golf Universal Orlando*** - enjoy special rates, preferred tee times and complimentary transportation* to select area golf courses

LOCATION

- On-site at Universal Orlando® Resort
- 16 miles from Orlando International Airport (MCO)
- 12 miles from downtown Orlando
- 5 miles from Orlando Orange County Convention Center

RECREATIONAL FACILITIES

- **Cabana Courtyard** - features a 10,000 sq. ft. zero-entry pool with iconic dive tower waterslide, interactive kids play area, cabanas for rent, and Atomic Tonic pool bar
- **Lazy River Courtyard*** - features a 8,000 sq. ft. zero-entry pool with 8,000 sq. ft. sand beach, a lazy river with waterfalls and cannons for interactive fun, and The Hideaway Bar & Grill
- **Galaxy Bowl** - 10-lane bowling alley (fees apply)
- **Physical Fitness Studio** - complimentary for hotel guests
- **Game-O-Rama** - arcade



www.floridaneighborhoods.org

\$129 + tax

(Shuttle Available)

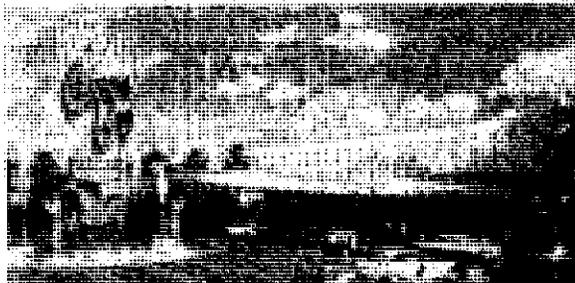
Deadline: June 10, 2013

GUEST ROOM AMENITIES

1,800 themed guest rooms including standard rooms that sleep up to four, plus family suites that accommodate up to six and feature a kitchenette.

Standard Rooms*

- One (1) 40" flat panel television with HD channels
- 2 queen size beds
- Cuisinart Single Coffee Pod Brewer
- Mini refrigerator
- Iron, ironing board, hairdryer and in-room safe
- In-room wireless high-speed internet access (fees apply - complimentary access in public areas)



Family Suites

Includes all standard room amenities, plus:

- An additional 40" flat panel television with HD channels
- Kitchenette with mini refrigerator, microwave and small sink
- Living Room with a full-size pull-out sofa
- Extra-Large Bathroom features preparation space for 3 people at once

DINING

- **Bayliner Diner** - food court offering family-friendly food including a salad bar, burgers, sandwiches, pizza, pasta, and grab and go items
- **Atomic Tonic** - pool bar at the Cabana Courtyard featuring signature frozen and non-frozen drinks, beer and wine
- **The Hideaway Bar & Grill** - tropical pool bar at the Lazy River Courtyard* serving simple grill menu, signature frozen and non-frozen drinks, smoothies, beer, and wine
- **Swizzle Lounge** - lobby bar
- **Coffee Shoppe** - lobby eatery serving coffee, sandwiches and Paninis
- **Pizza Delivery** - available during limited hours



Item 4.c.

PRESENTATIONS

Jim Fleischmann

Item 4.c. Presentation has been included as a separate Attachment to the Town Council 06/03/2014 Agenda Packet and is included in its entirety as 2014-06-03 Agenda Packet Attachment 4.c.



Item 5.

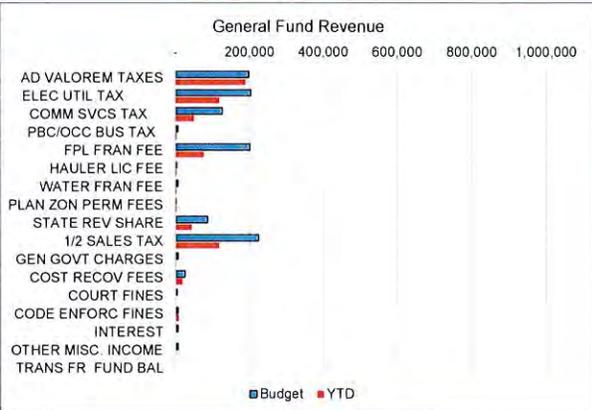
COMMITTEE REPORTS

Financials Ending April 2014



Town of Loxahatchee Groves Financial Activity Report as of April 30, 2014 (58% of year elapsed)

General Fund Revenue Budget



General Fund Revenues

Revenues	Budget	Year-to-Date	%
AD VALOREM TAXES @ 1.2000	197,297	190,710	96.7%
ELECTRIC UTILITY TAX	203,000	119,785	59.0%
COMMUNICATION SERVICES TAX	125,446	51,241	40.8%
COUNTY OCCUPATIONAL LICENSES	5,000	4,264	85.3%
FPL FRANCHISE FEE	200,000	77,353	38.7%
HAULER LICENSE FEE	2,000	3,805	190.3%
PBC WATER UTILITY FRANCHISE	5,050	3,284	65.0%
PLANNING & ZONING PERMIT FEES	100	3,122	3121.5%
STATE REVENUE SHARING	85,446	45,071	52.7%
HALF CENT SALES TAX	224,014	117,894	52.6%
GENERAL GOVERNMENT CHARGES	7,000	2,493	35.6%
COST RECOVERY FEES	25,000	20,166	80.7%
COURT FINES	2,500	-	-
CODE ENFORCEMENT FINES	5,000	9,648	193.0%
INTEREST	5,000	93	1.9%
OTHER MISC. INCOME	5,000	2,633	52.7%
TRANSFER FROM FUND BALANCE*	-	-	-
Total Revenues	1,096,853	651,561	59.4%

General Fund Expenditures

Expenditures	Budget	Year-to-Date	%
LEGISLATIVE	103,885	24,712	23.8%
EXECUTIVE	285,230	162,999	57.1%
FINANCIAL AND ADMINISTRATIVE	24,250	17,610	72.6%
LEGAL COUNSEL	90,000	51,564	57.3%
COMPREHENSIVE PLANNING & ZONING	170,042	89,623	52.7%
OTHER GENERAL GOVERNMENT	128,665	54,308	42.2%
LAW ENFORCEMENT	280,781	163,497	58.2%
PUBLIC WORKS	14,000	1,253	8.9%
Total Expenditures	1,096,853	565,565	51.6%
Excess(deficiency)	-	85,996	-

YTD-Total Funds Expen. Budget

Expenditures	Budget	Year-to-Date	%
Total Townwide Budget	4,550,949	924,237	20.3%

Selected Other Funds

Transportation Fund	Budget	Year-to-Date	%
FIRST LOCAL OPTION FUEL TAX (6 CENT)	249,245	120,027	48.2%
SECOND LOCAL OPTION FUEL (5 CENT)	117,326	58,948	50.2%
CONTRIBUTION FROM GENERAL FUND	-	-	-
TRANSFER FROM FUND BALANCE	856,191	-	-
Total Revenues	1,222,762	178,975	14.6%
TRAFFIC CONTROL SIGNS (6 CT) MAINT	6,000	2,953	49.2%
TOWN ROADS (6 CT) MAINT	93,245	26,750	28.7%
DISTRICT ROADS (6 CT) MAINT	150,000	2,915	1.9%
ROADS AND STREETS (5 CT)	-	-	-
SPECIAL PROJECTS (6 CT)	-	-	0.0%
148th TERR BRIDGE(5) CULVERT	-	-	-
CONSTRUCTION TOWN RDS & STREETS	-	-	-
TRANSFER TO CIP FUND	973,517	15,070	1.5%
Total Expenses	1,222,762	47,688	3.9%
Excess(deficiency)	-	131,287	-

Solid Waste Fund	Budget	Year-to-Date	%
SOLID WASTE ASSESSMENTS	432,873	391,623	90.5%
DISCOUNT FEES	(12,103)	(13,727)	113.4%
SWA RECYCLING INCOME	8,000	2,162	27.0%
CONTRIBUTION FROM GENERAL FUND	-	-	-
Total Revenues	428,770	380,058	88.6%
CONTRACTUAL-WASTE OVERSIGHT	7,010	15,868	226.4%
PBC ADMINISTRATION FEE 1%	4,460	3,667	82.2%
POSTAGE & FREIGHT	500	-	0.0%
SOLID WASTE CONTRACTOR	415,800	223,241	53.7%
OTHER SANITATION SERVICES	-	-	0.0%
LEGAL ADVERTISING	1,000	700	70.0%
MANAGEMENT FEES	-	-	-
Total Expenses	428,770	243,476	56.8%
Excess(deficiency)	-	136,582	-

Capital Improvement Program (CIP) Fund	Budget	Year-to-Date	%
CONTRIBUTION FROM TRANSPORTATION FUN	973,517	15,070	1.5%
TRANSFER FROM FUND BALANCE	829,047	52,439	6.3%
Total Revenues	1,802,564	67,509	3.7%

Develop Town Hall Alternatives	-	-	-
Surveying Town Roads	100,000	9,653	9.7%
OGEM Collecting Canal Road	943,630	-	0.0%
Okeechobee and D Road Traffic Light	250,000	6,000	2.4%
Town Roads OGEM Projects	100,000	51,855	51.9%
Trails	80,000	-	0.0%
D Road to Southern Blvd	300,000	-	0.0%
Purchase Roads from LGWCD	28,934	-	-
Total Expenses	1,802,564	67,508	3.7%

Contract Services Expenditures	Budget	Year-to-Date	%
Waste Pro	415,800	191,691	46.1%
Palm Beach County Sheriff	280,281	116,785	41.7%
Underwood Management Services Group	373,148	177,039	47.4%
Goren, Cherof, Doody, Ezrol	90,000	44,838	49.8%
Tew & Associates	35,000	12,818	36.6%
Land Research Management	20,000	15,970	79.9%
Engineering Services*	140,000	62,775	44.8%
Frank Schiola	25,000	21,355	85.4%
YEE's Corporation	10,800	6,300	58.3%
Loxahatchee Water Control District	178,934	21,613	12.1%
Total Expenses	1,568,963	671,183	42.8%

* Keshavarez & Assoc., A&B Engineering, Simmon & White
Represents consumption of fund balance. This is not true revenue by definition or reflected in GL in transactions



**BUDGET VS ACTUAL
AS OF APRIL 30, 2014**
58% Elapsed
General Fund
Revenues

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
001-311-100-000	Ad Valorem Taxes	16,102.43	190,709.53	-	197,297	(6,587.47)	96.7%
	Ad Valorem Taxes Subtotal	16,102.43	190,709.53		197,297	(6,587.47)	
001-314-100-000	Electric Utility Tax	20,316.60	119,784.53	-	203,000	(83,215.47)	59.0%
001-315-100-000	Communications Services	8,094.72	51,241.44	-	125,446	(74,204.56)	40.9%
001-316-200-000	County Occupational License	177.32	4,263.76	-	5,000	(736.24)	85.3%
	Local Taxes Subtotal	28,588.64	175,289.73		333,446	(158,156.27)	
001-323-100-000	FPL Franchise Fee	15,597.71	77,352.86	-	200,000	(122,647.14)	38.7%
001-323-125-000	Haulers License Fee	-	3,805.00	-	2,000	1,805.00	190.3%
001-323-300-000	PBC Water Utility Franchise	377.56	3,284.13	-	5,050	(1,765.87)	65.0%
001-329-100-000	Planning & Zoning Permit	481.50	3,121.50	-	100	3,021.50	121.5%
	Permits, Franchise Fees & Special Subtotal	16,456.77	87,563.49		207,150	(119,586.51)	
001-335-120-000	State Revenue Sharing	6,438.71	45,070.97	-	85,446	(40,375.03)	52.8%
001-335-180-000	Half Cent Sales Tax	20,327.09	117,894.36	-	224,014	(106,119.64)	52.6%
	Intergovernmental Revenue Subtotal	26,765.80	162,965.33		309,460	(146,494.67)	52.7%
001-341-000-000	General Government Charges	253.00	2,493.30	-	7,000	(4,506.70)	35.6%
001-343-349-000	Cost Recovery Fees	769.25	20,165.66	-	25,000	(4,834.34)	80.7%
	Charges for Services Subtotal	1,022.25	22,658.96		32,000	(9,341.04)	
001-351-100-000	Court Fines	-	-	-	2,500	(2,500.00)	
001-354-100-000	Code Enforcement Fines	-	9,647.50	-	5,000	4,647.50	193.0%
	Code Enforcement Fines Subtotal	-	9,647.50		7,500	2,147.50	
001-361-100-000	Interest	16.77	93.47	-	5,000	(4,906.53)	1.9%
001-369-000-000	Other Misc Income	-	2,633.11	-	5,000	(2,366.89)	52.7%
	Other Misc Revenue Subtotal	16.77	2,726.58		10,000	(7,273.42)	
001-399-000-000	Transfer from Fund Balance*	-	-	-	-	-	
	Other Non-operating Sources Subtotal	-	-		-	-	
	Grand Total Revenue	88,952.66	651,561.12		1,096,853	(445,291.88)	59.4%



TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF APRIL 30, 2014
 58% Elapsed

General Fund
 Expenditures

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
001-511-310-000	Professional Services	-	-	-	60,000	60,000.00	0.0%
001-511-400-000	Travel	-	-	-	3,000	3,000.00	0.0%
001-511-492-000	Other Operating Expenses	-	196.10	-	1,500	1,303.90	13.1%
001-511-499-000	Other Current Charges - Council Reimbursement	2,500.00	20,000.00	-	30,000	10,000.00	66.7%
001-511-500-000	Education & Training	-	-	-	1,000	1,000.00	0.0%
001-511-510-000	Office Supplies	-	-	-	300	300.00	0.0%
001-511-520-000	Operating Supplies	-	-	-	300	300.00	0.0%
001-511-540-000	Books, Publications & Subscriptions	215.74	4,015.44	-	2,435	(1,580.44)	164.9%
001-511-820-000	Special Events/Contributions	500.00	500.00	-	5,350	4,850.00	9.4%
	Legislative Total	3,215.74	24,711.54	-	103,885	79,173.46	23.8%
001-512-340-000	Other Services	22,008.83	154,061.81	-	264,106	110,044.19	58.3%
001-512-400-000	Travel	-	510.77	-	1,000	489.23	51.1%
001-512-420-000	Postage & Freight - NEW	130.24	336.54	-	1,000	663.46	33.7%
001-512-490-000	Legal Advertising	-	141.60	-	1,000	858.40	14.2%
001-512-492-000	Other Operating Expenses	(14.50)	282.04	-	944	661.96	29.9%
001-512-493-000	Election Expense	-	247.50	-	8,010	7,762.50	3.1%
001-512-510-000	Office Supplies	92.93	7,339.21	-	8,600	1,260.79	85.3%
001-512-540-000	Books, Publications & Subscriptions	-	79.68	-	570	490.32	14.0%
	Executive Total	22,217.50	162,999.15	-	285,230	122,230.85	57.1%
001-513-320-000	Accounting and Auditing	8,700.00	16,700.00	-	18,000	1,300.00	92.8%
001-513-470-000	Printing and Binding	-	-	-	4,750	4,750.00	0.0%
001-513-490-000	Legal Advertising	-	910.00	-	1,500	590.00	60.7%
001-513-493-000	Election Expense (moved)	-	-	-	-	-	0.0%
	Financial & Administrative Total	8,700.00	17,610.00	-	24,250	6,640.00	72.6%
001-514-310-000	Professional Services	8,034.15	51,563.90	-	90,000	38,436.10	57.3%
	Legal Total	8,034.15	51,563.90	-	90,000	38,436.10	57.3%



TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF APRIL 30, 2014
 58% Elapsed
 General Fund
 Expenditures

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
001-515-310-000	Professional Services	2,640.00	13,537.00	-	40,000	26,463.00	33.8%
001-515-340-000	Other Services	6,586.83	46,107.81	-	79,042	32,934.19	58.3%
001-515-343-000	Planning & Zoning Contract	270.00	876.25	-	20,000	19,123.75	4.4%
001-515-347-000	Comprehensive Plan	-	-	-	-	-	0.0%
001-515-349-000	Cost Recovery Expenditure	769.25	20,406.16	-	25,000	4,593.84	81.6%
001-515-490-000	Legal Advertising - NEW	316.48	8,695.44	-	6,000	(2,695.44)	144.9%
	Comprehensive Planning & Zoning Total	10,582.56	89,622.66		170,042	80,419.34	52.7%
001-519-315-000	Special Magistrate	2,275.01	7,008.63	-	16,000	8,991.37	43.8%
001-519-354-000	Code Compliance	1,950.00	10,586.50	-	41,000	30,413.50	25.8%
001-519-410-000	Communications Services	815.20	3,792.08	-	5,700	1,907.92	66.5%
001-519-440-000	Rentals and Leases	1,817.11	11,005.18	-	20,000	8,994.82	55.0%
001-519-450-000	Insurance	-	15,111.00	-	18,000	2,889.00	84.0%
001-519-460-000	Repair & Maint - Building	200.00	1,600.00	-	2,450	850.00	65.3%
001-519-470-000	Printing and Binding	-	-	-	-	-	0.0%
001-519-480-000	Promotional Activities	-	-	-	-	-	0.0%
001-519-490-000	Computer Repair	-	599.19	-	2,500	1,900.81	24.0%
001-519-491-000	Computer Services	133.00	2,179.24	-	3,631	1,451.76	60.0%
001-519-494-000	Inspector General Office	2,218.00	2,218.00	-	5,280	3,062.00	42.0%
001-519-810-000	Aids to Govt Agencies Grant - LGWCD	-	-	-	-	-	
001-519-820-000	Loxahatchee Groves CERT	-	208.00	-	2,000	1,792.00	10.4%
001-519-900-000	Transfer to Transportation Fund	-	-	-	-	-	0.0%
001-519-910-000	Transfer to Sanitation Fund	-	-	-	-	-	
001-519-920-000	Transfer to Capital Projects	-	-	-	-	-	
001-519-990-000	Contingency	-	-	-	12,104	12,104.00	0.0%
	Other Governmental Services Total	9,408.32	54,307.82		128,665	74,357.18	42.2%
001-521-341-000	Professional Services-PBSO	23,356.75	163,497.25	-	280,281	116,783.75	58.3%
001-521-342-000	Contractual-ADDL PBSO	-	-	-	500	500.00	0.0%
	Law Enforcement Total	23,356.75	163,497.25		280,781	117,283.75	58.3%
001-539-310-000	Other Services	-	-	-	-	-	0.0%
001-539-340-000	Professional Services	188.75	1,252.96	-	14,000	12,747.04	9.0%
	Public Works Total	188.75	1,252.96		14,000	12,747.04	8.9%
	Grand Total Expenditure	85,703.77	565,565.28		1,096,853	531,287.72	51.6%
	Net Revenue	3,248.89	85,995.84				



TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF APRIL 30, 2014
 58% Elapsed
Transportation Fund
Revenues

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
101-312-410-000	1st Local Option Fuel Tax (1 to 6 cent)	21,175.26	120,027.00	-	249,245	(129,218.00)	48.2%
101-312-420-000	2nd Local Option Fuel Tax (1 to 5 cent)	9,345.60	58,947.70	-	117,326	(58,378.30)	50.2%
101-363-990-000	Contribution from General Fund	-	-	-	-	-	0.0%
101-399-000-000	Transfer from Fund Balance	-	-	-	856,191	(856,191.00)	0.0%
Total Revenue		30,520.86	178,974.70		1,222,762	(1,043,787)	14.6%

Transportation Fund
Expenditures

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
101-541-467-000	Traffic Control Signs (6 ct) Maint.	1,897.50	2,953.00	-	6,000	3,047.00	49.2%
101-541-468-000	Non-District Roads (6 ct) Maint.	4,744.79	26,749.92	-	93,245	66,495.08	28.7%
101-541-469-000	District Roads (6 ct) Maint.	-	2,915.00	-	150,000	147,085.00	0.0%
101-541-631-000	Road and Streets (5 cent)	-	-	-	-	-	0.0%
101-541-632-000	Special Projects (6 cent)	-	-	-	-	-	0.0%
101-541-634-000	148th Terr Bridge (5)/Culvert	-	-	-	-	-	0.0%
101-541-636-000	Construct Town Rds & Sts	-	-	-	-	-	0.0%
101-541-920-000	Transfer to Capital Projects	-	15,070.00	-	973,517	958,447.00	1.6%
101-541-990-000	Transfer to Fund Balance	-	-	-	-	-	0.0%
101-541-996-000	Transfer to Fund Balance	-	-	-	-	-	0.0%
Total Expenditure		6,642.29	47,687.92		1,222,762	1,175,074	3.9%
Net Revenue		23,878.57	131,286.78		-		



TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF APRIL 30, 2014
 58% Elapsed
 Capital Improvement Program
 Revenues

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
305-363-990-000	Contributions from General Fund	-	-	-	-	-	0.0%
305-363-991-000	Contributions from Transportation Fund	-	15,070.00	-	973,517	(958,447.00)	1.6%
305-399-000-000	Transfer from Fund Balance	14,729.00	52,438.50	-	829,047	(776,608.50)	6.3%
	Total Revenue	14,729.00	67,508.50	-	1,802,564	(1,735,055.50)	3.7%

Represents consumption of fund balance. This is not true revenue by definition or reflected in GL in transactions

Capital Improvement Program
Expenditures

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
305-519-600-000	Develop Town Hall Alternatives	-	-	-	-	-	0.0%
305-541-610-000	Surveying Town Roads	-	9,653	-	100,000	90,347.00	9.7%
305-541-620-000	OGEM Collecting Canal Road	-	-	-	943,630	943,630.00	0.0%
305-541-630-000	Okeechobee and D Road Traffic Light	-	6,000.00	-	250,000	244,000.00	2.4%
305-541-640-000	Town Roads OGEM Projects	14,729.00	51,855.50	-	100,000	48,144.50	51.9%
305-541-650-000	Trails	-	-	-	80,000	80,000.00	0.0%
305-541-652-000	D Road to Southern Blvd	-	-	-	300,000	300,000.00	0.0%
305-541-654-000	Purchase Roads from LGWCD	-	-	-	28,934	28,934.00	0.0%
	Total Expenditure	14,729.00	67,508.50	-	1,802,564	1,735,056	3.7%
	Net Revenue	-	-	-	-	-	-



TOWN OF LOXAHATCHEE GROVES
BUDGET VS ACTUAL
AS OF APRIL 30, 2014
 58% Elapsed
 Solid Waste Fund
 Revenues

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
405-323-125-000	Haulers Licensing Fee - MOVED TO GF	-	-	-	-	-	0.0%
405-325-205-000	Solid Waste Assessments	33,194.54	391,622.88	-	432,873	(41,250.12)	90.5%
405-325-206-000	Discount Fees	(48.24)	(13,727.45)	-	(12,103)	(1,624.45)	113.4%
405-343-120-000	SWA Recycling Income	727.07	2,162.15	-	8,000	(5,837.85)	27.0%
405-363-990-000	Contributions from General Fund	-	-	-	-	-	0.0%
	Total Revenue	33,873.37	380,057.58	-	428,770	(48,712.42)	88.6%

Account Number	Account	Month to Date	Year to Date	Encumbrance	Annual Budget	Annual Variance	% Used
405-534-345-000	Contractual - Waste Over	3,439.87	15,868.37	-	7,010	(8,858.37)	226.4%
405-534-346-000	PBC Administration Fee 1	331.37	3,666.58	-	4,460	793.42	82.2%
405-534-420-000	Postage & Freight	-	-	-	500	500.00	0.0%
405-534-434-000	Solid Waste Contractor	25,954.44	223,240.64	-	415,800	192,559.36	53.7%
405-534-436-000	Other Sanitation Service	-	-	-	-	-	0.0%
405-534-490-000	Legal Advertising	-	700.00	-	1,000	300.00	70.0%
405-534-595-000	TOLG Management Fee	-	-	-	-	-	0.0%
	Total Expenditure	29,725.68	243,475.59	-	428,770	185,294.41	56.8%
	Net Revenue	4,147.69	136,581.99		-	-	

Note: YTD Fines credited to Service Provider invoicing - \$21,600.00



Item 6.

RESOLUTIONS

Resolution No. 2014-05

TOWN OF LOXAHATCHEE GROVES

RESOLUTION NO. 2014-05

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, OPPOSING THE AMENDMENTS TO THE PALM BEACH COUNTY COMPREHENSIVE PLAN PROPOSED FOR THE MINTO WEST DEVELOPMENT ON PROPERTY ABUTTING THE TOWN OF LOXAHATCHEE GROVES AND FORMERLY REFERRED TO AS CALLERY JUDGE GROVES; URGING THE PALM BEACH COUNTY COMMISSION TO DENY THE PROPOSED AMENDMENTS; PROVIDING FOR COPIES OF THIS RESOLUTION TO BE DISTRIBUTED TO AFFECTED ENTITIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Loxahatchee Groves borders on a 3,791 acre parcel, formerly owned by Callery Judge Groves, whereon in 2008 the Palm Beach County Commission approved development that would permit 2996 dwelling units at a density of 0.80 units per acre and 235,000 square feet of non-residential development on property designated as an “Agricultural Enclave” in the Palm Beach County Comprehensive Plan (the “Property”); and,

WHEREAS, in 2013, the Property was conveyed to a new owner, Minto SPW, LLC (“Minto”); and,

WHEREAS. Minto has filed an application with Palm Beach County to amend the Palm Beach County Comprehensive Plan to permit the development of 6500 residential units, 1.4 million square feet of non-residential uses, as well as a college campus, hotel and a baseball stadium; and,

WHEREAS, the pending application more than doubles the currently approved residential density on the Property, and would increase the non-residential uses on the Property more than six times that of the currently approved plan; and,

WHEREAS, the Town’s comprehensive plan provides that the residential density in the Town is 1 unit per 5 acres; and,

WHEREAS, if the proposed amendments are approved, the residential density on the Property will be approximately twenty (20) times that of the Town of Loxahatchee Groves; and,

WHEREAS, as a designated Agricultural Enclave, the development has a statutory preemption that it is not urban sprawl if its land uses and densities include those that surround the property; and,

WHEREAS, considering the Town of Loxahatchee Groves, the uses and intensities in the Indian Trails improvements District, and in the area generally known as the “Western Communities,” the proposed amendment would be urban sprawl; and,

WHEREAS, the approval of the proposed amendment would result in an urban enclave, with uses and intensities of use disproportionate to those that surround the Property; and,

WHEREAS, Okeechobee Boulevard vital to the Town of Loxahatchee Groves, as it is located generally in the middle of the Town; and,

WHEREAS, if the proposed amendments are adopted by the County Commission, Okeechobee Boulevard is likely to become a thoroughfare, similar to Southern Boulevard, which would physically divide the Town, contrary to the desires of the Town of Loxahatchee Groves, and its residents; and,

WHEREAS, the Town of Loxahatchee Groves is seeking to protect and maintain the rural lifestyles for which people live in the Town and which is vital to the Town’s vision and future; and,

WHEREAS, if the proposed amendments are adopted by the County Commission, it would result in a massive development on the Town’s border, and Okeechobee Boulevard being converted into a thoroughfare for traffic from new developments to the west and north of the Town, which would permanently alter the rural lifestyles of the Town and the Western Communities; and,

WHEREAS, when the County Commission approved the rezoning for the Highland Dunes development in 2013, many Commissioners publicly recognized the value to Palm Beach County

of diverse lifestyles and intensities in Palm Beach County, including the rural lifestyle of the Western Communities, and stated that careful consideration must be given when applications for development in the area are considered; and,

WHEREAS, Minto is not entitled to any additional development rights, as the current approved densities and uses were reviewed by the County in 2008 and approved consistent with the Property's designation as an Agricultural Enclave at that time, the uses and intensities of use in the Western Communities have not changed since those 2008 approvals, and Minto purchased the Property knowing full well the extent and scope of the permitted development on the Property; and,

WHEREAS, denying the proposed applications would be in the best interest of the residents of the Town and the Western Communities, as well as throughout the County by preserving the diversity of lifestyles that includes the rural and agricultural uses that are predominant within the Town of Loxahatchee Groves.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:

Section 1. That the foregoing "WHEREAS" clauses are confirmed and ratified as being true and correct and are hereby made a specific part of this Resolution.

Section 2. The Town Council of the Town of Loxahatchee Groves hereby opposes the pending applications filed by Minto to increase the currently approved uses and intensities of uses for the Property.

Section 3. The Town Council of the Town of Loxahatchee Groves urges the Palm Beach County Commission to deny Minto's applications to amend the Palm Beach County Comprehensive Plan, and deny all efforts to increase the currently approved densities and uses for the Property.

Section 4. The Town Clerk is directed to provide a copy of this Resolution to each member of the Palm Beach County Commission, the County Administrator, the Indian Trials

Improvement District, the Palm Beach County League of Cities, and other entities as may be determined by the Town Council or Town Management from time to time to be affected by the future development of the Property.

Section 5. Effective Date. This Resolution shall take effective immediately upon its adoption.

ADOPTED by the Town Council of the TOWN OF LOXAHATCHEE GROVES, FLORIDA, this 3rd day of June, 2014.

ATTEST:

TOWN OF LOXAHATCHEE GROVES,
FLORIDA

Janet K. Whipple, Town Clerk

Mayor David Browning

APPROVED AS TO LEGAL FORM:

Vice-Mayor Ron Jarriel

Office of the Town Attorney

Council Member Tom Goltzené

Council Member Ryan Liang

Council Member Jim Rockett



Item 7.a.

ORDINANCES

Ordinance No. 2014-04 (Livestock Waste Property Owners)

(2nd/Final Reading)

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2014-04

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO THE USE OF LIVESTOCK WASTE WITHIN THE TOWN; AMENDING THE TOWN'S UNIFIED LAND DEVELOPMENT CODE BY AMENDING PART III ENTITLED "SUPPLEMENTAL REGULATIONS," ARTICLE 50 ENTITLED "PUBLIC NUISANCES" BY ADDING A NEW SECTION 50-035 TO BE ENTITLED "USE OF LIVESTOCK WASTE;" PROVIDING FOR DEFINITIONS; PROVIDING THAT THE USE OF LIVESTOCK WASTE IS A PUBLIC NUISANCE EXCEPT AS PROVIDED BY THIS SECTION; PROVIDING FOR REGISTRATION AND PERMITS, REQUIREMENTS AND LIMITATIONS ON THE DELIVERY AND USE OF LIVESTOCK WASTE; PROVIDING FOR REPORTING AND NOTICE REQUIREMENTS; PROVIDING FOR REVOCATION OF PERMITS AND ENFORCEMENT; 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 (livestock waste) in the Town; and,

WHEREAS, on April 3, 2012, the Town Council adopted Ordinance 2012-03, which amended and restated Ordinance 2010-03, to provide for properties eligible to receive manure and horse bedding materials (livestock waste), amend permit requirements and provide regulations on how such materials are used on eligible properties; and,

WHEREAS, the Town Council has heard concerns from Town Management and the public relating to the current permitting process and continued abuses by commercial haulers, and property owners, for dumping manure and horse droppings (livestock waste) on properties within the Town; and,

WHEREAS, the Town Council continues to be concerned with water quality within the drainage canals in the Town, and has heard from residents with scientific and academic backgrounds that raised phosphorous levels are possible from continued abuse of livestock waste dumping by commercial haulers, and property owners, within the Town; and,

WHEREAS, the Town Council believes that increased equestrian activities in neighboring municipalities during certain periods of time each year causes commercial haulers of livestock waste originating on facilities in those areas to seek out places in close proximity to those communities to dump their loads and avoid expenses and perhaps industry regulations associated with taking such loads to facilities designed to accept such; and,

WHEREAS, the Town Council believes that when used properly and in limited quantities, livestock waste can provide agricultural benefits, and thus a total ban on the delivery of livestock waste is not in the best interest of the community; and,

WHEREAS, on the other hand, improper disposal and use of Livestock Waste is a public nuisance, causing pollution concerns, attracting flies and emanating odors to nearby properties; and

WHEREAS, the Town Council seeks to balance permitting the limited and beneficial use of livestock waste with avoiding nuisances created by abuses associated with the dumping of such materials within the Town; and,

WHEREAS, the Town believes that given the limited beneficial use of livestock waste, it is fair and reasonable to require property owners of property on which livestock waste is to be deposited for use for agricultural purposes to obtain a permit from the Town so that public nuisances can be avoided and the Town can effectively enforce regulations and laws intended to prevent illegal dumping of livestock waste and prevent pollution.

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 2012-03 is superceded as set forth herein.

Section 2. The Town’s Unified Land Development Code (ULDC) is amended to amend Part III, entitled “Supplemental Regulations,” Article 50, entitled “Public Nuisance,” to create a new Section 50-035, to be entitled “Use of Livestock Waste,” to read as follows:

PART III – SUPPLEMENTAL REGULATIONS

ARTICLE 50 – PUBLIC NUISANCES

Section 50-035. – Use of Livestock Waste.

(A) **Definitions.** All terms shall have the meanings set forth in Section 10-015 of the Unified Land Development Code, except as defined herein. The following definitions shall apply to this Section:

1. *Approved disposal site:* A real property for which a Town, county or state registration or permit has been issued for the disposal and/or processing of livestock waste, as amended from time to time, and/or a plot of land that is conducting bona fide agricultural activities in accordance with F.S. § 193.461.
2. *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).
3. *Commercial livestock waste hauler:* Person(s), firm(s), corporation(s), or other legal entit(ies) permitted by the Town to provide livestock waste removal services for a fee within the Town in accordance with terms and conditions established by this ordinance.
4. *Composting:* The process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in an environmentally acceptable manner within a period of 90 days.
5. *Hauler:* when used herein, collectively Commercial Livestock Waste Hauler and Livestock Waste Self-Haulers.

6. Livestock: Grazing animals, such as cattle, horses, sheep, goats, other ruminants, swine, ostriches, emus and rheas, which are used for private use or commercial purposes, or as defined by F.S. § 585.01, as may be amended from time to time.
 7. Livestock facility: Property under single ownership or control where livestock is raised and or boarded.
 8. Livestock waste: Wastes composed of excreta of animals and residual materials that have been used for bedding, sanitary, or feeding purposes for such animals. For purposes of this article, livestock waste that has been properly composted shall not be considered livestock waste.
 - (a) Livestock waste self-hauler: Property owner or authorized representative providing Livestock waste removal services from their own property within the Town, or delivering Livestock waste to their own property within the Town from a location within the Town, for personal use only by the owner or tenant of the receiving property, using a vehicle with a capacity no greater than ten (10) cubic yards.
 9. Livestock waste storage area: An area constructed of impermeable material such as concrete or asphalt; with an impermeable cover; or a mechanical storage container that can be sealed, lifted, and transported.
 10. Load: approximately twenty (20) to twenty-five (25) cubic yards of Livestock Waste.
 11. Public Nuisance: the unreasonable, unwarranted and/or unlawful activity and/or use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public.
- (B) The deposit, dumping, and/or use of Livestock Waste, unless done in strict compliance with this Section is declared to be a public nuisance and is prohibited.
- (C) A property owner must obtain a permit from the Town prior to accepting any Livestock Waste on the property. A property owner may have only one permit at a time. An annual permit shall be valid from October 1 to September 30, and shall expire each September 30 regardless of the date it is issued. Property owners are responsible for the timely renewal of the annual permits.
- (D) The requirements for the permit required by subsection (C) are as follows:
1. With the exception of a Town Manager-approved permit for residential property hereinafter provided, the property on which the Livestock waste 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 to the Town for a permit, the property owner may obtain its initial permit notwithstanding not having the agricultural use tax designation when the property owner has filed an application with the Palm Beach Tax Collector for an agricultural use property tax designation and certifies to the Town Manager that the property owner is making a good faith effort to obtain the agricultural use tax designation as soon as possible. This exception shall apply only for the initial permit. No subsequent permits may be issued until the property obtains the agricultural use tax designation. 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 Livestock Waste is solely for bona fide agricultural purpose on-site. The Town Manager shall advise the Town Council of all permits approved for residential properties.

2. The permit will be in the name of the record owner of the property. The property owner must be the applicant for the permit.
3. The property owner shall certify at the time of application that the Livestock Waste originates from within the Town or is shown by the filing of an affidavit by the property owner that it originated from outside the State of Florida.
4. The property owner must certify at the time of application that the Livestock Waste is being used by the property owner for bona fide agricultural purposes in appropriately limited quantities pursuant to Best Management Practices (BMP) or guidelines published by the Florida Department of Environmental Protection for

- the application of Livestock Waste (published guideline). The property owner shall provide the Town with a copy of the applicable BMP or published guideline.
5. The property owner must advise the Town at the time of application of the total quantity of Livestock Waste to be delivered to the property and its intended use.
 6. The property owner must identify whether he or she will be a Livestock Waste Self-Hauler, will use a Commercial Livestock Waste Hauler, or both. In the event a property owner intends to use a Commercial Livestock Waste Hauler, the property owner must identify the Commercial Livestock Waste Hauler, and the Commercial Livestock Waste Hauler must have a permit from the Town and be in compliance with the Town's ordinances at all times during the effectiveness of the owner's permit. A permit issued to a property owner pursuant this Section limits the property owner to using only one (1) Commercial Livestock Waste Hauler. The property owner must advise the Town in writing of a change in the Commercial Livestock Waste Hauler prior to receiving any Livestock Waste from the new Commercial Livestock Waste Hauler.
 7. The acceptance of a permit by the property owner shall provide consent for a Town representative to inspect the property solely for purposes of ensuring compliance with the terms of the permit.
 8. There shall be no charge for a Property Owner Permit.
 9. The Town may request copies of permits and licenses for the designated Commercial Livestock Waste Hauler, as well as drawings or layouts of the property to verify that the Livestock Waste shall be deposited and used in compliance with this Section 50-035.

- (E) The deposit of Livestock Waste is permitted only on Approved disposal sites within the Town.
- (F) Only Livestock Waste that originates from within the Town or is shown by the filing of an affidavit by the property owner that it originated from outside the State of Florida may be deposited on property within the Town.
- (G) Delivery of Livestock Waste by Commercial Livestock Waste Haulers shall be permitted only between the hours of 9:00 am through 4:00 pm, Monday through Friday, except holidays as listed on the Town website. Delivery of Livestock Waste by Commercial Livestock Waste Haulers is prohibited at all other times. Delivery must also be avoided during storm events, or when the ground is saturated.
- (H) The Property Owner may accept a maximum of ten (10) loads pursuant to the Permit, with a maximum of four (4) loads in a calendar month.
- (I) The Property Owner shall ensure that its Hauler does not dump Livestock Waste:
 - a. within fifty (50) feet of the property line, or such other distance in this subsection (I), whichever is greater;
 - b. within two hundred (200) feet of any well or other private potable water source, provided that the distance shall be three hundred (300) feet from the private potable water source if the private potable water source is located down slope from the Livestock Waste dumping site. These distances apply whether the water source is on the property or beyond the property;
 - c. within five hundred (500) feet from a potable community well or water source. This distance applies whether the surface water is on the property or beyond the property;

- d. Within fifty (50) feet from surface waters where the site is level and has vegetative cover, or one hundred (100) feet if the soil surface slopes towards the water source or is void of vegetative cover. These distances apply whether the water source is on the property or beyond the property.
- (J) The Property Owner shall spread the Livestock Waste in accordance with BMP or published guidelines within seventy-two (72) hours of receipt of the materials. Upon receiving notice from the Town of flies, odors or other adverse effects, affecting neighbors, the Livestock Waste shall be immediately spread by the Property Owner. Property Owners are required to use appropriate equipment to properly spread Livestock Waste.
- (K) Livestock Waste shall not be spread or otherwise applied:
- a. within fifty (50) feet of the property lines or such other distance in this subsection (K), whichever is greater;
 - b. within two hundred (200) feet of any well or other private potable water source, provided that the distance shall be three hundred (300) feet from the private potable water source if the private potable water source is located down slope from the Livestock Waste dumping site. These distances apply whether the water source is on the property or beyond the property;
 - c. within five hundred (500) feet from a potable community well or water source. This distance applies whether the surface water is on the property or beyond the property;
 - d. Within fifty (50) feet from surface waters where the site is level and has vegetative cover, or one hundred (100) feet if the soil surface slopes towards the

water source or is void of vegetative cover. These distances apply whether the water source is on the property or beyond the property.

- (L) Crops should be planted as soon as possible after spreading, but in no case later than ninety (90) days after spreading. A failure to timely plant crops shall result in a revocation of the permit and the property owner shall not be eligible for a new permit for a period of one (1) year from the date of revocation.
- (M) The use of Livestock Waste as fill on property is strictly prohibited.
- (N) The property owner shall post a sign at the entrance on the property at the location where deliveries are received with a contact telephone number for neighbors to be able to contact the property owner about concerns with the delivery and/or use of Livestock Waste on the property.
- (O) Delivery Records shall be provided by property owners to the Town Manager each month, no later than the fifth (5th) business day of the month following the month for which the report is filed. The Delivery records shall identify the waste source, quantity in cubic yards, and the bona fide agricultural use of the Livestock waste. Failure to provide monthly delivery records shall result in the revocation of the permit. The Town reserves the right to audit the delivery records and request records from the Commercial Livestock Waste Hauler that delivered the Livestock Waste to the property. The failure to cooperate with such audit shall result in the revocation of a permit.
- (P) The Town Council reserves the right to amend this Ordinance at any time, and any such amendments will apply to both future permits and active permits unless specifically exempted by the Town Council.

(Q) Violations of this ordinance shall result in a revocation of a permit by the Town Manager. Violations of this ordinance by a permit holder's designated Commercial Livestock Waste Hauler shall be a violation by the permit holder. 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.

(R) A violation of this ordinance is deemed by the Town Council to be a public nuisance.

(S) The Town Council specifically 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. Upon the issuance of a violation notice under Section 403.413, Florida Statutes, or this ordinance, any permits issued by the Town to the property owner shall be suspended and the property owner shall cease accepting Livestock Waste until such time as a hearing is conducted or the fines paid.

(T) In addition to enforcement pursuant to Section 403.413, Florida Statutes, this ordinance shall be enforced as follows:

(1) Law enforcement officers are authorized to enforce this ordinance. In addition to penalties resulting from a violation of Section 403.413, Florida Statutes, the fines for violations of this ordinance shall be:

<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>All Additional Offenses</u>
<u>\$350</u>	<u>\$400</u>	<u>\$450</u>	<u>\$500</u>

- (2) The Town may also file charges for any offense in a court with jurisdiction, in which case the penalty shall be a fine of \$500, imprisonment not to exceed sixty (60) days, or both, for each violation of this ordinance. The Town shall recover its costs of prosecution, including attorney's fees, filing fees, and personnel costs for law enforcement and Town employees.
- (3) To the extent authorized by law, 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, or of this ordinance. In such instances, the fine shall be the maximum permitted by law. The Town shall recover its costs of prosecution, including attorney's fees, filing fees, and personnel costs for law enforcement and Town employees.
- (4) Each day a violation remains, and each delivery by a Commercial Livestock Waste Hauler for which there is no permit, constitutes a separate violation of this ordinance.
- (U) Nothing in this ordinance is to be construed to permit a Solid Waste Management Facility in conflict with Town state and county regulations.

Section 3. Effect on Ordinance 2012-03. The provisions herein as to regulations for Property Owners for delivery and use of Livestock Waste, referred to in Ordinance 2012-03 as "manure and horse bedding," supersede and replace regulations as to delivery and use of Livestock Waste on properties within the Town in Ordinance 2012-03.

Section 4. 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 5. 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 6. 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 7. 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 ___ DAY OF _____, 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, 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

MDC



Item 7.b.

ORDINANCES

Ordinance No's. 2014-05 (Guns, Firearms, Gun Ranges)

(2nd/Final Reading)

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2014-05

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING THE TOWN'S UNIFIED LAND DEVELOPMENT CODE TO ELIMINATE REGULATIONS RELATING TO GUNS, FIREARMS AND GUN RANGES TO ADDRESS STATE PREEMPTIONS OF THE REGULATION OF THESE SUBJECTS; PROVIDING FOR INTENT OF THE TOWN TO COMPLY WITH THE STATE'S PREEMPTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 790.33, Florida Statutes, preempts to the state the field of regulation of firearms and ammunition, except for zoning ordinances “that encompass firearms businesses” so long as they are not intended to restrict or prohibit the sale of firearms and ammunition as a means of regulating such; and,

WHEREAS, Section 790.333, Florida Statutes, preempts to the state the field of regulation of firearms and ammunition use at sport shooting and training ranges; and,

WHEREAS, the Florida Attorney General has opined that the preemption in Section 790.333, Florida Statutes, includes zoning; and,

WHEREAS, Section 790.33, Florida Statutes, provides substantial penalties for any willful intrusion into the state's preemption on the regulation of firearms and ammunitions, including fines of up to \$5,000, termination of employment or removal from office, and damages of up to \$100,000.00; and,

WHEREAS, the Town's Unified Land Development Code contains zoning regulations relating to shooting and gun ranges, the goal of which was not to restrict gun and ammunition sales and use, but to provide use and development standards for such uses; and,

WHEREAS, the Town of Loxahatchee Groves, Florida, believes it is in the best interest of the Town to remove all references to guns, firearms, and gun and shooting ranges in the Unified Land Development Code in order to avoid the potential of conflict with state law, and to defer to the state for regulations of such pursuant to the state’s preemptions as evidenced by Sections 790.33 and 790.333, Florida Statutes.

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.

Section 2. Part II, entitled “Zoning Districts,” Article 25 entitled “Commercial Zoning Districts,” Section 25-015, entitled “Permitted Uses,” of the Town’s Unified Land Development Code, is amended as follows:

Section 25-015. - Permitted uses.

Plots located in the Commercial Low and Commercial Low Office zoning districts may be used for one or more of the following uses.

Principal Uses	Commercial Low (CL)	Commercial Low Office (CLO)
Adult Entertainment	Permitted subject to Article 20	Not Permitted
Arcade, Video	Permitted	Not Permitted
Automobile Repair Garage	Permitted	Not Permitted
Bank or Financial Institution	Permitted	Permitted
Bar, Lounge, Tavern or Pub	Permitted	Not Permitted
Barber Shop, Beauty or Nail Salon	Permitted	Not Permitted
Pool Hall	Permitted	Not Permitted

Car Wash, Self-Service or Automated	Permitted	Not Permitted
Catering or Food Service Delivery	Permitted	Not Permitted
Child Care Center	Permitted	Not Permitted
Commercial Animal Manure Mgmt.	Not Permitted	Not Permitted
Commercial Chipping and Mulching	Permitted subject to Article 80	Not Permitted
Convenience Store	Permitted	Not Permitted
Dance/Night Club	Permitted	Not Permitted
Day Labor Hiring Center	Permitted w/Special Exception	Not Permitted
Delicatessen	Permitted	Not Permitted
Theater or Auditorium	Permitted	Not Permitted
Dry Cleaning or Laundry Service	Permitted	Not Permitted
Employment Agency	Not Permitted	Not Permitted
Essential Services and Utilities	Permitted	Permitted
Exhibition of Wildlife Pets	Permitted subject to Article 80	Not Permitted
Gasoline Station	Permitted	Not Permitted
Shooting Range	See Note 1 below	See Note 1 below
Shooting Range, Indoor Archery Range	Permitted subject to Article 80	Not Permitted
Hotel	Permitted	Not Permitted
Holiday Wayside Stand	Permitted subject to Article 80	Permitted subject to Article 80
Laboratory (e.g., medical, dental, research)	Permitted	Permitted
Offices (e.g., business, professional, medical)	Permitted	Permitted
Package Liquor, Beer or Wine Store	Permitted	Not Permitted
Outdoor Events	Permitted subject to Article 80 and to a Special Exception	Permitted subject to Article 80 and to a Special Exception
Retail Plant or Produce Sales	Permitted	Not Permitted
Restaurant, Fast Food	Permitted	Not Permitted
Restaurant, Full Service	Permitted	Permitted
Restaurant, Take Out Only	Permitted	Permitted

Retail Services	Permitted	Not Permitted
Retail Store	Permitted	Not Permitted
Commercial Recreation (e.g., batting cages, rink)	Permitted	Not Permitted
Veterinary Clinic or Hospital	Permitted	Not Permitted
Warehouse, Self Storage	Permitted	Not Permitted
Wireless Communication Facilities	Permitted	Permitted
Adult Day Care	Permitted	Permitted
Schools, Public or Private	Permitted	Not Permitted
Gym or Fitness Center	Permitted	Permitted

Note 1: The regulation of guns and shooting ranges is preempted by state law and regulated solely by the State of Florida. See Sections 790.33 and 790.333, Florida Statutes

Section 3. Part II, entitled “Zoning Districts,” Article 35 entitled “Parks and Recreation Zoning Districts,” Section 35-015, entitled “Permitted Uses,” of the Town’s Unified Land Development Code, is amended as follows:

Section 35-015. - Permitted uses.

Plots located in the Parks and Recreation zoning district may be used for one or more of the following specified uses.

Principal Uses	Parks and Recreation
Gun or Archery Range	Permitted subject to Article 80
Shooting Range	See Note 1 below
Boat Ramp, Fishing Pier and Dock	Permitted
Botanical Garden	Permitted
Walking and Biking Trail	Permitted
Essential Services	Permitted
Nature Trail	Permitted
Outdoor Events	Permitted subject to Article 80
Lake or Pond	Permitted
Public Park	Permitted

Note 1: The regulation of guns and shooting ranges is preempted by state law and regulated solely by the State of Florida. See Sections 790.33 and 790.333, Florida Statutes

Section 4. Part III, entitled Supplemental Regulations,” Article 80, entitled “Conditional Use,” Section 80-040, entitled “Archery and gun ranges,” of the Town’s Unified Land Development Code, is amended as follows:

Section 80-040. - Archery ~~and gun~~ ranges.

Target areas for archery ~~and gun~~ ranges shall provide sufficient separation and barriers sufficient to preclude any intrusion of such activities (including noise above nuisance levels) upon adjacent properties. ~~All gun ranges shall be within a building located on a parcel that has a land use designation of Commercial Low Retail and shall also conform to the Best Management Practices for Environmental Stewardship of Florida Shooting Ranges as outlined by the Florida Department of Environmental Protection.~~

Section 5. Part IV, entitled “Parking and Loading, Access and Subdivision, Sight Distance,” Division I, entitled “Space Requirements, Size and Use, Section 95-010, entitled “Minimum parking space requirements,” of the Town’s Unified Land Development Code, is amended as follows:

Section 95-010. - Minimum parking space requirements.

The minimum parking requirements for each use is outlined below, however, for uses not specifically listed, the parking requirements for the most similar use shall be used as determined by the Town Manager. When the number of required parking spaces results in a fractional space, any such fraction shall require a full parking space. In the case of mixed uses (not including shopping centers), the total requirement for parking spaces shall be the sum of the various uses computed separately. In stadiums, sports arenas, religious facilities, bars and other places of assembly in which occupants utilize benches, pews, stools or other similar seating facilities, every 20 lineal inches of such seating shall be counted as one seat for the purpose of computing parking requirements. Every building, use or structure which complies with the parking requirements of this article may provide additional parking spaces as needed.

(E) *Recreational uses:*

Uses	Minimum Parking Requirements
Gun or Archery Range	One parking space per target position
Other Recreational Uses	Determined by agency facilitating and maintaining the use

Section 6: It is the intent of the Town Council that the Town's ordinances and Unified Land Development Code be interpreted and administered consistent with the state's preemptions of the regulation of fields of guns and ammunition, and gun ranges.

Section 7. All Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions, in conflict herewith are hereby repealed to the extent of such conflict.

Section 7: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given affect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 8: This Ordinance shall become effective as provided by law.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS _____ DAY OF _____, 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, Town Clerk

Vice-Mayor Ron Jarriel

APPROVED AS TO LEGAL FORM:

Office of the Town Attorney

Council Member Tom Goltzené

Council Member Ryan Liang

Council Member Jim Rockett



Item 8.

ADMINISTRATIVE UPDATE

(No Backup)



Item 9.

OLD BUSINESS

None



Item 10.a.

NEW BUSINESS

Captive Wildlife



FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
OFFICE OF THE GENERAL COUNSEL

MEMORANDUM

To: FWC Captive Wildlife Program
Through: James V. Antista, General Counsel *James V. Antista*
From: Carla J. Oglo, Assistant General Counsel *Carla J. Oglo*
Date: May 17, 2007
Re: LOCAL ORDINANCES AND THE REGULATION OF CAPTIVE WILDLIFE

This memorandum addresses the applicability of local ordinance and zoning codes to the regulation of captive wildlife. For purposes of this memorandum, the term captive wildlife means wildlife regulated under Rule 68A-6, F.A.C.

Background

As the population of Florida grows and urban sprawl consumes rural Florida, captive wildlife facilities which were originally on fairly rural land are now found amidst urban and suburban development. Local governments are concerned about the proximity of captive wildlife to people and, based on a relatively few cases of escape, believe in stronger local control over captive wildlife. These concerns are prompting local governments to consider adopting ordinances and zoning codes which directly regulate captive wildlife or to consider zoning codes which directly define the appropriate neighborhoods for the possession of captive wildlife. Both the local governments and those who have captive wildlife facilities are looking to the Florida Fish and Wildlife Conservation Commission (FWC) for guidance as to whether or not, or to what extent, these ordinances and zoning codes may be enacted consistent with the authority granted to the FWC by the Florida Constitution. In order to address this issue, it is necessary to understand some history about regulation of captive wildlife in Florida.

FWC's predecessor agency, the Game and Fresh Water Fish Commission, did not always have constitutional authority over all captive wildlife. In 1960, the Florida Supreme Court held that the then Game and Fresh Water Fish Commission had the authority to regulate *ferae naturae* or untamed animals in the wild, but the agency did not have the authority to regulate ownership of the animals once they became the property of someone, especially non-native animals. Barrow v. Holland, 125 So.2d 749 (Fla. 1960). In response to this issue, the Legislature enacted section 372.921 and 372.922 to authorize GFC to regulate captive wildlife, including wildlife possessed as pets or for exhibition or sale.

In 1974, the Florida Constitution was amended to empower GFC to "exercise the regulatory and executive powers of the State with respect to wild animal life and freshwater aquatic life." Article IV, Section 9, of the Florida Constitution. This constitutional provision has been interpreted to mean that GFC has constitutional authority over all fish and wildlife whether in the wild or in captivity. Charles River Laboratories, Inc. v. Florida Game and Fresh Water Fish

Commission, DOAH Case No. 96-2017 , affirmed at 717 So.2d 1003 (Fla. 1st DCA 1998). In 1998, the citizens of Florida voted to amend the state constitution in order to create the Florida Fish and Wildlife Conservation Commission which continued the grant of constitutional authority to the commission regulated all wildlife. The authority of FWC to regulate captive wildlife as part of its constitutional authority is no longer in question. Miramar v. Bain, 429 So.2d 40 (Fla. 4th DCA 1983) and Haddock & Greyhound Breeders Assn. of Fla. v. Florida Game and Fresh Water Fish Commission, DOAH Case No. 86-3341RP (decided May 19, 1997). Furthermore, FWC rules take precedence over legislative enactments which conflict with those rules. Whitehead v. Rogers, 223 So.2d 330 (Fla. 1969); Beck v. Game and Fresh Water Fish Commission, 33 So.2d 594 (Fla. 1948); State ex rel. Griffin v. Sullivan, 30 So.2d 919 (Fla. 1947) and Price v. City of St. Petersburg, 29 So.2d 753 (Fla. 1947).

Chapter 372, Florida Statutes is now considered to be in aid of FWC's constitutional authority by providing the authority for license fees and penalties for violations of FWC rules on captive wildlife. Rule Chapter 68, Florida Administrative Code provides the administrative rules relating to captive wildlife and Rule 68A-5.004, F.A.C. provides for suspension or revocation of licenses for a violation of the rules. This licensing and permitting program has extensive regulations regarding standards for possessing, housing, feeding, transporting, exhibiting, transferring, caring or selling animals. These regulations involve inspecting the property before the permit is issued. These regulations ensure both the safe and humane treatment of the animals and the public health safety and welfare. In 2007, the Legislature, in response to the escape of Burmese python into the Everglades National Park and to assist FWC in dealing with other reptiles of concern, enacted HB 1505 which provides for enhanced penalties for repeat offenders of captive wildlife violations and for repeat offenders. Both the statutes and the rules are providing a comprehensive and uniform state licensing and permitting process for the possession, exhibition and sale of captive wildlife.

Local government and captive wildlife

Formerly, Rule 68A-6.0022(5)(a)5.b, F.A.C. required appropriate neighborhoods for wildlife. It states:

5. Facility Requirements:

b. In order to assure public safety, Class I and Class II wildlife shall only be kept in **appropriate neighborhoods** and, accordingly, facilities that house such wildlife shall meet the requirements of this rule subsection. Compliance with these requirements is a necessary condition for licensure. For purposes of this subsection, a "facility" means the site at which Class I or Class II carnivores are kept or exhibited. Applicants shall submit documentation verifying that the construction of the facility, its cages and enclosures is not prohibited by county ordinances and, if within a municipality, municipal ordinance.

This rule has been replaced by Rule 68A-6.003, F.A.C., to be effective January 1, 2008. The rule deletes the appropriate neighborhood provision and states in pertinent part:

68A-6.003 Facility and Structural Caging Requirement for Class I, II and III Wildlife.

(2) In order to assure public safety, the facilities for the housing of Class I and Class II wildlife shall meet the requirements of this rule. Compliance with these requirements is a necessary condition for licensure. For the purposes of this rule, a "facility" means the site at which Class I or Class II wildlife are kept or exhibited. **Applicants shall submit documentation verifying that the construction of the facility, its cages and enclosures are not prohibited by county ordinance and, if within a municipality, municipal ordinance.**

5. Zoning:

Facilities housing the following Class I wildlife may not be located on property within an area zoned solely for residential use. Changes in zoning subsequent to the issuance of the license or permit shall not be disqualifying provided the license is maintained in a current and valid status.

- a. Primates (all listed species)
- b. Cats (all listed species)
- c. Bears (family *Ursidae*)
- d. Elephants (family *Elephantidae*)
- e. Rhinoceros (family *Rhinocerotidae*)
- f. Hippopotamuses (family *Hippopotamidae*)
- g. Cape Buffalos (*Syncerus caffer caffer*)

(c) Exemptions:

The following Class I and Class II wildlife are exempt from the facility requirements as listed above:

- 1. Permits authorizing possession of infants only including:
 - a. Class I or Class II carnivores until they reach 25 pounds or six (6) months of age, whichever ever comes first, provided written documentation is available to verify the age of the animal, the animal is marked or otherwise identifiable, and the animal is provided space for exercise on a daily basis;
 - b. Class I and II primates until they reach the age of twelve (12) months, provided written documentation is available to verify the age of the animal, the animal is marked or otherwise identifiable, and the animal is provided space for exercise on a daily basis.
- 2. Crocodylians four (4) feet in length or less.
- 3. Cats: Ocelots (*Leopardus pardalis*), Servals (*Leptailurus serval*), Caracals (*Caracal caracal*), Bobcats (*Lynx rufus*), African golden cats (*Profelis aurata*), Temminck's golden cats (*Profelis temmincki*), and Fishing cats (*Prionailurus viverrina*).
- 4. Non-human primates: Uakaris (*genus Cacajao*), Bearded sakis (*genus Chiropotes*), and Guenons (*genus Cercopithecus*) not including De Brazza's monkey (*Cercopithecus neglectus*), Blue monkey (*Cercopithecus mitis*), Preuss's monkey (*Cercopithecus preussi*) or any other non-human primate of the genus *Cercopithecus* which exceeds the normal adult weight of fourteen (14) pounds.

(d) Any Class I or Class II wildlife exempt from meeting the facility requirements of this rule must meet the following:

- 1. Class I wildlife shall not be possessed in **any multi-unit dwellings** or on any premises consisting of less than one quarter acre of land area.
- 2. Class II wildlife shall not be possessed in **multi-unit dwellings** unless the dwelling in which they are housed is equipped with private entrance, exit and yard area.
- 3. A fence sufficient to deter entry by the public, which shall be a minimum of five (5) feet in height, shall be present around the premises wherein Class I or Class II animals are housed or exercised outdoors.

(e) The above requirements shall be effective January 1, 2008, but shall not apply to those facilities licensed to possess captive wildlife species prior to that date. After January 1, 2008, those licensees that desire to expand their inventory to include a family of Class I or Class II species not previously authorized at their facility location shall comply with the requirements here in. Requests to upgrade wildlife classification authorizations shall be considered new applications for license purposes.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 372.921, 372.922 FS. History—New 8-1-79, Amended 6-21-82, Formerly 39-6.03, Amended 6-1-86, 7-1-90, 7-1-92, 2-1-98, Formerly 39-6.003, Amended 1-1-08.

City of Miramar v. Bain, 429 So.2d 40 (Fla. 4th DCA 1983) held that and state that the local governments are not authorized to adopt ordinances relating to captive wildlife which conflict with the authority of FWC. See also, Attorney General Opinion 2002-23 (March 15, 2002). These opinions also state that FWC has exclusive authority to enact rules and regulations

governing wildlife. This means that local governments cannot directly regulate captive wildlife, even if the local ordinance is more restrictive than the FWC rules and regulations and even if FWC has no rules or regulations that apply to that particular area. But the District Court of Appeal in City of Miramar v. Bain recognized that local government had some sphere of control to determine “appropriate neighborhoods” and commented about Rule 68A-6.02 (then the “appropriate neighborhood rule” and predecessor to recently repealed Rule 68A-6.0022) as follows:

We construe Rule 68A-6.02(5)(c) to mean that prior to issuance of a permit, applicants must demonstrate to the Commission that they can provide satisfactory caging facilities without violation of existing city or county building and zoning regulations. This construction provides for harmonious blending of the Commission’s permit requirements and city and county building and zoning regulations. It also insures that wildlife will only be maintained in appropriate neighborhoods.

City of Miramar v. Bain at 43.

Under the City of Miramar v. Bain decision, the Fourth District Court recognized that local government could adopt a comprehensive land use plan, **zoning code or building code** that would ensure that permitted wildlife is maintained in suitable neighborhoods or locations as long as those regulations do not discriminate against captive wildlife. Under the former rule, FWC could give deference to these building codes and zoning ordinance to determine the “appropriate neighborhood” for wildlife. However, the new rule deletes the appropriate neighborhood language and, in our view renders the City of Miramar v. Bain language, as to local government sphere of local control over wildlife through zoning, inapplicable.

The new rule, to be effective January 1, 2008, offers no deference to local government to determine appropriate neighborhoods for wildlife; therefore, there is no authority under FWC rules for local governments to determine appropriate neighborhoods for wildlife. FWC interprets Rule 68A-6.003 to only allow local government to control the structural requirements of buildings, that is, the building or facility must meet the requirements of the building code. The new rule further states that Class I captive wildlife may not be possessed in areas zoned “residential only”; other Class I and II wildlife which are exempt from facility requirements (small cats and small primates) may not be possessed in “multi-unit dwellings”. It has become a common occurrence for local governments to attempt to regulate some aspect of captive wildlife, which requires FWC to, on ad hoc basis, deal with draft local ordinances on captive wildlife. We hope this memorandum will help local government better understand the role of the state in regulation of captive wildlife and captive wildlife facilities.

The following are examples of some local actions or ordinances that FWC believes are either authorized or unauthorized by the Article IV, Section 9, Florida Constitution and FWC rules thereto.

Types of actions or ordinances which are authorized

- Local government can establish “residential use only” zoning, which can in effect prohibit certain kinds of Class I wildlife. Local governments are authorized to regulate the abatement of public nuisances such as poor sanitation or noise that may be associated with the keeping of wildlife provided the ordinance does not distinguish between nuisances from animals and nuisances from other sources.

- Local government can control structural requirements of buildings and if a property owner wants to build a structure for their animals, the structure must comply with local building codes. Local government can regulate the building of the structures as long as it does not distinguish between structures for wildlife and structures for other purposes.
- Local government can regulate commercial activity provided that captive wildlife is not discriminated against through this regulation.
- Local government may regulate the possession and discharge of firearms within municipal boundaries (FWC requests that portions of Wildlife Management Areas within municipalities be exempted from such restrictions).
- Local government may control the use of local government-owned property and facilities and prohibit or regulate exhibitions thereon, so long as the regulation is directed to behaviors which may be addressed under local police power, and does not regulate wildlife.
- Local government can require persons engaged in occupations to comply with registration requirements. This might require a captive wildlife facility to disclose and describe the captive wildlife in possession.

Types of action or ordinances which are not authorized

- Local government is prohibited by the constitution, statute and rules from prohibiting the possession, breeding or sale of captive wildlife.
- Local government cannot establish zoning classifications which expressly regulate or prohibit possession of wildlife. Local government cannot prohibit the possession of Class I or II wildlife in zoning classifications such as mixed use residential or commercial.
- Local government may not regulate in the area of taking, possession, transportation or sale of wildlife, even if the ordinance is more restrictive, and even if there is no specific FWC rule dealing with that particular issue. These areas are preempted by FWC rules and regulations.
- Local government may not regulate in the areas of hunting or fishing, even if the ordinances are more restrictive than FWC rules and regulations, and even if there is no specific FWC rule dealing with that particular issue. These areas are preempted by FWC's rules and regulations.
- Local governments that create their own captive wildlife permitting and regulatory system are in conflict with Article IV, Section 9. If the ordinance gives the locality the authority to deny a permit for the possession of captive wildlife regulated by FWC, that permitting system would be in conflict with FWC's authority unless the ordinance is in effect as registration program that allows a person to possess wildlife if authorized by FWC provided that possessors of captive wildlife must register with local government.

Conclusion

The Florida Constitution, FWC rules and those Florida Statutes in aid of the Commission provide authority for comprehensive and uniform state-wide regulation and control of captive wildlife by FWC. The Florida Courts have upheld FWC's exclusive authority in this area. Local government regulatory authority in the area of captive wildlife is limited. This governing structure is designed to provide state-wide regulation of captive wildlife without overlapping or conflicting local ordinances.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

DAVID W. FOLEY, JR.; and JENNIFER
T. FOLEY,

Plaintiffs,

vs.

Case No. 6:12-cv-269-Orl-37KRS

ORANGE COUNTY,

Defendant.

ORDER

This cause is before the Court on the following:

1. Defendant Orange County's Motion to Dismiss (Doc. 175), filed January 31, 2013;
2. Plaintiffs' Response to County's Motion to Dismiss (Doc. 182), filed February 14, 2013;
3. Defendant Orange County's Dispositive Motion for Final Summary Judgment (Doc. 261), filed June 14, 2013;
4. Plaintiffs' Motion for Summary Judgment (Doc. 269), filed June 14, 2013;
5. Plaintiffs' Response to Defendant Orange County's Motion for Summary Judgment (Doc. 277), filed June 28, 2013;
6. Defendant Orange County's Response in Opposition to Plaintiffs' Motion for Summary Judgment (Doc. 282), filed July 15, 2013;
7. Plaintiffs' Supplemental Response in Opposition to Orange County's Motion for Summary Judgment (Doc. 285), filed July 22, 2013;
8. Plaintiff's Reply to Defendant Orange County's Response in Opposition to

Plaintiffs' Motion for Summary Judgment (Doc. 286), filed July 31, 2013;

9. Defendant Orange County's Reply in Support of Summary Judgment (Doc. 287), filed August 5, 2013.

BACKGROUND

Plaintiffs are residents of Orange County, Florida, who own and raise toucans. (Decl. ¶¶ 10, 20.)¹ They bring several claims against Orange County based on their efforts to operate a commercial aviary out of their residence, which is located in a residential-only zoned area of the county, and another parcel of property that is located in rural-use zoned area of the county. (*Id.* ¶¶ 12–19.) Plaintiffs contend, writ large, that portions of Orange County's land use ordinances, which prohibit the operation of a commercial aviary at the residence altogether and at the second property absent a special use permit, conflict with a provision of the Florida Constitution that provides the Florida Fish and Wildlife Commission with all of the "regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life." Art. IV, § 9, Fla. Const.

The dispute arose after Orange County received a citizen's complaint regarding Plaintiffs' business. (Decl. ¶ 39.) County code enforcement officers investigated the complaint and cited Plaintiffs for building accessory buildings at their residence without the necessary permits. (*Id.* ¶¶ 41, 51.) During the pendency of the ensuing code enforcement proceedings, Plaintiffs requested the county zoning manager provide them

¹ Plaintiffs, in violation of the Local Rules, attempt to incorporate by reference over 200 pages of materials to the Amended Complaint. While Plaintiffs' complaint and attachments are voluminous, most of the relevant facts are set forth in an attached declaration. (Doc. 164, Exhibit 14.) The Court will construe the declaration as alleging the factual support for the complaint and in this Order will refer to the allegations it contains as "Decl."

with an official determination as to whether they were authorized to operate a commercial aviary at their residence. (*Id.* ¶ 69.) The manager determined that the operation of a commercial aviary at the residence was not authorized as a primary or secondary use under Orange County's land use ordinances, and he determined further that a commercial aviary was not an authorized home occupation. (Doc. 163, Ex. 10.) Plaintiffs appealed the manager's determination to the board of zoning adjustment and then the board of county commissioners, but failed to convince either body to overturn the manager's interpretation of the ordinances. (Decl. ¶¶ 83, 98, 101, 121.) Plaintiffs filed actions in state court for reviews of the code enforcement proceedings and the determination proceedings; however, in both cases, the courts determined that Orange County did not err. (*Id.* ¶¶ 123–124.) Plaintiff then filed this action.

Plaintiffs' initial 67-page complaint brought numerous federal and state claims against Defendant Orange County and a number of individual defendants. Plaintiffs sought, and were granted leave to amend their initial complaint. (Doc. 88.) They filed a 92-page Amended Complaint on May 14, 2012, which once again brought numerous federal and state claims against Defendant Orange County and a number of individual defendants. (Doc. 85.) The Court dismissed all claims in Plaintiff's amended complaint and struck it as improper on December 4, 2012. (Doc. 150.) The Court dismissed the claims against all of the individual defendants with prejudice, and dismissed without prejudice those brought against Orange County. (*Id.*) The Court directed Plaintiffs to file a Second Amended Complaint that set forth only claims against Orange County. (*Id.*)

The Second Amended Complaint—like its predecessors—is verbose, filled with irrelevant discussions of legal issues, and attempts to bring federal and state claims against Defendant Orange County and a number of individual defendants. (Doc. 162.)

While the Second Amended Complaint sets forth its federal and state law claims in just 39 pages, it also incorporates by reference three appendices totaling over 200 pages of material. Such incorporation by reference violates Local Rule 4.01. Rather than dismissing the complaint yet again, the Court will treat the declaration that is part of Appendix B (Doc. 164, Exhibit 14) as setting forth Plaintiffs' allegations of fact.

The Court construes the Second Amended Complaint as presenting a state-law claim that seeks a declaration that portions of Orange County's land use ordinances are void.² The Court also construes the Second Amended Complaint as raising five federal claims. The first federal claim is a substantive due process challenge to Orange County's land use ordinances.³ Plaintiffs' second federal claim is a "class of one" equal protection claim. Their third federal claim is one for "compelled speech" in violation of the First Amendment, and their fourth federal claim alleges Orange County's ordinances act as prior restraints to Plaintiffs' commercial speech rights. Plaintiffs' final federal claim is that Orange County's land use proceedings are searches and seizures that violate

² This claim is not subject to res judicata or estopped by Plaintiffs' state court actions, which were in nature of an administrative review of an executive action. Indeed, in those proceedings, the state court notified Plaintiffs of the need to file an independent civil action to challenge the constitutionality of the land use ordinances. (See Doc. 26, Ex. A; Doc. 66, Ex. 1; Doc. 67, Ex. 2.)

³ The Court construes this claim as a facial substantive due process claim to three provisions—Section 38-1, Section 38-77, and Section 38-79(48)—of Orange County's zoning ordinance as well as a challenge to Orange County's application of those provisions to Plaintiffs' residence. See *Eide v. Sarasota Cty.*, 908 F.2d 716, 721–22 (11th Cir. 1990). Plaintiffs cannot bring an as applied substantive due process challenge in connection with their second property because they have not shown that Orange County has applied the ordinances to that property. See *id.* at 724–25; see also *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 197–200 (1985) (refusing to adjudicate the plaintiff's due process claims in a dispute concerning land use regulations because the plaintiff "failed to apply for variances from the regulations"). In other words, the claim that relates to the rural property is not ripe.

Plaintiffs' Fourth Amendment rights.⁴

The parties have conducted discovery and filed cross motions for summary judgment. These motions are now ripe for adjudication. The relevant facts are not disputed.⁵

STANDARDS

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To defeat a motion for summary judgment, the nonmoving party must "go beyond the pleadings, and present affirmative evidence to show that a genuine issue of material fact exists." *Porter v. Ray*, 461 F.3d 1315, 1320 (11th Cir. 2006). The Court must "draw all justifiable inferences in favor of the nonmoving party, including questions of credibility and of the weight to be accorded

⁴ The Second Amended Complaint purports to bring claims against Defendants other than Orange County without leave. Because the Court had previously dismissed those claims with prejudice (Doc. 150), the Court issued an Order informing those parties that they need not respond to the Second Amended Complaint and directing the clerk to terminate them as parties to this action (Doc. 168). In this Order, the Court considers only those claims in the Second Amended Complaint that Plaintiffs assert against Defendant Orange County. To the extent Plaintiffs intend to bring claims against any other defendant, such claims are hereby dismissed because Plaintiffs' were not granted leave to assert such claims in their amended pleading. As an additional basis for dismissal, if one is needed, the Court also dismisses those claims as a sanction for Plaintiffs' failure to abide the Court's Order to comply with the Rule 8 and Rule 10 of the Federal Rules of Civil Procedure.

⁵ Plaintiffs' residence is classified as R-1A by the county's land use ordinances. Plaintiffs own or have an interest in a toucan breeding business. Mr. Foley and his business were issued permits that authorized the possession and sale of the birds at the residential property. And Orange County has prohibited Plaintiffs from operating their toucan breeding business at their residence.

particular evidence.” *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

“Cross motions for summary judgment do not change the standard.” *Perez-Santiago v. Volusia Cnty.*, No. 6:08-cv-1868-Orl-28KRS, 2010 WL 917872, at *2 (M.D. Fla. Mar. 11, 2010) (quoting *Latin Am. Music Co. v. Archdiocese of San Juan of the Roman Catholic & Apostolic Church*, 499 F.3d 32, 38 (1st Cir. 2007)) (internal quotation marks omitted); see also *Taft Broadcasting Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991). “Cross motions for summary judgment are to be treated separately; the denial of one does not require the grant of another.” *Santiago*, 2010 WL 917872 at *2 (citations and internal quotation marks omitted). When considering cross-motions for summary judgment, the Court must “consider and rule upon each party’s motion separately and determine whether summary judgment is appropriate as to each under the Rule 56 standard.” *Monumental Paving & Excavating, Inc. v. Pa. Mfrs.’ Ass’n Ins. Co.*, 176 F.3d 794, 797 (4th Cir. 1999) (citations omitted).

DISCUSSION

Plaintiffs’ core dispute with Orange County—that the county has no authority to regulate their toucan breeding business—is encapsulated in their state-law claim. The Court will therefore discuss that claim first. The Court then addresses the merits of Plaintiffs’ federal claims.

I. State Law Claims

The Court construes Plaintiffs’ Second Amended Complaint as seeking a declaration that certain portions of Orange County’s land use ordinances are void under Florida law. To address this claim, the Court must first review the county’s land use ordinances and then describe in detail the ordinances challenged by Plaintiffs. The Court then reviews Florida’s legislative and regulatory scheme for the possession and

sale of captive wildlife. The parties dispute how these two regulatory schemes interact.

A. Orange County's Land Use Ordinances

Orange County is a charter county that possesses in accordance with Article 8, section 1(g) of the Florida Constitution, "all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors." As such, it "may enact county ordinances not inconsistent with general law." *Seminole Cty. v. City of Winter Springs*, 935 So. 2d 521, 523 (Fla. 5th DCA 2006). This is a direct constitutional grant of broad powers of self-government. *Id.* It is pursuant to this constitutional delegation of the state's police power that Orange County enacted a comprehensive set of land use regulations. See Fla. Stat. § 125.66.

Orange County divides the land within its boundaries into land use districts. Ch. 38, Art. IV, § 38-71, Orange County Code ("OCC"). These districts are designated, among other things, for commercial use, agricultural use, and residential use. *Id.* § 38-77. The ordinances identify land uses—those that are permitted, those that are prohibited, and those that may be allowed if a special exception is granted by the county—by reference to a use table. *Id.* §§ 38-74, 38-77. The use table's rows and columns denote different land use districts and land uses. *Id.*

Plaintiffs' residence is located in the R-1A zone, which is "intended to be single-family residential areas with large lots and low population densities" Ch. 38, Art. VI, § 38-301, OCC. The county's ordinances permit Plaintiffs to use their residence for only those categories of land uses that are designated *P* in the land use table and, if they apply for and are granted a special exception, those categories of land uses designated *S*. *Id.* § 38-302, 38-303. If the table contains a number, then another section of the zoning ordinances imposes certain conditions with which a property owner must comply

in order to engage in that land use. *Id.* § 38-79. If the land use table is blank for a particular land use category, then that use is prohibited in that district. *Id.* § 38-304. The ordinances define some of the categories listed in the land use table. The land use table designates “commercial aviculture, aviaries” as a category of land use. An aviary is defined as “an enclosure for holding birds, excluding poultry, in confinement.” Ch. 38, Art. I., § 38-1, OCC. “*Aviculture (commercial)*” is defined as “the raising, breeding and/or selling of exotic birds, excluding poultry, for commercial purposes.” *Id.* The definition also directs that a commercial purpose is present if any one of the following conditions are satisfied:

- (1) The operation exists with the intent and for the purpose of financial gain;
- (2) Statements of income or deductions relating to the operation are included with routine income tax reporting to the Internal Revenue Service;
- (3) A state sales tax identification number is used to obtain feed, supplies or birds;
- (4) An occupational license has been obtained for the operation;
- (5) Sales are conducted at the subject location;
- (6) The operation involves birds or supplies which were purchased or traded for the purpose of resale;
- (7) The operation involves a flea market or commercial auction, excluding auctions conducted by not-for-profit private clubs;
- (8) The operation or activities related thereto are advertised, including, but not limited to, newspaper advertisements or signs;
or
- (9) The operation has directly or indirectly created traffic.

Id. The ordinances define poultry as “domestic fowl such as chickens, roosters, turkeys, ducks, geese, pigeons, etc.” *Id.* No definition is supplied for non-commercial aviculture, nor is any such category listed in the land use table. *Id.* The land use table designates instead the “breeding, keeping, and raising of exotic animals” as another category of land use. Ch. 38, Art. IV, § 38-78, OCC. This category is left undefined. The land use table is blank in reference to an R-1A district for the “commercial aviculture, aviaries”

and “breeding, keeping, and raising of exotic animals” categories. *Id.* Land uses falling within these categories are therefore prohibited. Ch. 38, Art. VI, § 38-304, OCC.

B. The Possession and Sale of Captive Wildlife in Florida

All wildlife in Florida is controlled and regulated by a state agency called the Florida Fish and Wildlife Conservation Commission. The commission was created by the Florida Constitution and given “the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life,” Art. IV, § 9, Fla. Const.

The current incarnation of the commission was formed after voters adopted a proposal of the 1998 Constitutional Revision Commission to merge the former Game and Fresh Water Fish Commission “GAME Commission”), which was a constitutional agency, and the Marine Fisheries Commission, which was an agency created by statute. *Caribbean Conservation Corp. v. Florida Fish & Wildlife Conservation Comm’n*, 838 So. 2d 492, 497–99 (Fla. 2003). While the Game Commission was created in 1942, it did not have the power to regulate captive wildlife until the Florida Constitution was revised in the late 1960s. *Compare Barrow v. Holland*, 125 So. 2d 749, 751 (Fla. 1960) (concluding that Art. IV, § 30 of the Florida Constitution of 1885, which authorizes the creation of the Game Commission, did not provide the commission with the power to regulate captive wildlife) *with* Art. IV, § 9, Fla. Const. (authorizing the Game Commission to carry out “the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.”).

The commission has exercised the powers given to it by promulgating rules regulating the possession and sale of captive wildlife, which are found in chapter 68A of the *Florida Administrative Code*. Rule 68A-1.002 of the Code declares that “[a]ll wild animal life within the jurisdiction of the State of Florida, whether such wild animal life is

privately owned or otherwise, is subject to the regulation of the Commission.” The regulations require all persons, except in limited circumstances not relevant here, to obtain a permit from the commission in order to lawfully “possess any native or non-native wildlife in captivity.” Fla. Admin. Code R. 68A-6.0011.

Such permits are issued in three classes. A class I permit is required to possess animals such as lions, tigers, and bears. *Id.* 68A-6.002(1)(a), 68A-6.0022(1). A class II permit is required to possess animals such as monkeys, the smaller members of taxonomic family *Felidae*, and some members of the family *Canidae*. *Id.* 68A-6.002(1)(b), 68A-0022(1). If a category of wildlife is not listed as class I or class II, and it is not identified as an enumerated exception, then a person must obtain a class III permit to possess and sell the animals. *Id.* 68A-6.002(1)(c), 68A-6.0022. Permits issued by the commission are labeled as “Licenses to Sell or Exhibit” and specifically identify the animals that the licensee is authorized to possess. (See, e.g., Doc. 264-1.)

The commission requires persons possessing wildlife to obtain documentation regarding the source and supplier of every animal, as well as document the birth, death, and sale of every animal. *Id.*; see also *id.* 68A-6.006. A permit holder is obligated under the Code to maintain these records, make them available upon request, and allow the inspection of the facility housing the wildlife. *Id.* 68A-4.006. The commission specifically requires any person engaged in the business of breeding exotic birds to obtain a permit from the commission.⁶ *Id.* 68A-6.006(1).

The commission has forbidden the possession of class I wildlife for personal use, *id.* 68A-6.0021(1), which the Court construes to mean wildlife maintained in captivity as

⁶ The rules regarding the sale of captive exotic birds are murky, but are not central to the resolution of the dispute between the parties because there is no dispute that Plaintiffs’ business is intended to be a commercial breeding operation.

a personal pet, *see id.* 68A-1.004(55) (defining the term "personal pet"). Indeed, the commission presumes that "the possession of wildlife . . . is commercial in nature," and (unless one qualifies as a "hobbyist possessor" of class III wildlife) requires every permit holder to "demonstrate consistent and sustained commercial activity in the form of exhibition or sale" of the wildlife the holder is authorized to possess. *Id.* 68A-6.0024(1).

The commission also regulates the size and composition of the facility that must be used to house captive wildlife. *Id.* 68A-6.0023; *see also id.* 68A-6.003–68A-6.004. The rules specifically regulate the size and construction of cages for exotic birds. *Id.* 68A-6.004(4)(r). The commission also considers, prior to issuance of a permit, the location and character of the property where captive wildlife will be housed. The way in which the commission has done so has changed over the years, however. Prior to 2008, the commission required applicants for class I and class II permits to show that the wildlife would be kept in "appropriate neighborhoods," which is also the term used in the commission's enabling statute.⁷ *See id.* 68A-6.0022(5)(b) (2000); Fla. Stat. § 379.303(1) (2012). In 2008, the commission modified Rule 68A-6.003 entitled "Facility and Structural Caging Requirements of Class I, II and III Wildlife" to include certain requirements for properties housing captive wildlife. Among other things, this rule required applicants seeking permits for class I and class II wildlife to demonstrate the required cages and enclosures were not prohibited by any county or municipal ordinance. Fla. Admin. Code R. 68A-6.003(2) (2008). The rule also specifically prohibited certain class I wildlife from being housed on "property within an area zoned solely for residential use." *Id.* 68A-6.003(2)(c) (2008).

⁷ Referring to the relevant Florida Statutes as "enabling" is a misnomer as the state legislature can only "enact laws in aid of the commission." Art. IV, § 9, Fla. Const.

The current version of Rule 68A-6.003 requires facilities for the housing of Class I and Class II wildlife to meet certain ownership requirements, be of a certain size, contain an appropriate buffer zone, and be enclosed by a perimeter fence. *Id.* 68A-6.003(2) (2010). While the commission has imposed additional requirements for facilities housing class III mammals, it does not impose any additional requirements for facilities housing class III birds. *Id.* 68A-6.003(2) (2010). Further, and in contrast to the requirements imposed on class I and class II wildlife in the past, the rule does not require applicants to show that the required cages and enclosures would not be prohibited by a county or municipal ordinance. *Id.* In place of such a requirement, the rule directs the commission's staff to provide notice of a permit application to the county or municipality in which a proposed Class I or Class II wildlife facility is located.⁸ *Id.* Under the commission's rules, once it issues by a permit, the licensee is authorized to possess wildlife at the location identified in the permit. *Id.* 68A-6.0022(1).

C. Intersection of the Regulation of Land Use and Captive Wildlife

Plaintiffs' main legal theory is that the portions of Orange County's zoning ordinances that regulate commercial aviculture conflict with the Florida Constitution's grant of regulatory and executive authority over captive wildlife to the Fish and Wildlife Conservation Commission. Orange County, in contrast, casts this as a question of preemption. That is not the correct legal analysis, however. Under the correct analysis, the Court must ask first whether the commission is provided with constitutional authority over the subject matter of the challenged ordinance. If it is, then the ordinance is invalid. If not, then the Court must determine whether the scope of the statute is limited to

⁸ The rules do not provide for such notice when the application is to possess class III wildlife.

subjects that fall outside of the commission's constitutional authority.

In *Whitehead v. Rogers*, 223 So. 2d 330 (Fla. 1968), the Supreme Court of Florida considered a conflict between the constitutional grant of power given to the Game Commission by the Florida Constitution of 1885 to regulate hunting seasons and a state statute of general application. A hunter was arrested for violating a statute that prohibited the discharge of firearms on Sundays. *Id.* at 331. The hunter possessed a valid hunting license issued by the Game Commission that authorized the licensee to hunt from a certain date to a certain date. *Id.* 330. One of the authorized dates was a Sunday. *Id.* Because the state legislature could enact only "laws in aid of, but not inconsistent with," the Game Commission's constitutional grant of authority, the court reasoned that the statute was void to the extent it prohibited an activity that was expressly authorized by the Game Commission. *Id.* at 330-31.

In *Askew v. Game and Fresh Water Fish Commission*, 336 So. 2d 556 (Fla. 1976), the Court was asked to void statutes which purported to allow a state agency to introduce non-native fresh water fish into Florida's waters without first obtaining a permit from the Game Commission. In reaching its decision, the court first construed the Game Commission's constitutional grant of authority, which provided that the "commission shall exercise the nonjudicial powers of the state with respect to wild animal life and fresh water aquatic life." *Id.* at 559 (construing Art. IV, § 9 of the Florida Constitution of 1968). The court noted that, "standing alone, . . . Article IV, Section 9 of the Florida Constitution would require that the challenged statutes be held unconstitutional." *Id.* at 560. Nevertheless, the court noted that another constitutional provision provided the legislature with the power protect the state's natural resources. *Id.* Reasoning that the constitution should be read as a whole and that each of its parts

should be given meaning, the court concluded that the challenged statutes were a valid exercise of legislative authority granted by the second constitutional provision. *Id.*

The scope of authority granted to the Game Commission was challenged again in *Airboat Association of Florida, Inc. v. Florida Game and Fresh Water Fish Commission*, 498 So. 2d 629 (Fla. 1986). In that case, the Game Commission had promulgated rules that restricted the use of dogs and all-terrain vehicles for hunting wildlife in the Big Cypress Wildlife Management Area. *Id.* at 630. The petitioners challenged the rules under the state administrative procedure act; however, the court noted that the Game Commission, as a constitutional body, was not an agency within the meaning of the administrative procedure act. *Id.* at 631. The court also noted that the rules promulgated by the Game Commission were not rules but rather were “in the nature of legislative acts.” *Id.* at 632.

Most recently, the Supreme Court of Florida construed the scope of the current commission's authority over all marine wildlife in *Caribbean Conservation Corp. v. Florida Fish & Wildlife Conservation Comm'n*, 838 So. 2d 492, 497–99 (Fla. 2003). In that case, a conservation group challenged certain statutes that purportedly usurped the commission's constitutional authority. *Id.* at 494. The court explained that, to determine whether a challenged statute is constitutional, a court must first determine whether the Florida Constitution provides the commission with constitutional authority over the subject matter of the statute. *Id.* at 500–01. If not, then the court should consider whether the scope of the statute is limited to subjects that fall outside of the commission's constitutional authority. *Id.* Using this framework, the court looked to the language used in the Florida Constitution and construed it “consistent with the intent of the framers and the voters.” *Id.* at 501. The court also endeavored to read multiple

constitutional provisions *in pari materia* to ensure that each is given a consistent and logical meaning. *Id.*

In sum, Florida law provides that the state legislative power over captive wildlife was transferred to the Florida Fish and Wildlife Conservation Commission. Art. IV, § 9, Fla. Const.; *see also Sylvester v. Tindall*, 18 So. 2d 892, 900 (Fla. 1944). The effect of the transfer of that portion of the state's legislative power was to divest the state legislature of authority to regulate the possession and sale of captive wildlife, *Beck v. Game and Fresh Water Fish Commission*, 33 So. 2d 594, 595 (Fla. 1948), and vest that power in the commission, *State ex rel. Griffin v. Sullivan*, 30 So. 2d 919, 920 (Fla. 1947).⁹ The commission therefore assumed the regulatory authority that the legislature had prior to the transfer. *Caribbean Conservation*, 838 So. 2d at 497. As such, the rules adopted by the commission are tantamount to legislative acts, *Airboat Ass'n of Florida, Inc.*, 498 So. 2d at 630, and become the governing law of the state, *Griffin*, 30 So. 2d at 920. Any and all laws in conflict with the commission's rules are consequently void. *Whitehead*, 223 So. 2d at 330–31.

Applying these principles, the Court concludes that Orange County cannot use its land use ordinances to regulate the possession or sale of captive wildlife. Those ordinances specifically seek to prohibit the use of Plaintiffs' residence for "commercial aviculture, aviaries" and the "breeding, keeping, and raising of exotic animals." Ch. 38,

⁹ As the Florida Attorney General concluded shortly after the adoption of the Constitution of 1968, the commission has "replaced the legislature as the representative of the people." Op. Att'y Gen. Fla. 72-41 (1972). "The commission's decisions are the law" when its regulations concern "wild animal life and fresh water aquatic life" in Florida. *Id.*

Art. IV, § 38-78, OCC; *Id.* Art. VI, § 38-304, OCC.¹⁰ Those land uses specifically target activities that fall within the exclusive authority of the commission,¹¹ whose rules on the topic are the governing law of the state. Orange County's prohibitions against land uses such as "commercial aviculture, aviaries" and "breeding, keeping, and raising of exotic animals" are in direct conflict with the commission's rules, which impose an obligation on the breeders of exotic birds to maintain a commercial enterprise. For this reason, Orange County's ordinances, to the extent that they regulate captive wildlife, and more specifically commercial aviculture, are inconsistent with general law and are therefore void.¹² See, e.g., *Grant*, 935 So. 2d at 523 (holding a charter county in Florida may only "enact county ordinances not inconsistent with general law").

Even if the Court were to accept Orange County's characterization of its ordinances as generally applicable—which it does not because the ordinances are not crafted in that way—Orange County still could not enforce its ordinances banning commercial aviculture against Plaintiffs. See *Whitehead*, 223 So. 2d at 330–31. In

¹⁰ Moreover, in its papers, Orange County admits that its ordinances specifically prohibit Plaintiffs from keeping, breeding, and raising exotic animals at their residence in addition to commercial aviculture. (Doc. 287, pp. 2–3.)

¹¹ Thus, the case of *City of Miramar v. Bain*, 429 So. 2d 40, (Fla. 4th DCA 1983), is inapposite because the ordinances in that case did not specifically seek to regulate the possession of captive wildlife.

¹² Indeed, Florida's Attorney General came to the same conclusion when he was asked to opine whether a non-charter county could enjoin "the possession, breeding or sale of non-indigenous exotic birds" using the county's land use ordinances. Op. Att'y Gen. Fla. 2002-23 (2002). Tellingly, Orange County has made no attempt in any of the papers filed in this case to distinguish its ordinances from those analyzed in the Attorney General's opinion, nor has Orange County attempted to explain why this Court should not be persuaded by the Attorney General's interpretation of Florida law. An opinion's arguments need not be compulsory in order to be compelling. While all too common, this ostrich-like tactic is generally not considered persuasive advocacy. See, e.g., *Gonzalez-Servin v. Ford Motor Co.*, 662 F.3d 931, 934 (7th Cir. 2011) (noting that the "ostrich is a noble animal, but not a proper model for an . . . advocate.").

Whitehead, the Florida Supreme Court held that a statute prohibiting shooting on Sunday was void to the extent it prohibited an activity that was specifically authorized by the Game Commission. *Id.* at 330–31. Like the hunter in *Whitehead*, who was issued a permit by the Game Commission that authorized him to hunt on Sunday, Plaintiffs were issued a permit by the commission authorizing them to possess and sell class III birds from their residence. *See id.* Thus, like the statute in *Whitehead*, Orange County's ordinances are void to the extent such ordinances prohibit Plaintiffs from possessing and selling class III birds from their residence. *See id.*

* * * * *

For these reasons, the Court concludes that Plaintiffs are entitled to summary judgment on their state law declaratory judgment claims that Orange County's ordinances are void.

II. Plaintiffs' Federal Claims

The Court construes the amended complaint as bringing five federal claims, each of which is discussed below.

A. Due Process

The Due Process Clause of the Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The Supreme Court has interpreted this clause to provide for two different kinds of constitutional protection: substantive due process and procedural due process. *McKinney v. Pate*, 20 F.3d 1550, 1555 (11th Cir. 1994) (en banc). Plaintiffs bring only substantive due process claims, which this Court must carefully analyze to determine the nature of the rights of which Plaintiffs have been deprived. *DeKalb Stone, Inc. v. County of DeKalb*, 106 F.3d 956, 959 (11th Cir. 1997).

Plaintiffs assert two possible bases for their claims.¹³ They contend first that Orange County's zoning ordinances are *ultra vires* and, therefore, are arbitrary and irrational. (Doc. 162, ¶ 57.) Plaintiffs also contend that Orange County's decision to uphold the zoning manager's determinations that a commercial aviary is not a permissible use of a residential-only zoned property, and that a commercial aviculture operation also cannot be a home occupation are substantive due process violations. (*Id.* ¶ 94.)

In order to address these claims, the Court will first review the law applicable to substantive due process claims. The Court will then apply that law to the two possible bases for Plaintiffs claims to see if they can state a claim under federal law. Then, the Court will discuss whether Plaintiffs' chief complaint—that Orange County's zoning ordinances are *ultra vires*—may state a substantive due process claim.

1. Applicable Law

The substantive component of the Due Process Clause protects those rights that are fundamental—that is, rights that are “implicit in the concept of ordered liberty.” *McKinney*, 20 F.3d at 1556. Fundamental rights are those protected by the U.S. Constitution. *Id.* Substantive rights that are created by state law are generally not subject to substantive due process protection. *Id.* Land use regulations like those at issue in this case are state-created rights that are not protected by substantive due process. *Greenbriar Village, L.L.C. v. Mountain Brook*, 345 F.3d 1258, 1262 (11th Cir.

¹³ The Court concludes without further analysis that a third possible basis—the actions of the county code enforcement personnel and the outcome of the code enforcement board proceeding—cannot support a substantive due process claim.

Furthermore, because Plaintiffs have refused to characterize their challenge as a regulatory takings claim, the Court declines to analyze their substantive due process challenge as a regulatory taking claim.

2003). There is an exception to this general rule, however.¹⁴

If a person's state-created rights are infringed by a "legislative act," the substantive component of the Due Process Clause will protect that person from a government's arbitrary and irrational action. *Lewis v. Brown*, 409 F.3d 1271, 1273 (11th Cir. 2005). The availability of this type of claim turns on the legislative nature of the government's action. If the action is executive in nature, then violations of state-created rights cannot support a substantive due process claim, even if the plaintiff alleges that the government acted arbitrarily and irrationally. *Greenbriar Village*, 345 F.3d at 1263.

The Eleventh Circuit describes executive acts as those acts that "apply to a limited number of persons (and often only one person)" and which "typically arise from the ministerial or administrative activities of members of the executive branch." *McKinney*, 20 F.3d at 1557 n.9. An example of an executive act that is not subject to substantive due process is the enforcement of existing zoning regulations. *DeKalb Stone, Inc.*, 106 F.3d at 959. Legislative acts, in contrast, "generally apply to larger segments of—if not all—society." *Id.* The Eleventh Circuit cites "laws and broad-ranging executive regulations" as common examples of legislative acts. *Id.*

2. Can Plaintiffs State a Claim?

In this case, the first basis for Plaintiffs' substantive due process claim can be construed as a challenge of a legislative act. It is a claim that Orange County has attempted to regulate land use in a manner that it could not under the organic law of Florida. The zoning ordinances challenged by Plaintiffs apply to all the real property

¹⁴ Plaintiffs recognize and raise this exception to the general legal principle. Orange County, however, failed to address the legislative act exception in its papers, relying instead on the general principle that state-created rights cannot form the basis of a substantive due process claim.

located in the county. They are broad-ranging and applicable to a large portion of county residents.

The second basis for Plaintiffs' claim, however, requires closer scrutiny. Plaintiffs challenge Orange County's decision to uphold the determinations of the county zoning manager that a commercial aviary is not an authorized use in the residential zoning category applicable to Plaintiffs' residence, and that operation of a commercial aviary is not an authorized home occupation under the zoning regulations. The chain of events began when Plaintiffs requested an "official determination" from the zoning manager as to whether the operation of a commercial aviary at their residence was permitted by the zoning code. (Decl. ¶¶ 67–69.) The zoning manager concluded that a commercial aviary was not permitted in the residential-only zoned areas. (Id. ¶ 81.) Plaintiffs appealed to the Board of Zoning Adjustment, which upheld the zoning manager's interpretation of the zoning ordinances. (Id. ¶¶ 85, 92.) Plaintiffs then appealed part of the board's decision to the Board of County Commissioners. (Decl. ¶ 101.)

At bottom, the second factual basis for Plaintiffs' substantive due process claim is a dispute over how Orange County interprets its existing zoning ordinances. Plaintiffs sought to persuade the county that a commercial aviary would be a permissible use of their residentially zoned property or that a home occupation (as that term is used in the zoning ordinances) could encompass the operation of a commercial aviary. They were unsuccessful. The county zoning manager, the county Board of Zoning Adjustments, and the Board of County Commissioners all decided that Plaintiffs' interpretation of the existing zoning ordinances was incorrect. The interpretation of existing laws is not a legislative function; it is an executive act usually intertwined with an enforcement

action.¹⁵ While Plaintiffs asked the county directly for an interpretation in this case, the nature of the action is the same—the county was interpreting the existing law.¹⁶ That is an executive act that cannot serve as the basis for a substantive due process claim.

Thus, to the extent Plaintiffs can bring a substantive due process claim, such claim must be based on the contention that the enactment of Orange County's land use ordinances was an arbitrary and irrational legislative act.

3. Do Plaintiffs Support Such a Claim?

As discussed above, the provisions of Orange County's land use ordinances that regulate captive wildlife are void. The ordinances are also unenforceable against the holders of permits issued by the commission that authorize the possession and sale of captive wildlife at a particular facility. These ordinances do not, however, implicate fundamental rights protected by the substantive component of the Due Process Clause. The ordinances implicate only property rights, which are the creature of state law.

Where a person's state-created rights are infringed by a legislative act, the Due

¹⁵ The ordinance that created Board of Zoning Adjustment tasked it with, among other things, hearing and deciding "appeals taken from the requirement, decision or determination made by the planning or zoning department manager where it is alleged that there is an error in the requirement, decision or determination made by said department manager in the *enforcement of zoning regulations*." Art. V, § 502, Orange County Charter (emphasis added).

¹⁶ The Eleventh Circuit reached a similar conclusion in *Boatman v. Town of Oakland*, 76 F.3d 341 (11th Cir. 1996), when it rejected a property owner's assertion that he had a substantive due process "right to a correct decision from a government official." In that case, a building inspector decided that the property owner's building was a mobile home that was prohibited by the applicable zoning ordinance. *Id.* at 345. The inspector therefore refused to inspect the property and issue a certificate of occupancy. *Id.* The property owner, who was also a member of the town zoning board, disagreed with the building inspector's interpretation of the zoning ordinance. *Id.* When the town council agreed with the inspector's interpretation of the ordinance, the property owner sued, arguing that the town's refusal to perform the inspection was arbitrary in violation of their federal due process rights. *Id.* The Eleventh Circuit concluded that such a "claim is not cognizable under the substantive component" of the Due Process Clause. *Id.*

Process Clause protects that person from arbitrary and irrational governmental action. *Lewis*, 409 F.3d at 1273. As there is no evidence in the record that enactment of Orange County's land use ordinances targeted a protected class, the Court must apply the rational basis test. See *Schwarz v. Kogan*, 132 F.3d 1387, 1390 (11th Cir. 1998) (holding substantive due process claims that do not involve a person's fundamental rights are reviewed under the highly deferential rational basis standard). "In order to survive this minimal scrutiny, the challenged provision need only be rationally related to a legitimate government purpose." *Id.* at 1390–91. The Court must first identify "a legitimate government purpose . . . which the enacting government body could have been pursuing." *Bannum, Inc. v. City of Fort Lauderdale*, 157 F.3d 819, 822 (11th Cir. 1998) (internal quotations omitted) (emphasis in original). The Court must then determine "whether a rational basis exists for the enacting government body to believe the legislation would further the hypothesized purpose." *Id.* So long as there is a "plausible, arguably legitimate purpose" for the enactment of Orange County's land use ordinances, summary judgment is appropriate unless Plaintiffs can demonstrate that the county could not possibly have relied on that purpose. *Restigouche, Inc. v. Town of Jupiter*, 59 F.3d 1208, 1214–15 (11th Cir. 1995).

Orange County advances a plausible, reasonable, and sound purpose—to promote the health, safety, and welfare of its citizens—to support its land use ordinances. Plaintiffs fail to demonstrate that the county could not possibly have relied on that purpose—indeed, they advance no evidence whatsoever that Orange County was not motivated to protect the health, safety, and welfare of its citizens when the land use ordinances were enacted.

Accordingly, the Court finds it appropriate to grant summary judgment in favor of

Orange County and against Plaintiffs on their substantive due process claims.¹⁷

B. Equal Protection

To prevail on their class of one equal protection claim, Plaintiffs must show evidence that they were intentionally treated differently from others who were “similarly situated” and that there was no rational basis for the difference in treatment. *Grider v. City of Auburn*, 618 F.3d 1240, 1263–64 (11th Cir. 2010). A similarly situated comparator must be defined and identified precisely; a plaintiff cannot rely upon “broad generalities” to establish his claim. *Id.*

In this case, Plaintiffs suggest that the proper comparator is commercial businesses that are authorized land uses in residential zoned areas. The Court disagrees. The similarly situated requirement must be rigorously applied in the context of a class of one claim. *Lieb v. Hillsborough Cnty. Public Transp. Comm’n*, 558 F.3d 1307, 1307 (11th Cir. 2009). Here, the comparison is not between commercial aviaries and all other businesses. The proper comparator is a person who the county allows to possess and sell captive wildlife from a property that is zoned residential only. Plaintiffs do not identify, and advance no evidence of, any such similarly situated comparator.

Therefore, the Court finds summary judgment is due to be granted in favor of

¹⁷ It may seem incongruent to conclude that an ordinance is void under state law while at the same time finding that the substantive component of the Due Process Clause are not violated by the void ordinance. The fact is, however, that the only substantive due process claim that is viable here—a claim that a legislative act violated due process—does not rise or fall on the lawfulness of the state legislation. In other words, this type of substantive due process claim is not a challenge to the ordinance *qua* ordinance. Rather the claim is based upon the arbitrary and capricious action of the government in *enacting* the ordinance. See, e.g., *Villas of Lake Jackson, Ltd. v. Leon Cnty.*, 121 F.3d 610, 615 (11th Cir. 1997) (holding that a “substantive due process claim based upon the arbitrary and capricious action of the government in adopting the regulation” is one of only four causes of actions for violations of an individual’s constitutional rights arising in the context of “zoning regulations governing a specific use of real property”).

Orange County and against Plaintiffs on their equal protection claims.

C. Compelled Speech

Plaintiffs claim that Orange County's land use special exception requirement and determination procedure violate their rights under the First Amendment.¹⁸ The Court understands this claim to be that, by requiring Plaintiffs to submit to the special exception procedure, the ordinances force Plaintiffs to engage in speech—that is, the engagement of land use proceedings—that they prefer not to participate in. The Court also understands Plaintiffs to claim that they were compelled to request a determination from the zoning manager to challenge the validity of the ordinances. Neither of these arguments can form the basis for a claim under the compelled speech doctrine.

It has long been held that the First Amendment prohibits the government from compelling citizens to express *beliefs* that they do not hold, *see, e.g., West Virginia State Bd. of Ed. v. Barnett*, 319 U.S. 624 (1943) (holding that school children could not be forced to recite the pledge of allegiance), and prevent the stifling of "speech on account of its message," *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994). Zoning regulations that are content-neutral are not compelled speech. *See, e.g., Demarest v. City of Leavenworth*, 876 F. Supp. 2d 1186, 1197 (E.D. Wash. 2012) (concluding zoning restrictions on signage do not compel land owners to engage in speech). Orange County's land use procedures are content-neutral in that they do not

¹⁸ The Court assumes that Plaintiffs' compelled speech, commercial speech, and search and seizure claims are ripe and sufficiently defined to permit adjudication because Orange County's ripeness arguments address only the substantive due process claims. There is some doubt whether all of Plaintiffs' other federal claims are justiciable, however, because some claims are based on Plaintiffs' objections to the special exception requirement of Orange County land use regulations. Under the Code, that procedure can be used only in connection with Plaintiffs' rural property. The Court will consider Plaintiffs' claim on the merits nonetheless.

direct the content of such speech, nor do they compel any land owner to engage in speech. The special exception requirement is the process that a land owner must engage if he wishes to be authorized to use his property in a particular manner. Likewise, Plaintiffs were not required to seek a determination from the zoning manager to challenge the validity of the ordinances. Plaintiffs fail to state a compelled speech claim.

The Court therefore finds summary judgment is due to be granted in favor of Orange County and against Plaintiffs on their compelled speech claims.

D. Commercial Speech

Plaintiffs also claim that section 38-1 of the Orange County Code is an impermissible prior restraint of their commercial speech rights. Orange County argues that the zoning manager's determination that Plaintiff could not maintain a commercial aviary at their residence did not "censor" Plaintiffs' commercial speech. (See, e.g., Doc. 261, p. 23.) Despite Orange County's failure to squarely address Plaintiffs' commercial speech claim,¹⁹ the Court must consider whether there is a legal basis for such claim.

The First Amendment, as applied to the States through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation. See, e.g., *Virginia Pharmacy Bd. V. Virginia Citizens Consumer Council*, 425 U.S. 748,

¹⁹ The briefing in this action is particularly troubling. Plaintiffs, who do not have the benefit of counsel, have framed their claims to avoid most common pitfalls and have raised some valid arguments in response to Orange County's legal positions (such as the legislative act exception to the prohibition on substantive due process claims for state-created rights). Orange County, which is represented by counsel, by contrast repeatedly fails to address the exact claims raised by Plaintiffs or the legal authorities identified by Plaintiffs that are adverse to Orange County's positions. Portions of Orange County's briefs are supported by no legal authority whatsoever. The Court will not speculate as to why Orange County chose to brief the case in this manner. The Court does note, however, that the county's choice has caused this action to consume more judicial resources than are typically required to adjudicate *pro se* actions.

761–62 (1976). Commercial speech, however, “enjoys a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, and is subject to modes of regulation that might be impermissible in the realm of noncommercial speech.” *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623 (1995). Indeed, the seminal case in this area, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 571 n.13 (1980), observed “that commercial speech is such a sturdy brand of expression that traditional prior restraint doctrine may not apply to it.”

The Court need not reach that far, however, because it concludes that section 38-1 of the Orange County Code does not regulate commercial speech. That provision of the Code contains the definition that Orange County uses to determine when real property is being used for the purposes of commercial aviculture. It is this activity that is regulated by the Code, not commercial speech. As a result the First Amendment is not implicated. See *ABC Home Furnishings, Inc. v. Town of E. Hampton*, 947 F. Supp. 635, 643 (E.D.N.Y. 1996) (holding that a town’s revocation of an event permit did not give rise to a commercial free speech claim because, while the town did receive complaints about the event advertising, the town’s revocation was an effort to regulate the event, “i.e., the activity underlying the speech, not the speech itself”); see also *Jim Gall Auctioneers, Inc. v. City of Coral Gables*, 210 F.3d 1331, 1333 (11th Cir. 2000) (noting that the “right to hold an auction” is arguably not protected commercial speech). Plaintiffs fail to state a commercial speech claim.

Therefore, the Court finds summary judgment is due to be granted in favor of Orange County and against Plaintiffs on their commercial speech claims.

E. Search and Seizure

Lastly, Plaintiffs claim that they were subjected to an unreasonable search and seizure that violated their rights under the Fourth Amendment. They contend that the special exception requirement subjects them to "search by public hearing" and the "seizure of fees." They also contend that the county's zoning determination procedure is an unreasonable search and seizure.

First, Plaintiffs cannot establish that the hearing procedures for a special exception and a zoning determination are protected by the Fourth Amendment. Plaintiffs have no expectation of privacy in relation to such hearings. Indeed, "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz v. United States*, 389 U.S. 347, 351 (1967). Plaintiffs knowing and voluntary engagement of these proceedings take them outside the protections of the Fourth Amendment.

Second, the voluntary payment of governmental fees is not subject to protection under the Fourth Amendment. *See, e.g., Fox v. District of Columbia*, No. 10-2118, 2013 WL 563640, at *3 (D.C.D.C. Feb. 15, 2013) (holding that the voluntary payment of a fee in a procedure that allows a arrestee to pay and forfeit the fee for immediate release from jail without prosecution is not protected under the Fourth Amendment). To establish an unlawful seizure, Plaintiffs must demonstrate that the payment of the fees constitutes a seizure that is unreasonable. *Soldal v. Cook Cnty.*, 506 U.S. 56, 61-62 (1992). "A seizure is not unreasonable if it occurs with the non-coercive, voluntary consent of the owner." *Fox*, 2013 WL 563640, at *3 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)). Here, both the special exception and the zoning determination procedures used by Orange County are proceedings that a land owner must voluntarily

initiate. The payment of fees associated with such proceedings is likewise voluntary and therefore outside the protections of the Fourth Amendment. Plaintiffs do not state a claim for the violations of their rights under the Fourth Amendment.

The Court therefore finds summary judgment is due to be granted in favor of Orange County and against Plaintiffs on their search and seizure claims.

CONCLUSION

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Orange County's Motion to Dismiss (Doc. 175) is **DENIED AS MOOT**.
2. Orange County's Dispositive Motion for Summary Judgment (Doc. 261) is **GRANTED IN PART** and **DENIED IN PART**.
3. Plaintiffs' Motion for Summary Judgment and Partial Summary Judgment (Doc. 269) is **GRANTED IN PART** and **DENIED IN PART**.
4. The Court grants summary judgment in favor of Plaintiffs and against Defendant Orange County on Plaintiff's state-law declaratory judgment claims that Orange County's land use regulations are unlawful. As discussed in this Order, the portions of Orange County's land use regulations that prohibit "commercial aviculture, aviaries" and "breeding, keeping, and raising of exotic animals" are inconsistent with general law of Florida and are therefore void. The Court grants summary judgment in favor of Orange County and against Plaintiffs on all of the remaining claims.
5. The sole remaining issue in this action is the remedy available pursuant to Plaintiffs' state law declaratory judgment claim. The parties are directed to confer and advise the Court on or before September 6, 2013, of the

remedies available to Plaintiffs under state law.

6. The trial and pretrial hearing dates are vacated, as are all deadlines except those imposed in this Order. The clerk is directed to terminate any motion that remains pending after entry of this Order.

DONE AND ORDERED in Chambers in Orlando, Florida, on August 13, 2013.



ROY B. DALTON JR.
United States District Judge

Copies:
Counsel of Record

State of Florida Constitution

Art. IV,

SECTION 9. Fish and wildlife conservation commission.—There shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. **The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life** and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution.

History.—Am. C.S. for H.J.R. 637, 1973; adopted 1974; Am. proposed by Constitution Revision Commission, Revision No. 5, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

Section 80-045. - Exhibition of Class I and Class II Wildlife.

Individuals providing care and permanent habitat for Class I and Class II Wildlife that have been abused, neglected or otherwise need sanctuary may request a license from the Town to allow limited exhibition of said wildlife, subject to the provisions of this section.

- (A) For purposes of this section only, exhibition of wildlife shall be defined as a public or private showing of Class I and Class II wildlife for financial or other consideration.
- (B) For purposes of this section, Class I and Class II wildlife are defined pursuant to Chapter 68-A6, F.A.C., as amended.
- (C) The property on which the animals are kept shall have a minimum plot size of five acres and a minimum plot width and length of 300 feet and must conform with all of the minimum requirements established in the Florida Administrative Code.
- (D) No wildlife exhibition license may be issued for a location that is within 1,000 feet of another licensed wildlife exhibitor.
- (E) Signage is not permitted.
- (F) The owner of the animals must hold a USDA, Animal Welfare Act, Class C Exhibitor License and a Florida Fish and Game Conservation Commission Class I or II (as applicable) License, and must live on the property on a permanent basis.
- (G) The owner of the animals shall maintain 501(C)(3) non-profit status for the specific purpose of caring and providing habitat for the wild animals.
- (H) All wildlife habitat areas shall be surrounded by a minimum of a six foot high barrier/fence to prevent unauthorized access. The wildlife habitat areas shall also be fully screened from all property lines to a height of six feet through the use of landscape materials or opaque fence materials.
- (I)

Public premises liability coverage in the amount of \$1,000,000.00 shall be maintained at all times. The policy must name the Town as an additional insured and must be issued by an insurance company authorized by the Florida Department of Insurance to do business in the State of Florida. The Town Attorney must approve the policy.

(J)

The number of wild animals on the property shall be limited to three per acre.

(K)

At no time shall the property be unattended and without the presence of someone licensed to handle wild animals, or with at least six months experience working under the jurisdiction of the licensee's Federal and State licenses when the owner of the animal(s) is away from the premises.

(L)

All parking shall be accommodated on-site, and shall be screened from view along all property lines adjoining any private or public street, or residential plot. Parking areas shall be set back at least 25 feet from any residential plot line. Parking areas need not be paved.

(M)

Public admission shall be by appointment only, and shall be limited to 40 people on the property at any given time, except that groups from educational institutions arriving by bus shall be limited to 100 people, and that special events with attendance greater than that provided for herein may be held up to 12 times per year, provided the owner notifies the Town Clerk's Office in writing at least five days prior to the event. The notification shall state the date and hours, nature of the event, and maximum number of people expected.

(N)

Noise levels, including noises resulting from public admission, shall not exceed the limits set forth in [Section 50-010](#), "Excessive Noise."

(O)

Noise abatement. Wildlife habitat areas shall be designed, constructed and located using noise abatement measures (e.g., locating wildlife which excessively screech, howl, or make loud noises away from property lines; maintaining a thick, vegetated buffer along property lines) to help ensure that noise levels do not exceed the limits set forth in [Section 50-010](#), "Excessive Noise."

(P)

Upon determination that an application for an exhibition of Class I and Class II wildlife license satisfies the criteria of this section, the Town shall notice property owners within 1,000 feet of the subject property, by certified mail, that an application for a wild animal habitat license will be administratively approved and issued ten days from the mailing date indicated on the notice, unless a written objection is received by the Town Clerk within the ten day period.

(Q)

Upon satisfying all of the conditions for licensure, a license under this section shall be issued administratively unless the Town receives written objection from a noticed property owner within the ten day response period. In the case of a timely objection, the application for licensure shall be scheduled for the next available Town Council agenda as an advertised public hearing. After hearing the testimony of affected property owners, the Town Council may approve, approve with conditions, or deny the application for licensure based upon consideration of the following criteria:

(1)

That the use is compatible with the existing natural environment and other properties in the vicinity;

(2)

That there will be adequate provision for safe traffic movement, both vehicular and pedestrian, in the area which will serve the use;

(3)

That there are adequate setbacks, buffering, and general amenities in order to control any adverse effects of noise, light, dust and other potential nuisances; and,

(4)

That the land area is sufficient, appropriate and adequate for the use as proposed. Conditions placed upon the license by Town Council may supplement the requirements of this section contained in provisions (A) through (O).

(R)

Licenses are valid only to the person named on the license and shall not be transferable.

(S)

Upon a second violation of any one or more provisions of this section within a 24 month period, as determined pursuant to the Town's code enforcement procedures, the Town shall notify the licensee, by

certified mail, of its intent to revoke the license. The licensee or designee may initiate an appeal of the revocation by filing written notice of intent to appeal with the Town Clerk's Office no later than 15 days from receipt of the Town's notice of intent to revoke the license. The license will be administratively revoked should the licensee not file an appeal within the allotted time. The Town Clerk shall schedule the appeal for the next available Town Council meeting. In determining the existence of extenuating factors contributing to the code violation(s), Council may uphold the revocation or continue the license with any conditions Council may deem appropriate to protect the public health, safety and welfare.

(T)

Nothing within this section shall be construed to prevent the Town Council from revoking the license at any time, provided that after conducting an advertised public hearing on the matter, a supermajority of council members make a determination that the licensed activity no longer satisfies the criteria for licensure.

(U)

All exhibition of Class I and Class II wildlife shall occur on a parcel that has a land use designation of Commercial Low.

Section 80-050. - Aviculture.

Permits for aviculture, as defined in Article 10, "Definitions, Abbreviations, and Construction of Terms" may be issued in the Agricultural Residential (AR) zoning district subject to the following:

(A)

Minimum plot size requirements.

(1)

Two acres for 40 to 200 birds.

(2)

Five acres for 201 or more birds.

(B)

Breeder.

(1)

The minimum plot size shall be two acres; and

(2)

Shelters, cages and accessory structures shall be set back a minimum of 50 feet from all property lines; and

(3)

Outdoor shelters and cages shall be contained to specific areas of the plot and completely screened from view from adjacent properties with a visual barrier. Such barriers may include natural vegetation, landscaping, fencing or other opaque structures; and

(4)

The breeder shall locate birds that excessively screech, chirp, crow or make loud noises away from residential properties to the maximum extent possible; and

(5)

The care, licensing, registration and inspections shall be as required by applicable regulations; and

(6)

Any avicultural endeavor shall comply with Article 50, "Public Nuisances," of this Code.



Item 10.b.

NEW BUSINESS

Code Enforcement PowerPoint

* Code Enforcement in Florida

Mark A. Kutney, AICP, ICMA-CM
Town Manager
Town of Loxahatchee Groves

- * Is governed by Florida Statute FS Chapter 162 County or Municipal Code Enforcement
- * Statute's principal intent was to achieve compliance with applicable codes
- * Was not conceived to be a vehicle for local government to enhance revenue

* Code Enforcement in Florida

There are three alternate methods to process code enforcement actions in local government:

1. Code Enforcement Boards
2. Special Magistrates
3. Both

* Code Enforcement Models

The Membership for a Code Enforcement Board
Shall whenever possible include:

- * An architect
- * Business person
- * Engineer
- * General Contractor
- * Sub Contractor
- * Realtor

* Code Enforcement Boards

1. Complaints
 - a) by a complainant
 - b) anonymous complaints
2. Patrol and monitoring
3. Planned, Programmed, and Strategic Code Enforcement Action

* Code Enforcement Methods

Developed in 1982 by James Q. Wilson and George L. Kelling

Theory suggests that disorder and crime are inextricably linked with the physical environment at the community level

Source: Code Enforcement by Schilling and Hare

* Broken Window Theory of Code Enforcement/ Property Maintenance

The Code Enforcement Function is usually conducted in one of the following departments:

- * As a free standing department
- * As part of a building department
- * As part of a planning or planning/development department
- * As part of a police department
- * As part of a fire service department

* Code Enforcement Function Within the Local Government Context

- * The Fourth Amendment of the U.S. Constitution protects persons, houses, papers, and effects against the unreasonable searches by government agents without a warrant
- * The same limitations that apply to police officers when they enter private property to search for evidence, apply to most code enforcement situations
- * Also applies to administrative inspections

source: Code Enforcement: by Schilling and Hare

* Inspections/Gathering Evidence

- * It should be noted the Fourth Amendment applies to searches where the occupant has a reasonable expectation of privacy (source: Code Enforcement by Schilling and Hare)



* **Inspections/Gathering Evidence continued...**

- * Administrative inspections by enforcement inspectors may be accomplished without a warrant when:
 - * The occupant consents to the inspection
 - * No reasonable expectation of privacy exists in the place or situation
 - * The inspection of a vacant building does not require an inspection warrant

Source: Code Enforcement by Schilling and Hare

*** Inspections/Gathering
Evidence continued...**

- * Inspection of yards surrounding single family homes
 - * When steps are taken to keep people out (e.g. construction of a fence) the code enforcement officer must be careful to not violate protections
 - * When plain view observations are evident, no warrant is needed

source: Code Enforcement by Schilling and Hare

*** Inspections/Gathering
Evidence continued...**

Highly Regulated Businesses

- * Warrantless inspections are permitted where the search furthers an administrative policy or purpose designated by statute or ordinance (source: Code Enforcement by Schilling and Hare)
- * When work is being completed by building permit (called in-progress inspections)

*** Inspections/Gathering Evidence continued...**

The following are examples of difficult cases to gather evidence and prosecute:

- * Noise complaints
- * Overcrowding/violation of family definition
- * Religious uses (RLUIPA)

* Code Enforcement Nightmares

Informal:

- * Notice of violation (NOV)
- * Stop work orders
- * Mediation

Formal:

- * Due Process-Notices and Hearings

* Administrative Remedies

- * The code enforcement board/magistrate may order the violator to pay a fine in the amount specified for each day the violation continues past the date set for compliance



* Administrative Fines and Liens

- * A fine shall not exceed \$250 per day
 - \$500 for repeat offenders
 - If a violation is found to be irreparable or irreversible in nature, the fine may be \$5000 per violation



* Administrative Fines and Liens continued...

The determination of the amount of fine shall be based on the following factors:

- * The gravity of the situation
- * Actions taken by the violator to correct the violation
- * Previous violations committed by the violator

*** Administrative Fines
and Liens continued...**

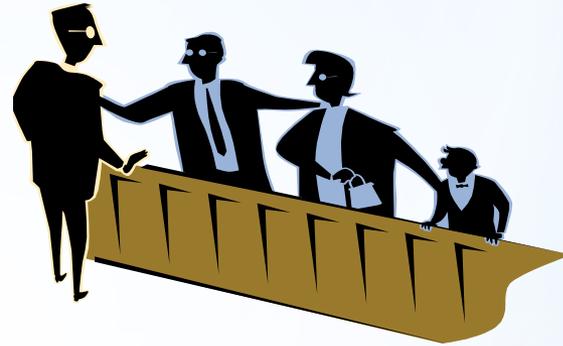
- * A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.

* Administrative Fines and Liens continued...

- * A fine imposed...shall continue to accrue until the violator comes into compliance or judgment is rendered in a suit...
- * A lien arising from a fine imposed...runs in favor of the local governing body and the local governing body may execute a satisfaction or release of lien...

* Administrative Fines and Liens continued...

- * After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local government attorney to foreclose on the lien or sue to recover a money judgment for the amount of lien plus accrued interest



* Administrative Fines and Liens continued...

- * No lien may be foreclosed on real property which is a homestead
- * No lien shall continue for a period longer than 20 years after the certified copy of an order has been recorded

* Administrative Fines and Liens continued...

* An aggrieved party including the local governing body may appeal a final administrative order to the circuit court

-The appeal must be filed within 30 days of the execution of the order



* Appeals

* Citation Process

* Notice to Appear



* Supplemental Code Enforcement Procedures

*Questions