



Town of Loxahatchee Groves

Regular Meeting, October 19, 2010 at 7:00 p.m.

MINUTES

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

Frank R. Spence, Town Manager
Michael Cirullo, Town Attorney; Goren, Cherof, Doody & Ezrol, P.A.
Ann Harper, Town Clerk

Michelle Mellgren, The Mellgren Planning Group (Contractor)

1. OPENING

- A. Call to Order/Roll Call**
- B. Pledge of Allegiance**
- C. Invocation**

Mayor David Browning called the meeting to order at 7:00 p.m. In addition to Mayor Browning, the following Council members were present: Councilmen Ron Jarriel, Ryan Liang, and Jim Rockett, and Vice-Mayor Dennis Lipp. After the Pledge of Allegiance, Mayor Browning gave the Invocation. Present from Staff were Frank Spence, Town Manager, Michael Cirullo, Town Attorney, and Ann Harper, Town Clerk.

D. Additions and Deletions

Councilman Rockett said he would like to add an item to the agenda concerning modification of the budget based on the latest cost of the Waste Pro contract.

E. Approval of Agenda

Motion was made by Councilman Liang, seconded by Councilman Jarriel, to approve the agenda. The motion carried by voice vote, 5/0.

2. CONSENT AGENDA - None

3. PRESENTATIONS

Candidate Tami Donnally introduced herself to the Council and residents in the audience and said she is running for the State Representative in District 85, and she urged residents to vote for her.

4. COMMITTEE REPORTS - None

5. ORDINANCES - PUBLIC HEARING – 2nd Reading

A. ORDINANCE 2010-009

**AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF LOXAHATCHEE GROVES, FLORIDA,
ADOPTING THE TOWN OF LOXAHATCHEE GROVES
UNIFIED LAND DEVELOPMENT CODE; APPROVING A
ZONING MAP FOR THE TOWN; PROVIDING FOR
REPEAL OF LAWS IN CONFLICT; PROVIDING FOR**

**SEVERABILITY; PROVIDING FOR CODIFICATION;
AND PROVIDING AN EFFECTIVE DATE.**

Attorney Cirullo read the title of the Ordinance.

Michelle Mellgren said at the last Council meeting, when the Ordinance was passed on first reading, it passed with the modification to remove "bona fide agriculture" from the Ordinance. The Council then asked the Attorney to provide an opinion as to what the impact would be. She and the Attorney spoke and agreed that it would have significant impact. The revised version of the LDR's which she has forwarded to the Town does not have "bona fide agriculture" removed because of the substantial changes it would have made to the document.

Attorney Cirullo referred to his memo in the agenda backup advising that taking out that definition of "bona fide agriculture" does not provide notice for property and business owners in the land use context. He did not recommend a specific course of action and asked for direction from Council.

Councilman Rockett said he raised this issue because we seemed to be stepping back into the County code. He reviewed various changes which he recommended, included bringing in Best Management Practices (BMP's) to be used throughout the documents. After further discussion, the Mayor called for public comment on the issue of "bona fide ag" and "agriculture".

Public Comments

Todd McLendon spoke about the proposed BMP's and how they will be enforced.

Howard Voren said there are no BMP's written for the agricultural industries such as horses or cattle or poultry.

Elise Ryan said there is a long list of agricultural industries with BMP's.

John Ryan spoke about BMP's.

Larry Lefkowitz spoke about the right-to-farm act and the need for this unique community to determine how to make it right and fair for everybody.

Council Motion

Motion was made by Councilman Jarriel, seconded by Councilman Liang, to return to the definition of "bona fide agriculture" as presented in the first reading of the Ordinance. The motion carried by voice vote, 4/1, with Councilman Rockett voting no.

Mayor Browning said the Council would continue discussion on the Ordinance.

Michelle Mellgren reviewed the scrivener errors, which were identified by Vice-Mayor Lipp, and asked that they be approved.

Motion was made by Councilman Liang, seconded by Councilman Jarriel, to approve the changes as outlined. The motion carried by voice vote, 5/0.

Attorney Cirullo said the next section to discuss is Section 50, Noise, page 64.

Section 50-010 (A) (1) between the hours of 7:00 a.m. and 10:00 p.m. ~~for a period of fifteen minutes or more.~~

(2) . . . between the hours of 10:00 p.m. and 7:00 a.m. ~~for a period of fifteen minutes or more.~~

Attorney Cirullo asked for confirmation that Council wishes to remove these sections (which are crossed through).

Motion was made by Councilman Rockett, seconded by Vice-Mayor Lipp, to remove the sections which are crossed out.

Public Comments

Howard Voren said noise ordinances are written for amplified sound and equipment and do not refer to any types of birds or animals.

Larry Lefkowitz said what Mr. Voren said is true, but it is because Palm Beach County did not do its job.

Susan Clubb spoke about sound and noise levels.

Frank Schiola described a noise problem he had with a neighbor and how it was solved.

John Ryan spoke about noise as it relates to aviaries.

Howard Voren spoke about decibel levels relating to property line measurements.

Nina Corning said noise is part of where we live with dogs barking, people working on their houses, and we have to be tolerant of other people.

Todd McLendon wanted someone on Council to ask the attorney questions regarding public and private nuisances.

Council Motions

Mayor Browning called for a voice vote on the motion to do away with the " . . . period of 15 minutes" in Section 50-010 (A) (1) and (2). The motion carried by voice vote, 5/0.

Councilman Rockett made a motion to add the wording "a sound level which exceeds this limit for more than 10% of any measurement period, which period should not be less than 10 minutes". Vice-Mayor Lipp seconded the motion.

Mayor Browning called for a voice vote on the motion, which carried 5/0.

Mayor Browning said the Council would now discuss Section 50-010 (B) regarding sound level measurement compliance, and he would like to clarify where the sound measurement should be taken.

Vice-Mayor Lipp said it should be in the area of the living quarters.

Councilman Rockett said he is not going to have any part of his property act as a buffer for someone else's sound.

Mayor Browning said he was thinking about something close to the house, not the property line.

Councilman Jarriel said he agrees with Councilman Rockett, to the extent that whether you live on five acres or ten acres, you have the right to have peace and quiet on your property. These standards

were made by the American National Standards Institute, and if this becomes a problem, then we will have to make some changes. We have to start with something, and these standards have been determined by professionals, and we should leave it as it is.

Vice-Mayor Lipp suggested using “. . . or within 20 feet of the primary residence.”

Councilman Liang said he does not want it too strict or too lax, but he does not want people abusing the Ordinance.

Michelle Mellgren suggested using “. . . at the end of the required setbacks.”

Motion was made by Councilman Jarriel, seconded by Vice-Mayor Lipp, to add “at the edge of the required setbacks” to the measurement boundaries.

Public Comments

Larry Lefkowitz said this is an agricultural community, and he is outside working on his property all the time. He can't use his property without being subjected to deafening noise.

Todd McLendon addressed Councilman Jarriel regarding decibel levels.

Susan Clubb said she supports the setback proposal.

Elise Ryan said lots of people don't have fifty feet between their house and their neighbor, and you are not giving them any protection.

Council Action

In response to Mayor Browning's question, Michelle Mellgren said that smaller lots are addressed in part of the code, which provides setbacks for non-conforming smaller lots.

Mayor Browning called for a vote on the motion to add “at the end of the required setbacks” to the measurements for sound. The motion carried by voice vote 4/1, with Councilman Rockett voting no.

Attorney Cirullo said those are all of the items on which we needed direction.

Councilman Rockett said he is concerned about things that were taken out of the document (deleted) and not struck through. He would like the opportunity to go through the entire document page by page to make sure nothing has been left out of the code.

Attorney Cirullo outlined options for the Council to review and revise the code.

Vice-Mayor Lipp said he spent ten hours on Sunday comparing this document to the September 24th version and came up with changes that need to be made, and he does not want to put this off for two more weeks.

Vice-Mayor Lipp's Recommended Changes (made by consent of the Council)

Page 34, 20-010 – “pens & cages” discussed but no changes made

Page 19 – Home Office – add “must be homesteaded”

Page 24 – Put definition of “Private Road” back but delete the last sentence

Page 30 – Wetlands – delete “Potholes”

- Wildlife pets – remove “only” and ad “as permitted by FL Fish & Wildlife”

Page 34 – no change

Page 37 – used to have a (5) “parking area” following (4) – put it back in
Page 39 – has private kennels permitted – leave as is
Page 42 – no change
Page 47 – no change
Page 48 – no change
Page 65 – Sec. 50-015 (A) (3) Agricultural operations – replace with “Any” operations . . .
Page 92 – Sec. 75-020 – no change
Page 95 – Sec. 80-015 Add (c) provide proof of homestead exemption
Sec. 80-020 – has two (A)’s – need to re-letter
Page 123 – Add “political or campaign signs” – see “opinion signs”
Councilman Liang said he does not agree with not allowing signs in residential areas.
Page 136 – would like to add when signs can be put up; no change was made
Page 176 – Quasi Judicial Hearings in (B) – no change

Vice-Mayor Lipp brought up the subject of Sunsport Gardens. He said he found through the County that they are operating under an ordinance that allows 48 sites, and they now have 132 sites. The question for the Attorney is that the County “shall” monitor Sunsport Gardens, and they never did. He asked what recourse does the Town have for allowing them to go from 48 to 132 sites. Attorney Cirullo said if they are in violation of their approval, we can see if we are going to enforce it or not. The first step is to see if they want to sit down with us.

Council Motion

Motion was made by Councilman Liang, seconded by Vice-Mayor Lipp, to authorize the changes as discussed.

Public Comments

John Ryan asked whether or not Amendment 4, if it passes, would require public referendums on these items if adopted tonight. Attorney Cirullo said his understanding is that Amendment 4 relates to Comprehensive Plan amendments.

Paul Reillo said he would like to look at the document for a week before they vote on it.

Council Action

Mayor Browning called for a vote on the motion to approve the changes, which carried 5/0.

Mayor Browning asked if there were any other changes which Council members would like to make.

Councilman Rockett referred to page 89, Section 65-010 Determination of valid agricultural use. He asked can we include his statement regarding classification as agricultural does not grant protection under the right to farm act. Attorney Cirullo said that does not need to be in the Town’s code.

Councilman Liang said he wants to allow non-lighted signs in residential neighborhoods. Vice-Mayor Lipp said nurseries already have signs. Councilman Rockett said he agreed with allowing signs.

Council Motion

Motion was made by Councilman Liang, seconded by Vice-Mayor Lipp, to amend Section 90-040 (A) to permit identification signs, non-illuminated, with maximum of six square feet. The motion carried by voice vote; 5/0.

Public Comments

Howard Voren suggested the Council re-think the six-foot sign allowance since most of the signs in the Town are eight square feet.

Kevin Carrol said it was restrictive and unreasonable to require aviaries to have a six-foot fence or wall around the property. Vegetation would serve the purpose.

Howard Voren distributed a document to the Council members and the Town Attorney. Motion was made by Councilman Rockett, seconded by Councilman Liang, to receive and file the document. The motion carried by voice vote 5/0. Mr. Voren said his document referred to the same code section as Kevin Carrol spoke about regarding the wording on opaque fences, and he said there was no need to mention sound barriers.

Motion was made by Councilman Jarriel, seconded by Councilman Liang, to replace Section 80-050 (B)(3) with the wording in the document distributed by Mr. Voren.

Public Comments

Paul Riello commented on the sound issue and the sound barrier.

Council Action

Mayor Browning called for a vote on the motion to replace the wording of Section 80-050 (B) (3), which carried 4/1 with Councilman Rockett voting no.

Mayor Browning suggested that further discussion on the Ordinance be continued to a future meeting, and he would prefer that it be at the second meeting in November.

Attorney Cirullo said that would give time for the document to be revised with all the revisions made tonight, and a revised version should be ready to be posted by November 8th.

Motion was made by Councilman Rockett, seconded by Vice-Mayor Lipp, to continue the Public Hearing to the Council Meeting on November 16th, 2010. The motion carried by voice vote, 5/0.

Michelle Mellgren said she would incorporate the changes made tonight,

6. ORDINANCES - PUBLIC HEARING - 1st Reading - None

7. OLD BUSINESS

A. Consideration of accepting four parcels from Palm Beach County (*Town Manager*)
(Continued from Council Meeting 10/5/10)

- 1) 22nd Road N. (previously accepted)
- 2) 147th Ave. N.
- 3) 24th Ct. N.
- 4) 131st St. (2)
- 5) Raymond Dr. (2)

Mr. Spence said this item was carried over from the last meeting. He recommended that the Town accept the properties.

Councilman Jarriel said he does not like to be rushed into making a decision and we need to think about the liability.

Clete Saunier, Water Control District Administrator, said these are not exactly roads, just pieces of roads. However, there is one parcel which is one-quarter acre.

After discussion concerning the parcels and meeting dates, a motion was made by Councilman Jarriel, seconded by Councilman Liang, to cancel the regularly scheduled Town Council meeting on November 2, 2010. The motion carried by voice vote, 5/0.

Motion was made by Vice-Mayor Lipp, second by Councilman Liang, to defer this item to the December 7th, 2010, Council meeting. The motion carried by voice vote, 5/0.

8. NEW BUSINESS

A. Addendum Items (if needed)

Modification of Budget (added by Councilman Rockett at beginning of meeting)

Councilman Rockett mentioned the proposed expenditures in the Sanitation Fund and said we have a new rate coming from Waste Pro, and the budget has a "balancer" figure of \$11,375. He made a motion to amend the budget.

Mr. Spence suggested that this be referred to the Finance Advisory and Audit Committee (FAAC) for their recommendation to Council since Council members do not have any information in front of them that relate to this subject. Attorney Cirullo said budget amendments must be done by Resolution. Councilman Jarriel said he agreed with the Town Manager that this recommendation should be forwarded to the FAAC for their consideration.

Council agreed to refer Councilman Rockett's recommendation to the FAAC.

9. ADMINISTRATIVE UPDATE

A. Administrative Update

10. CLOSING COMMENTS

A. Public Comments

Paul Reillo commented on the proposed LDR's.

Nina Corning spoke about the Town operating with the Palm Beach County codes and also said that code enforcement is too strict.

Phyllis Maniglia spoke about "pens and cages" and urged residents to be "neighborly."

Marge Herzog suggested that the Town accept the property transfers from the County and then turn those parcels over to the residents whose properties border the new parcels.

Cindy Corum thanked the Council for sponsoring her attendance at the City Clerks' Career Development Academy.

B. Town Attorney Comments

Attorney Cirullo asked the Council for an Executive Session on the Callery-Judge lawsuit. The meeting was set for Tuesday night, October 26, at 4:30 p.m.

C. Town Council Member Comments

Vice-Mayor Lipp said the subject of Sunsport was not addressed tonight and it should be on the next agenda. It needs to be determined whether or not the County has "shall" in their approval of Sunsport, and what is the recourse for them. He wants to have a meeting scheduled with Sunsport, and Attorney Cirullo said he will request that they meet with the Town.

Councilman Liang said through the process of working on the LDR's, he now realizes that we might not solve all the problems, but he would like to get to the place that we have a starting point.

Mayor Browning said working on the LDR's has been a long process, and it is a balancing thing.

D. Adjournment

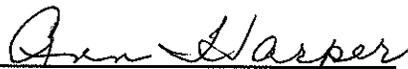
There being no further discussion and no additional public comment, the meeting was adjourned at 10:40 p.m.



DAVID BROWNING, Mayor

____ November 16, 2010 ____
Date Council Approved

Attest:



Ann Harper, Town Clerk