



Town of Loxahatchee Groves Regular Meeting, February 15, 2011 at 7:00 p.m. MINUTES

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

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

1. OPENING

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

Mayor David Browning called the meeting to order at 7 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 added item 9D, Financial Reporting Standards, for discussion only, not action.

E. Approval of Agenda

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

2. CONSENT AGENDA

A. Approval of Minutes of Regular Town Council Meeting on January 18, 2011

Councilman Rockett said that the narrative in Section 1 E should be corrected, and Council agreed to the correction.

Motion was made by Vice-Mayor Lipp, seconded by Councilman Liang, to approve the minutes as corrected. The motion carried by voice vote, 5/0.

3. PRESENTATIONS – None

4. COMMITTEE REPORTS – None

5. PUBLIC HEARINGS – Ordinance 2nd Reading

ORDINANCE NO. 2011-007

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, PROVIDING FOR AN EXTENSION OF THE MORATORIUM ENACTED PURSUANT TO THE TOWN OF LOXAHATCHEE GROVES ORDINANCE NO. 2007-07, AND AS AMENDED BY ORDINANCES 2007-07, 2008-08, 2009-02, 2010-001 AND 2010-004 CONSISTENT WITH THE TOWN CHARTER, ON THE PROCESSING AND REVIEW OF APPLICATIONS FOR DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS, AND APPLICATIONS FOR AMENDMENTS TO THE TOWN COMPREHENSIVE PLAN; CONFIRMING THAT EXEMPTIONS TO THE MORATORIUM SHALL REMAIN IN EFFECT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVING FOR AN EFFECTIVE DATE.

Mr. Spence read the title of the Ordinance. Attorney Cirullo said this extends the moratorium to August 31, 2011. Mayor Browning opened the Public Hearing. No one came forward to speak, and the Public Hearing was closed.

Motion was made by Vice-Mayor Lipp, seconded by Councilman Jarriel, to approve the Ordinance on second and final reading. The motion carried by roll-call vote, as follows:

AYES: Councilmen Jarriel, Liang, and Rockett; Vice-Mayor Lipp; Mayor Browning.

NAYS: None.

6. ORDINANCES - 1st Reading

A. ORDINANCE NO. 2011-008

AN ORDINANCE OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING THE TOWN OF LOXAHATCHEE GROVES UNIFIED LAND DEVELOPMENT CODE (ULDC), ARTICLE 20 ENTITLED, "RESIDENTIAL ZONING DISTRICTS", SECTION 20-015, "PERMITTED USES" TO PROVIDE FOR A MOBILE HOME AS A SPECIAL EXCEPTION USE; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE.

Mr. Spence read the title of the Ordinance. Attorney Cirullo said this is one of those references to Article 80 which was not intended. Mobile homes are still permitted with Council consent, but instead of a conditional use they will be a special exception.

Motion was made by Vice-Mayor Lipp, seconded by Councilman Jarriel, to approve the Ordinance on first reading and schedule second reading for March 1, 2011.

The motion carried by roll-call vote, as follows:

AYES: Councilmen Jarriel, Liang, and Rockett; Vice-Mayor Lipp; Mayor Browning.

NAYS: None.

B.

ORDINANCE NO. 2011-009

AN ORDINANCE OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, PROVIDING FOR A TOWN ORDINANCE RELATING TO CODE ENFORCEMENT AUTHORITY AND PROCEDURES WITHIN THE TOWN PURSUANT TO CHAPTER 162, FLORIDA STATUTES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND, PROVIDING FOR AN EFFECTIVE DATE

Mr. Spence read the title of the Ordinance. Attorney Cirullo said he recommended to the Manager that in lieu of a schedule of fines, it would be good to put our own ordinance in place. This is not changing any law or procedures applicable to the Town; it confirms that we follow State law and it also sets fine amounts. It is a convenient way to have it on our own Code since we have our own Code enforcement.

Motion was made by Councilman Jarriel, seconded by Vice-Mayor Lipp, to approve the Ordinance on first reading and set second reading for March 1st, 2011. The motion carried by roll-call vote, as follows:

AYES: Councilmen Jarriel, Liang, and Rockett; Vice-Mayor Lipp; Mayor Browning.

NAYS: None.

7. RESOLUTIONS

RESOLUTION NO. 2011-002

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, DESIGNATING THE DATE, TIME AND PLACE TO QUALIFY AND FILE FOR THE OFFICE OF TOWN COUNCIL MEMBER FOR SEAT 5 PRIOR TO THE MUNICIPAL GENERAL ELECTION TO BE HELD ON TUESDAY, MARCH 8, 2011, PURSUANT TO THE TOWN CHARTER, SECTION 7, AND CHAPTERS 97 – 106, FLORIDA STATUTES; THE ELECTION FILING PERIOD OPENS PROMPTLY AT 12:00 NOON ON JANUARY 25, 2011 AND CLOSSES PROMPTLY AT 12:00 NOON ON FEBRUARY 1, 2011; SETTING FILING FEES; AUTHORIZING THE TOWN CLERK TO APPOINT ELECTION BOARDS FOR ELECTION PRECINCT 6080; APPOINTING THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS TO HANDLE ALL MUNICIPAL ABSENTEE BALLOTS; AND TO REPRESENT THE TOWN OF LOXAHATCHEE GROVES AT ALL LOGIC AND ACCURACY TESTS OF THE OPTICAL SCANNING VOTING EQUIPMENT PRIOR TO THE MUNICIPAL ELECTION; OPTING OUT OF EARLY VOTING; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

Mr. Spence read the title of the revised Ordinance and advised Council members that the Resolution being considered is the updated one placed on the dias, not the original version in the agenda backup. Changes in the updated one were made as a result of last minute information from the Supervisor of Elections and the attorney from the League of Cities.

Attorney Cirullo said the changes are shown in a different font in the title and the body of the Resolution so they can be easily recognized. The Attorney also made a change in line 3 of the title of the revised Resolution as follows: "... amending Section 6-7 to clarify ..."

Motion was made by Councilman Jarriel, seconded by Councilman Liang, to approve the Resolution.

Council Discussion

Vice-Mayor Lipp asked Attorney Cirullo to review the changes to Sections 6 and 7. Attorney Cirullo said the changes involved confirming that the Supervisor will conduct the election and certain language appointing her as a non-voting member of the Canvassing Board in a manner that does not interfere with the Charter provisions. The changes also provide for the Town Clerk to appoint a designee to represent her if necessary. Mr. Spence said he would be representing the Clerk as her designee at the Logic & Accuracy test of voter equipment.

Vice-Mayor Lipp suggested that the agreement be amended to provide that the election results will be transmitted electronically as required by the Supervisor.

Council Action

Mayor Browning called for a voice vote on the motion to approve the Resolution, as amended. The motion carried by voice vote, 5/0.

8. OLD BUSINESS

- A. Discussion of the Callery-Judge and Seminole Improvement District v. Town of Loxahatchee Groves and Department of Community Affairs Administrative Challenge to the Town's Adopted Comprehensive Plan and Proposed Settlement Agreement

Attorney Cirullo said this is on the agenda so he can get direction on what the Council would like to do next on this matter. Council has not taken any action to adopt the terms of this agreement. Council needs to make a decision on this document. The litigation is now in a sixty-day abeyance, and the Town must report back to the Administrative Law Judge with the status no later than April 1st.

In response to Councilman Rockett's question, Attorney Cirullo said if the Council wants to take definitive position on this settlement, a motion should be made. If the Council wants to have a consensus that you cannot accept the settlement as is, then you must identify the issues. The options range from approving the agreement, as it is, to going straight to Court, and there are options in between.

Motion was made by Councilman Rockett, seconded by Vice-Mayor Lipp, to reject the agreement and move to Court. (NOTE: THIS MOTION WAS LATER REVISED.)

Council Comments

Councilman Jarriel said at the last Council meeting, he would have agreed with that, but in the meantime he has found things that were not known before. For one thing, the Indian Trail Improvement District was not aware of what is going on, and they do not want additional roads in their area. He would like to know how much money the Town has put into this mediation and shade sessions so far. He hates the thought of that money being wasted, but he wants us to go back to Callery-Judge and have them come to the workshop with the residents who live on Okeechobee Boulevard. He would also like more communication with Indian Trail, because as Western Communities we must work together.

Councilman Liang said since we heard from the people, we should have Callery Judge respond to them. If they are willing to continue working, then we could keep moving forward. But if they are unable to budge, then we will go to Court.

Vice-Mayor Lipp said this agreement has fifty-four "shalls" for the Town to do, and not one for Callery-Judge. He is not as optimistic about this as his colleagues. Putting the workshop together with the Okeechobee Boulevard workshop is not a good idea.

Public Comments

Michelle Damone, President, Board of Supervisors, Indian Trail Improvement District, said she saw the Mayor and Town Manager Spence at their business meeting last week. She said the Board was caught by surprise with this proposed agreement. She does not understand how a legal document, which involves Indian Trail roads and would need approval from our community in order to make the connection, did not include the District, and how is it enforceable.

Grace Joyce said she can see the two sides (Town and Callery-Judge) are not communicating well. She said Callery-Judge is bullying the Town, and the Agreement does not meet the goals of our Comprehensive Plan. She thinks the Town should hire a Land Use Attorney, and she has the names of two such attorneys.

Nina Corning said she agrees with Grace and we should find legal representation to deal with this type of thing.

Council Comments

Vice-Mayor Lipp said in June 2009 he received a letter from Dennis Koehler, a land use attorney in Palm Beach County. He asked Mr. Koehler to recommend firms for this lawsuit. He submitted information about the firms of Sterns, Weaver, Miller, et.al, and Casey, Ciklin, et.al. and said that we should instruct staff to start conducting interviews with at least two firms.

Councilman Rockett said he made the motion because he heard what the residents said at the last meeting about this proposal. He does not see anything in the agreement that can be re-worked, and he thinks Council should agree to reject it.

Mayor Browning said the motion is to reject the agreement and go to trial. He does not know if it is a good idea to do both actions in one motion.

Councilman Rockett revised his motion to reject the proposal from Callery-Judge, and Vice-Mayor Lipp agreed with the change. The motion carried by voice vote, 5/0.

Council Discussion

Mayor Browning asked Attorney Cirullo what action should now be taken. Attorney Cirullo said the Council could instruct him to go back and ask them what they have to offer, or tell them the agreement is rejected and here are the items for further discussion, or invite them to participate in a workshop to resolve this, or go straight to litigation. If you want to consider special counsel, that should be done separately, and there is a process to do that.

Councilman Liang said we should let Callery-Judge know where we are coming from and find out if they are open to working with us; if not, just go to court.

Attorney Cirullo said the Council must come to a decision before April 1st for a report to the Special Magistrate. Regarding special counsel, that can be done at the next meeting on March 1st.

Council Action

Vice-Mayor Lipp said we are faced with a "leadership" moment on Council. During the past eighteen months, we have had at least twelve meetings with them, and we ended up with this document which has fifty-four "shalls" for the Town.

Motion was made by Vice-Mayor Lipp, seconded by Councilman Rockett (for discussion), to abandon any future negotiations with Callery-Judge and instruct Counsel to move forward with litigation.

Council Discussion

Councilman Jarriel brought up the subject of people living north of Okeechobee and roads connecting with Sycamore. He would like to know what this lawsuit has cost the Town so far, and he would like a workshop held with Callery-Judge.

Vice-Mayor Lipp asked would it would be proper to modify this motion because Councilman Jarriel brought up some good points. Could we go back to Callery-Judge and say we agree to these two road issues: Sycamore and eventually Okeechobee. It is that, or we go to trial.

Attorney Cirullo said it would probably be better to have a new motion.

Councilman Rockett said the Sycamore connection does not belong in the settlement document. We should get input from Indian Trails and from residents.

Public Comments

The following residents spoke about various sections of the proposed agreement and how the Council should approach the problems:

John Ryan
Nina Corning
Grace Joyce

Michelle Damone commented on the use of E Road as a thoroughfare.

Council Action

Mayor Browning called for a voice vote on the motion to abandon negotiations. The motion failed 4/1 with Councilmen Liang, Jarriel, and Rockett and Mayor Browning voting no. Vice-Mayor Lipp voted yes.

Motion was made by Councilman Rockett, seconded by Councilman Jarriel, for Attorney Cirullo to notify Callery-Judge that the agreement has been rejected and ask if they would like to provide an alternative proposal by February 25th for Council consideration on March 1st. The motion carried by voice vote, 5/0.

Attorney Cirullo said he would seek proposals from attorneys who would be available to assist the Town with this comprehensive plan challenge, and the Council can select a legal firm at the next meeting.

9. NEW BUSINESS

A. Request for Administrative Interpretation of Section 45-010 (A) of the Unified Land Development Code

Mr. Spence said since October 2010, numerous Code Enforcement complaints have occurred involving garbage, trash, and other debris being piled onto public rights-of-way and easements immediately abutting private property. Section 45-010 of the Land Development Code does not specifically indicate, but is assumed as such, to include not only private property but adjacent public property so long as substantial evidence warrants that such dumping is caused by the property owner. Interpretation as such will allow the Town's Code Enforcement Officer (s) to issue a code violation and notice to correct to the property owner, pursuant to this Code Section, if property owner is found to be illegally dumping trash, garbage, and debris onto abutting public lands.

Mr. Spence said Beverly Tew, President of our Code Enforcement Contractor Firm, Tew & Taylor, Inc., is here with color photos of specific examples of substantial dumping of debris in front of properties. The

Code Enforcement Officers have requested this interpretation that would make dumping on abutting area the responsibility of the property owner.

Mrs. Tew said there are areas of the new Land Development Code which are not clear, and when Code Enforcement cases are prepared, they must be in legal terms and forms for consideration by the Magistrate. The photographs of trash and debris dumping were distributed to the Council members and were discussed. Mrs. Tew said they are working closely with Frank Schiola, and he has been attempting to have Waste Pro pick up the trash and debris; however, sometimes there are things in the trash that Waste Pro will not pick up. Some of the properties are repeat offenders.

Councilman Rockett commented about putting the burden on the property owner to pick up trash and debris which was dumped by someone else. Mrs. Tew said there are things that we can do to identify who did the dumping, including going through the trash to determine who it belonged to, and frequently it is a neighbor.

In response to Vice-Mayor Lipp's question, Attorney Cirullo said Staff is looking for a policy decision which will say that the property owner is responsible for maintaining his property and keeping it free from trash and debris which includes adjacent public way to his property.

Public Comments

Frank Schiola spoke about illegal dumping problems throughout the Town.

Council Action

Motion was made by Vice-Mayor Lipp, seconded by Councilman Liang, to add language (administrative policy) concerning the property line extends to the ingress/egress easements.

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

B. Request from Portuguese-American Cultural Society for permit to hold annual Portuguese Cultural Festival on Saturday and Sunday, March 5 and 6, 2011

Mr. Spence said that now that the Town has its own Land Development Code, the Town controls special event permits, and this is the first application to come before you for approval. In the past, the County approved these permits, but now it is the responsibility of Council.

Attorney Cirullo said a structured application form is being developed, and the Council is being asked to approve this event even though there is no formal application.

Council Action

Motion was made by Councilman Liang, seconded by Councilman Jarriel, to approve the application for the Cultural Festival on March 5 and 6, 2011.

Council Discussion and Vote

Councilman Rockett said he noticed the hours on Saturday are to 1 a.m. Mr. Spence said he told them to go to midnight only on Saturday night.

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

C. Discussion on establishing a Planning and Zoning Advisory Board

Mr. Spence said the general practice in cities is to have a Planning and Zoning Board of citizens, and this Board also sits as the Local Planning Agency. He received a phone call from the Director of the Ft.

Lauderdale branch of the Urban Land Institute who offered his technical assistance in establishing such a Board. He suggested the Council authorize the Attorney to prepare the appropriate Ordinance in consultation with the technical staff of the Urban Land Institute.

Attorney Cirullo said there are a lot of policy decisions to be made before an ordinance is created. Council must decide on the makeup of the Board and whether the Board's authority will be advisory or quasi-judicial. The authority varies as to the type of control you want to give them. The first step is to review options and get direction from Council.

D. Addendum Items (if needed)

Financial Reporting Standards (added at beginning of meeting – for discussion only)

Councilman Rockett said we need a set of standards for financial reports. Part 1 is to set up a schedule for when they are presented to the FAAC for review. Statements presented to the Council should be as corrected by the FAAC. The summary forms should be reviewed by the Finance Director before they are presented to the FAAC, and the FAAC should pick up on things before they are presented to the Council. He asked Council to direct the FAAC to review this at their next meeting and come back and tell us that they approved this schedule or how it can be improved and get it in a timely manner.

Part 2 relates to the end of the year. This is a much more involved process. He would like FAAC to discuss this with Finance Director and Town Manager to outline how that would work for us. He still wants a preliminary set of information before the following month ends.

Councilman Jarriel said this needs to go to FAAC and the Town Manager, and then report back to the Council. Mayor Browning asked Council members if they agreed with this recommendation, and all agreed.

10. ADMINISTRATIVE UPDATE

A. February/March 2011 Calendar

Mr. Spence said regarding the Donna Brosemer case, the Ethics Committee issued a finding of no probable cause for violation. He will continue to pursue a refund of \$2,000 that the Town over-paid her, plus costs.

Mr. Spence reviewed the status of the culvert and bridge at 148th Terrace. As soon as he receives construction drawings, he can go out for bids. Councilman Rockett said a road extension also needs to be put in.

Regarding the Okeechobee Boulevard workshop, Mr. Spence has secured Saturday, March 26th, 9 am to 12 noon, as the meeting date to be held at the Palms West Presbyterian Church. Council agreed to this date and time.

11. CLOSING COMMENTS

A. Public Comments

Tom Goltzené invited everyone to a forum for candidates at the February 24th Landowners Association meeting.

Marge Herzog presented the Council with the \$300 check which they had awarded for a student to attend the Girls State program. Since the student selected was not from the local area as stipulated by the Council, the check was returned by the American Legion.

Nina Corning asked for an update on the 149th Street culvert.

Tony Lopes spoke about 148th Terrace North.

B. Town Attorney Comments – None

C. Town Council Member Comments

Mayor Browning said he is still seeing signs on Okeechobee and asked people who see these signs to call the company and ask them to remove them.

D. Adjournment

There being no further discussion and no additional public comment, the meeting was adjourned at 9:50 p.m.



DAVID BROWNING, Mayor

_____ April 5, 2011 _____
Date Council Approved

Attest: 

Ann Harper, Town Clerk