



Town of Loxahatchee Groves

Town Council Meeting

Tuesday, April 2, 2013 at 7:00 p.m.

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

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

Town Manager Mark Kutney
Town Clerk Susan A. Eichhorn
Town Attorney Michael D. Cirullo, Jr.

MINUTES

1. OPENING

a. Call to Order & Roll Call

Mayor Browning called the meeting to order at 7:00 p.m. Present were Mayor David Browning, Vice Mayor Jim Rockett, and Council Members Tom Goltzené, Ronald D. Jarriel and Ryan Liang. Also present were Town Manager Mark Kutney, Town Clerk Susan Eichhorn, Town Attorney Michael D. Cirullo, Jr., Town Planning Consultant Jim Fleishman, and Town Planning Technician Braeden Garrett.

b. Pledge of Allegiance & Invocation – Mayor Browning

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c. Approval of Agenda

The Agenda was approved by motion of Councilman Liang, seconded by Vice Mayor Rockett. The motion carried 5/0.

d. Appointments:

1. Mayor

Councilman Jarriel nominated David Browning for Mayor. The motion was seconded by Councilman Liang. The motion passed 5/0.

2. Vice Mayor

Councilman Liang nominated Ronald Jarriel for Vice Mayor. The motion was seconded by current Vice Mayor Jim Rockett. The motion passed 5/0.

2. CONSENT AGENDA

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

Town Attorney Cirullo announced that one of the invoices from his law firm had not been provided with the invoices submitted to the Town Council, through a bookkeeping error in his office. He provided the statement, and requested approval.

b. Minutes for Approval: March 5, 2013

The Consent Agenda was approved by motion of Councilman Rockett, seconded by Councilman Liang. The motion carried 5/0.

3. PRESENTATIONS

- a. FPL Presentation Regarding Current Initiatives/Community Involvement – *Max Macon, Area Manager, External Affairs*

Max Macon addressed the Town Council, stating that he was asked to come and provide a presentation to the Town Council. He provided his background, and described the activities and operation of FPL. He responded to questions and comments from the Town Council and from the public.

- b. Jeff Brophy and Lauree Simmons regarding: Big Dog Ranch and Proposed ULDC Text Amendment

Jeff Brophy, Landscape Architect with Land Design South, addressed the Town Council on behalf of Big Dog Ranch. He advised that Lauree Simmons was also present with Big Dog Ranch. He thanked the Town Council for the great staff in the Town that had worked with them as they pursued their goal. The reason for the presentation this evening was to provide the Town Council information regarding Big Dog Ranch within Loxahatchee Groves.

Lauree Simmons addressed the Town Council, describing how the Big Dog Ranch operates. She advised that the current property being utilized by Big Dog Ranch was laid out for wildlife, but not for an animal shelter, and was not designed for an animal rescue location. They needed 15 acres to start from scratch and build a new facility, and she requested that the Town consider allowing their facility to operate in Loxahatchee Groves. She provided a video presentation of the Big Dog Ranch facility.

Jeff Brophy stated that the facility is looking to move as quickly as possible. The principle use was a use already allowed in Loxahatchee Groves, and it was the accessory uses that would require zoning approval.

Town Council comments were heard. Councilman Rockett noted that there may be some major hurdles from people that live on Bryan Rd., and suggested that public workshops be held so that concerns could be addressed,

Public Comments:

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André LaCroix, 13000 Bryan Rd: Commented that although he was a dog lover, he was concerned with the proposed location on Bryan and Folsom Roads, and that a commercial site may be better. He mentioned that there would be no tax revenue, and may be increased noise levels.

Dan Vinayi, 13157 Bryan Rd.: Commented that a restraint on growth had been promised when the Town was started, and he thought the organization was fantastic and there was a need for it, but not in a residential neighborhood. He said that he had spoken with everyone on Bryan Road and none were in favor of this.

Jerry Perkins, 12970 Bryan Rd: Commented that he did not believe that a facility of this size belonged in a residential area.

Ann Parker, 15565 Collecting Canal Rd: Commented that she has been to that facility a few times and it was one of the cleanest ones that she has ever seen. She hoped that they could find someplace in our Town that would accept them.

Dennis Lipp, 13402 North Rd.: Commented that he was familiar with the facility, and it was a good one. He noted that commercial kennels were not permitted in the AR Zoning District and rescue animals were permitted with special exception.

Grace Joyce, 147th Ave. N,: Commented that she was not sure exactly what the presenters were hoping to accomplish tonight; the fact of the matter was the use must be consistent with the Comprehensive Plan; that she felt that this was an inappropriate forum to discuss this and that perhaps the Town could come up with a different policy so that folks who wanted to test the ULDC could come to a community forum, rather than the Town Council meeting.

Jeff Brophy replied that this was a regular process, and that these matters are addressed at staff level, then at the Town Council level, so that it is known exactly what is planned.

Brian Tuttle, Developer, commented that there would be no traffic on Bryan Rd. The location was being considered in several locations, and once a property is located, neighborhood meetings would take place. He noted that by Code, the facility was allowed, but without the commercial boarding and the commercial kennel.

Town Manager Kutney advised that it was the intention for a text amendment to be filed and an application to be filed, and this was an opportunity for them to explain in public what they envisioned and to respond to any questions.

- c. American Cancer Society Relay for Life Presentation by Valerie Shaughnessy, Team Chair – *Councilman Ron Jarriel*

Valerie Shaughnessy addressed the Town Council explaining the Relay for Life, and requesting that the Town become an event sponsor.

Vice Mayor Jarriel said that he had asked them to come here and speak, and made a motion to donate \$500 to the American Cancer Society. The motion was seconded by Councilman Liang.

Councilman Rockett said that he would contribute his \$500 Town Council paycheck for this month too.

Mayor Browning commented that he had an inherent problem with the Town donating – the donation fund was set up for local people, and that he had a problem with donating tax money for this type of thing.

Councilman Goltzené said that we are deciding how to spend the money appropriately and the money is in the budget.

Todd McLendon, 3481 D Rd,: Commented that he agreed with Mayor Browning that tax money should not be donated.

The motion to approve donating \$500 to the American Cancer Society carried 4/1 with Mayor Browning dissenting.

4. COMMITTEE REPORTS

- a. Finance Advisory & Audit Committee (FAAC) Report and Approval of the February 2013 Financial Reports – *Committee Member Virginia Standish*

FAAC Committee Member Standish presented the FAAC Report.

The FAAC report and 2013 Financial Reports were approved through motion of Councilman Rockett, seconded by Councilman Liang. The motion carried 5/0.

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******A five minute break was taken at 8:20 p.m.******

5. PUBLIC HEARINGS (Ordinances 2nd Reading) –

a. ORDINANCE NO. 2013-02

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING PART III, ENTITLED "SUPPLEMENTAL REGULATIONS," ARTICLE 80, ENTITLED "CONDITIONAL USES," SECTION 80-020, ENTITLED "RESIDENTIAL ENTERPRISE," OF THE TOWN OF LOXAHATCHEE GROVES UNIFIED LAND DEVELOPMENT CODE TO DELETE THE PROPERTY SIZE REQUIREMENTS, THE REGULATIONS RELATING TO NUMBER OF EMPLOYEES AND DELIVERY OF MERCHANDISE; TO PERMIT A LIMITED NUMBER OF CUSTOMERS TO TRANSACT BUSINESS AT THE LOCATION OF A RESIDENTIAL ENTERPRISE; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Town Attorney Cirullo read Ordinance No. 2013-02 by title, as printed above.

Town Attorney Cirullo noted that at the last meeting the ordinance was presented at first reading, and it was amended to delete the requirements regarding size of property, employees and contractors and delivery.

Mayor Browning commented that several people had contacted him that believed it might be good to table this ordinance. Zoning in Progress was in place and people could continue to operate for right now.

Town Manager Kutney addressed the concerns of the Mayor. He noted that he had sent a memorandum, dated April 1, 2013, to the Town Council as he had been asked to provide some additional thoughts. He said that he agreed with the analysis of the LPA, and noted that staff was trying to address uses that had existed in the Town for some time, and then also address new uses. The use of residential enterprise and home office uses do not allow traffic or customers to come to the property. Staff believed that the uses could be reviewed based

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upon the impacts. That is one alternative – to table the ordinance tonight and allow staff to address the two issues. The other option is to change item H, where it talks about allowing up to three customers at one time, to change that to do it by appointment – drop the numbers and just say by appointment. Those were two ways it could be addressed, with the third way being to adopt it tonight.

Town Attorney Cirullo advised that it was really a policy decision on how the Town Council wanted to proceed. Because of the unique situation of gun sales, staff was prohibited by Statute from doing a subject specific ordinance on that.

Vice Mayor Jarriel suggested that the number of customers be eliminated, and that the ordinance is finalized.

Town Manager Kutney commented that it troubles him when an ordinance change is made to affect one property owner's situation, because it will also affect anyone else who has a residential enterprise.

Public Comment:

Grace Joyce, 3886 147th Ave. N.: Commented that the second whereas clause in the proposed ordinance was incorrect, because the P & Z board did not recommend approval. There was no evidence that this change was consistent with the Comprehensive Plan. The land use category of the Comprehensive Plan says that the Town will restrict and protect the surrounding areas from the impact of home occupancy. The changes that are proposed are just the opposite. Florida has a building code. Most communities have home occupations take place in the primary structure and you can have folks come to your home, because that is something you would find in a residential neighborhood. Residential enterprise is somewhat unusual. You are now taking an accessory structure and by allowing the public to come in, you have changed the occupancy of that residential accessory structure. The instant you think about changing the occupancy of a building you must file for a permit and provide for everything that would pertain to a commercial building, which would now apply to this residential structure. Staff should analyze the situation and try to help the gentleman, and figure out a way to help him without unintended consequences that would affect everybody. She cautioned the Town Council not to move forward with this and to ask staff to come up with a solution.

Dennis Lipp: 13402 North Rd.: The ADA is separated into four different areas – when a place of public accommodation is located in a home the portions of the home used for such are considered to be Title 3, which states that you have to have an awful lot of things done.

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Once this policy is made, building codes come in, then zoning codes, and a whole plethora of things. Your job is to set policy for the whole town, not just one voter. The ordinance should be left as it originally was.

Ann Parker, 15565 Collecting Canal Rd.: The revision to the ordinance upset her because to her it looked like they were opening a commercial sized can of worms. If you go through with this as is, commercial will be all over and she hoped they table it tonight.

John Ryan, 3508 A Rd.: This ordinance has been discussed for two or three meetings. He listened to the audio of the last meeting, and he maintained that there was discussion back and forth of Councilman Goltzene's three points. With regard to the number of customers there was concern with the Planning and Zoning Board advice to the Town Council. The Mayor said that he was looking for a simple solution in maybe eliminating H, which would do the job. After discussion, it was turned over to Town Attorney Cirullo to bring things together, and the vote was taken. I think that there was real confusion in getting to the changes in the ordinance for consideration tonight. Grace Joyce highlighted some very relevant concerns. Suggests staff take those concerns to heart, and he hopes the Town Council will rely on the ULDC Review Committee to look at how to deal with historic businesses in a simplified special exception use basis. That is how the staff could work with Mr. Kline – with special exception wording. Table this and let staff consider how to deal with Mr. Kline's issues.

Howard Voren, 1538 E Rd.: We seem to be going on in circles. I agree with everything John Ryan said. I understand everything Grace Joyce brought up. We are never given solutions to the problems.

Councilman Goltzené commented that it was interesting to hear the connection between this and commercial, because if we take that argument we are essentially saying that you cannot be residential enterprise, you must be commercial. The other part is that if you look at the scale and scope of the residential enterprise, also, if you get a gun from him maybe it is because you may want to talk to Bill. I think we ought to make an effort to help folks out. I am talking about how we can enable these small businessmen to continue to operate. We have to look out for these folks. We have to find a way to look after the little guy.

Bill Kline, E Rd.: Commented that he wants to make it clear that his records are opened to everyone and anybody. No one has mentioned the farmers and the ranchers. They keep the crows and blackbirds out of the corn with what I supply. I work out of my barn, not out of the house, and I only have from 6-10 people a year.

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Mayor Browning asked if it would harm his business if he took customers by appointment.

Mr. Kline replied that was not a problem. Gun shows were where the problem is.

Grace Joyce, 3886 147th Ave. N.: Commented that the simple solution is to recognize that Mr. Kline has a legal nonconforming use. Right now, with zoning in progress, he is in. It is so simple to create this category of legal nonconforming. We cannot say by appointment only – as soon as you open up a building for public access, you are opening up other issues.

Town Manager Kutney stated that he agreed with Ms. Joyce in regard to nonconforming uses. One piece of information she did not have is that Mr. Kline came in the Town offices in 2012 for residential enterprise.

Town Attorney Cirullo stated that the Town Code already has a provision to recognize legal nonconforming uses. The issue is it has to be demonstrated that it was legal with the County Code and that it existed as of October 1, 2006. If it cannot be established that it was legal and existing on October 1, 2006, then it would not be possible to be included as a legal nonconforming use. If we can table this tonight, staff can spend time to verify this situation. If the use cannot be demonstrated we would have to progress at the policy level. If we can sit down with this gentleman and verify he was legal as of 2006 it would take care of this in the short term.

Public Comment:

Howard Voren, 1538 E Rd.: Referred to a 180 day period referred to by Town Attorney Cirullo. Town Attorney Cirullo clarified that if you are legal nonconforming there is no time issue. The 180 days was for folks that could not demonstrate that they were legal ever. For legal nonconforming use there was not a 180 day period.

John Ryan, 3508 A Rd.: Commented that the ULDC Review Committee is considering simplifying the special exception process for people who have historically been operating businesses.

Thias Gonzalez, 13090 Raymond Dr.: Commented regarding a special policy and a change in an ordinance.

Councilman Rockett made a motion to table Ordinance No. 2013-02. The motion was seconded by Councilman Liang for discussion. (The motion required four votes to

pass.) Mayor Browning and Councilman Rockett voted aye. Vice Mayor Jarriel, Councilman Goltzene and Councilman Liang voted nay. The motion failed.

Councilman Liang made a motion to approve Ordinance No. 2013-02, with amendment to add appoint only language. The motion was seconded by Councilman Goltzené.

Town Attorney Cirullo advised that if the Town Council were to go back and undo the deletions that were approved on first reading, there would need to be another first reading of this ordinance. If Mr. Kline could come to the town offices and demonstrate that he was legal nonconforming, he would conform to the Code.

The motion made by Councilman Liang to approve Ordinance No. 2013-02, with amendment failed (The motion required four votes to pass.) Councilman Liang, Vice Mayor Jarriel and Councilman Goltzené voted aye; Mayor Browning and Councilman Rockett voted nay.

6. ORDINANCES (1st Reading)

a. Public Hearing: - None

7. RESOLUTIONS

a. Resolution No. 2013-03

Accepting Administrative Policy 3-13

Town Manager Kutney reported that a policy had been drafted in response to concerns expressed regarding procedures at Town Council meetings.

Motion: Councilman Goltzené made a motion to accept Administrative Policy 3-13, with the following amendments:

- **3 minute time limit for public comment;**
- **That there be no question/answering period conducted with the Town Council when people are making their public comment;**

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- **Public Comment will be allowed after Town Council deliberation and prior to the vote, with a 3 minute time limit and no questions.**

The motion was seconded by Vice Mayor Jarriel.

Town Attorney Cirullo read Resolution No. 2013-03 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AUTHORIZING AND ADOPTING ADMINISTRATIVE POLICY 3-13, RULES OF PROCEDURE FOR TOWN COUNCIL MEETINGS; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

Councilman Rockett commented that he would like to recognize that any board/committee member speaking at public comment may have more time than three minutes, because they are providing information to the Town Council. After Town Council discussion, it was pointed out that the Mayor had that discretion.

Town Manager Kutney explained that if a board/committee member is speaking on behalf of themselves that is fine. If they are making representation on behalf of the committee, that needs to be clarified when they speak.

Public Comment:

Nina Corning, 2834 E Rd.: Commented that public comment input was needed at the Town Council meetings, and commented on No. 8 and No. 10 of the procedure being accepted.

Howard Voren, 1538 E Rd.: Suggested making sure that the public comment section was written in a way to recognize that the members of the Town Council do have the right to ask a question and the policy should reflect that.

Frank Schiola, 13434 Marcella Blvd.: Commented regarding the procedure being accepted, and the conduct going on during the Town Council meetings.

The motion to accept Resolution No. 2013-03, as amended, passed 5/0.

8. ADMINISTRATIVE UPDATE – Town Manager Kutney

Town Manager Kutney reported on the following:

- He had sent an email with all of the information relating to the pond siting process that FDOT was conducting. The next meeting was April 4, 2013 in Ft. Lauderdale, and he encouraged the members of the Town Council to participate, either by attending the meeting, or via teleconference. He advised that he would continue to update the Town Council in this regard.
- Major Smith of The Palm Beach County Sheriff's office has indicated that they will need to do a 2% increase in the contract with the Town, so in the next budget year the Town would be looking at a \$5,000 increase.
- The Comprehensive Annual Financial Report (CAFR) was transmitted to the Government Finance Officers Association (GFOA).
- On March 22, 2013, there had been 10 responses to the RFQ for engineering services submitted. It is handled through the CCNA process, and recommendations would be made after review of the proposals and presentations.
- Intergovernmental Coordination (IGC) meetings have been reconstituted. The next meeting was set for April 26, 2013.

9. OLD BUSINESS

a. Discussion of Manure Ordinance

Town Manager Kutney explained that there had been feedback regarding the new ordinance, and that staff was willing and able to make any adjustments, and needed some general direction.

Discussion took place regarding what had recently been done in Wellington regarding the handling of manure, how PBSO may assist the Town in enforcement of illegal manure dumping, stopping deliveries from Wellington into Loxahatchee Groves during Polo Season, manure that is produced and used within the Town; signs or stickers that can be put on

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official hauling trucks; testing of the local water for contamination; and the discretion of the Town manager to grant permits.

Town Manager Kutney stated that there was some enforcement available, and there was probably some additional information that would need to be written into the Code. Staff would review all of the items discussed tonight, including discussing enforcement with Lt. Combs, and how that could be accomplished.

Public Comment:

John Ryan, 3508 A Road: Commented that Lt. Combs said that the Town Code relies on the Town code enforcement with the manure ordinance, and said that basically our ordinance is an enforcement nightmare. The simple solution is to make it a misdemeanor. The process now is not enforceable.

Nina Corning, 2834 E Rd.: Commented regarding horse shows, seasonal delivery time limits, manure rationing for larger and smaller properties.

Virginia Standish, 15410 North Rd: Suggested that the Town website list authorized manure haulers, and that code enforcement document the manure needs on properties.

Frank Schiola, 13434 Marcella Blvd.: Commented regarding enforcement, water quality affected by manure, and classifying illegal manure dumping as a hazardous waste.

Howard Voren, 1538 E Rd.: Commented regarding enforcement, and the Town issuing licenses that can be displayed on the side of trucks.

b. Roadway Issues – *Councilman Tom Goltzené*

Councilman Goltzené requested that the Town Council have a special meeting on April 16, 2013, to discuss issues relative to the Town road system: what to do with the Town roads – getting them regularized in some way, gas tax issues, Compton road issues, etc.

Town Manager Kutney advised that it will be advertised as a Special Town Council Meeting

10. NEW BUSINESS - *None*

11. CLOSING COMMENTS

a. Public

Henry Noyes and Robin Sheehan, 14345 Tripp Rd.: Commented regarding another extreme noise nuisance generated by dirt bikes next their house. These activities were preventing them from enjoying their property and turning people away from Mrs. Noyes' business. There are also issues with the drainage as a result of the dirt bike issue.

Town Manager Kutney noted that there has been a complaint filed, and staff has been working the case. Our code officer has been out to take noise readings. There have been other people who complained verbally. He offered to try to mediate the situation, if the Town Council was interested in doing that.

Keith Harris, 2580 C Rd: Commented that he was speaking as a private citizen and referred to a letter that he had forwarded to the Town Manager, Town Council, Planning and Zoning Board, ULDC Review Committee, and Roadway Equestrian Trails and Greenway Advisory Committee, regarding his commercial stables permit. He stated that he was presenting this as a citizen needing some relief from the ULDC, and he was asking the Town to reconsider the requirement of a special exception use regarding commercial equestrian cooperation and make it an accessory use.

Frank Schiola, 13434 Marcella Blvd.: Commented regarding the conduct at Town Council meetings, and asked that it not be tolerated by the Town Council.

Howard Voren, 1538 E Rd.: Commented regarding the special exception process and the situation of Mr. Harris.

Virginia Standish, 15410 North Rd: Comment regarding Town Council input to the ULDC Review Committee and commented regarding the noise issue.

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b. Town Attorney

In response to Councilman Rockett regarding the transfer of roads, Town Attorney Cirullo said that the District was looking for a form for the quit claim deed. There was nothing from the District yet regarding Compton and Marcella, and the letter roads that were in the Special Act were being evaluated. He said that he hoped to have more to put in a memo in the middle of April.

Councilman Rockett commented that this was a high, high priority and if Town Attorney Cirullo needed more assistance, he needed to request that from the Town Council.

c. Town Council Members

Councilman Rockett: We had a real good turnout. The addition of having comments at the front end of the meeting might help people that don't have time to stay.

Councilman Liang: Good Night.

Vice Mayor Jarriel: Thanks for coming. We have roads needing work. The worst is Bryan Rd. Those roads are existing and need to be resurfaced. We will need permission from the people on Collecting Canal to finish the roads. Residents on Bryan Rd. need help.

Councilman Goltzené: Congratulated the Mayor and Vice Mayor. One little problem that is becoming a bigger problem was the poaching of wild hogs in Loxahatchee Groves. Also, addressed the Tent City behind the A & G store. Town Manager Kutney responded that the property where the Tent City was located was owned by Mr. Yee, and staff had notified Mr. Yee, who needed to be the person who called the Sheriff to get the people off of the property.

Mayor Browning: Thanked everyone

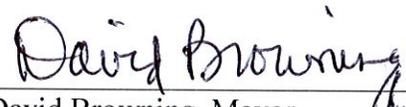
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12. ADJOURNMENT

There being no further business, the Town Council Meeting of April 2, 2013, was adjourned at 11:25 P.M.

**These minutes were approved by the Town Council on
Tuesday, May 7, 2013**


Susan Eichhorn, Town Clerk


David Browning, Mayor

(SEAL)