



Town of Loxahatchee Groves

Town Council Meeting

Tuesday, August 20, 2013 at 7:00p.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 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, Councilmen Tom Goltzené, and Jim Rockett. Vice Mayor Jarriel and Councilman Ryan Liang were not present. Also present were Town Manager Mark Kutney, Town Clerk Susan Eichhorn, Town Attorney Michael D. Cirullo, Jr., and Town Planning Consultant Jim Fleischmann.

b. Pledge of Allegiance & Invocation – Mayor Browning

c. Approval of Agenda

2. CONSENT AGENDA

- a. Minutes for Approval: Revised Minutes of July 16, 2013

Motion: Councilman Rockett made a motion to approve the Consent Agenda. The motion was seconded by Councilman Goltzené. The motion passed 3/0.

3. PUBLIC COMMENT

Phyllis Maniglia, 359 West "D" Rd.: Commented regarding a code enforcement issue that had been ongoing and that she had never received anything in writing from code enforcement, regarding the statutes that were cited. She suggested that the code enforcement employees need to address people in writing, and advise as to the progress of the case.

Keith Harris, 2580 C Rd.: Commented regarding the \$80,000 in 2014 for funding of equestrian trails between "A" Road and Folsom Road, the motion made by the Town Council on March 6, 2012 regarding acquiring a portion of the canal from 6th Court North to C Road; the horse trail between E and C Roads. He referred to the Town Council minutes from March 6, 2012 when a motion was made to acquire a portion of the canal from 6th Court North to C Road, not to exceed \$30,000. He referred to the August 21, 2012 Town Council minutes that stated that despite the fact that the Town Council voted for a horse trail between C and D Roads there was an email from a former LGWCD official that said that there was not an easement for that property. He suggested that it be determined if there was an easement, and volunteered to do the legwork if the Town Council so wished. He stated that the development of a master plan is essential and that each and every dollar will require attention and consideration to make the equestrian trails for Loxahatchee Groves successful for all parties concerned. He requested that it be on a future agenda.

Councilman Goltzené commented regarding the comments of Mr. Harris regarding the \$80,000 funding for equestrian trails between "A" road and Folsom Road, and stated that the plat was located and the easement to the LGWCD did exist, and Town Manager Kutney was now aware of it. Town Manager Kutney replied that the issue would be scheduled for discussion at an upcoming meeting.

Councilman Goltzené also suggested that Solar Sports people should have the conservation easement in place before they come in for approval; all the way from "C" road over. It has not been cleared because there were Brazilian peppers along that way.

4. PRESENTATIONS - *None*

5. COMMITTEE REPORTS - *None*

6. PUBLIC HEARINGS (Ordinances 2nd Reading)–

7. ORDINANCES (1st Reading) - *None*

a. Public Hearing:

8. RESOLUTIONS

9. ADMINISTRATIVE UPDATE – *Town Manager Kutney*

- Update on the ULDC Review Committee: Staff had previously indicated that they would more than likely need to double up on meetings starting in October; any Town Council concerns would be provided to give to the Committee. A public comment had been received from Howard Voren, a ULDC Review Committee member, requesting that the Town Council approve an extra meeting this month, since the Planning and Zoning Board meeting was cancelled this month.
- Sirdar Trucking Contract: Town engineering consultants were measuring as to the cubic yard issue, and the Public Works consultant and Town Manager were reviewing all aspects of the service and invoice. Councilman Rockett commented that he was concerned with the vegetation contract and the way it was structured as an hourly service provider, and said that it was not a reasonable basis. He suggested that we cancel the contract, pay what we owe, and go out again for services only on that particular need, and do it on a per mile basis, per road mile (lane mile). He stated that he thought that we have gone down the wrong path on an hourly basis, and it made it difficult to administer. He suggested to the Town Council that we move to do that expeditiously, because obviously we need the service. It was the consensus of the Town Council to include this item on the Agenda for the next meeting for discussion.
- Received the population estimate of 3,185 from the University of Florida as of April 1 2013.

- Representative of Cotleur & Hearing had invited the Mayor and Vice Mayor to discuss the Callery Judge project, and if any other Town Council members were interested staff would contact Cotleur Hearing to make arrangements for a meeting.

10. OLD BUSINESS

- a. Town Council Discussion and Direction to Staff Regarding Use of Golf Carts and Dune Buggies on Town Roads

Mayor Browning suggested that he would like to discuss this with the full Town Council present.

Motion: Councilman Rockett made a motion to move this item to the next available meeting option. The motion was seconded by Councilman Goltzené. The motion passed 3/0.

- b. Transmission (email) from Tim Hart Woods

Town Manager Kutney advised that in March 2013, the Town Council had asked that code enforcement efforts be stopped in the Palms West Plaza. He had then advised Mr. Yee, the landlord, that the Town was not making any requirements, however, Mr. Yee wanted to resolve life safety issues. In the Resolution R-88-1546, which approved the Zoning Petition for the Plaza, signed with the County, provision No. 15 stated that “No access shall be permitted onto West Tangerine Road or West “D” Road.” That was one liability that concerned Mr. Yee. Town Manager Kutney explained that, at this point, anything Mr. Yee wanted to do would be done without consultation or affirmation from him.

Town Manager Kutney then discussed the email received from Mr. Hart Woods, which said that Mr. Yee had indicated that Town Manager Kutney had directed Mr. Yee to shut the gate in that area. Mr. Kutney explained that the management company was very concerned with threats that Mr. Hart Woods put in an email about bricks coming through the Town offices window, etc., and he wanted the Town Council to be aware of it. Any action to be taken was up to the Town Council.

Discussion took place.

Town Attorney Cirullo commented that there was a Resolution that says no access. He suggested meeting with the property owner if that is a condition he wants to seek formally, and leave it up to him to see if he wants to ask for relief from that condition. If you want to formalize that access, then you should do it the right way.

Public Comments:

John Ryan, 3508 "A" Rd.: Commented that the existence of a formal resolution ought to be respected. A formal request for change by Mr. Yee would allow public comment from those affected by the road. If the Town collects gas tax on that section it would argue for that being a public road. If Tangerine was extended and made a more formal road for public use at some point, it would be appropriate. Mr. Yee should make a formal request, pay any associated costs, and people who live there ought to be involved in the process.

Phyllis Maniglia, 359 West "D" Rd.: Commented that she very much encouraged Mr. Hart Woods' business, and that we need to embrace the agriculture people. Pineapple was a road that used to go through all the way, and she thought it should be opened, and that was how she felt as a resident in the neighborhood,

Frank Schiola, Marcella Blvd: Commented that the gate issue could be solved through Town Council approval, if that is what the shopping center wants. The second part of this is something that we have seen in Loxahatchee Groves for the last six months, and that is an elevated threat level. The Town Management company is receiving phone calls such as, grade my roads today or I will come in there and beat the crap out of you, and the threats are coming more and more often.. He cited the killings at a Connecticut council meeting over a sewer matter. He said that in almost every other municipality, if you send a threatening email you will get a visit from someone, and that he thought the Town Council needed to address this.

Mayor Browning requested that the Town Manager contact Mr. Yee and see if he wants to bring this forward.

11. NEW BUSINESS

- a. Clarification of Valley Crest Development Matter

Town Manager Kutney provided a brief update on this matter, and noted that Attorney David Coviello was present to address the cost recovery issue.

Attorney David Coviello, on behalf of Magic Properties V, LLC, addressed the Town Council, stating that the violation that precipitated this whole site plan process went on for over two years after a code enforcement violation. The violation stated that a landscape service business was only permitted in the zoned area in conjunction with a retail or wholesale nursery. It was now known that was an error -- there was always the opportunity to have a stand alone landscape service business. Because of that error, the applicant was required to come back twice for site plan approval, and he stated that he did not think it was fair to impose the costs from the second time that the applicant came back.

Attorney Coviello explained that he was referring to the County Code, when the violation was imposed. The applicant had been travelling under the County Code in this entire proceeding. The County Code said that a stand alone landscape business was permitted in that zoning district as a principal use, but the applicant was cited under the AGR district, which the property was not in.

Town Attorney Cirullo commented that the case dated back to 2008 and was cited under County Code. He did not know how long the error was allowed to perpetuate, and he had not spent the time to go back and review it in terms of this cost recovery issue. He stated that he looked at it more a fairness request to you, and whether you want to consider that as an equity issue.

Councilman Goltzené stated that he thought it was important to understand whether they went through a six year process because of an error on the Town's part. It would be very material when the fine was discussed.

Attorney Coviello stated that the property owner had discovered that it was always permitted. We knew that the Town code changed, so his client was willing to work with the Town staff. When we came before you, we looked at the code and confirmed that we never needed a nursery component and that is when you directed us to come back and take out the nursery component. There was an error in the violation.

Discussion took place.

Town Attorney Cirullo advised that he would go back and get the application and the code review it with attorney Coviello, so that we can get on the same page so that we know what was done in this matter.

Public Comments:

John Ryan, 3508 A Rd.: Commented that he agreed that one of the background issues is that this business was operating under the County before we adopted our Code. That is one reason that the ULDC committee has focused on a simplified special exception process. It may not have been handled as a special exception because there was a legal business under the County Code, but there was confusion because that was in place before the Town's ULDC was in place.

Frank Schiola, Marcella Blvd.: Commented that before we had a Town and we were incorporated, the county gave BTRs to anyone who wanted it, without any research at all. The County rarely sent code enforcement. It was in an AR zone. They come in and bring in all of the trucks and trailers and it is basically a commercial operation. I think that's where it all comes to. I think you will find that it is AR, and it ended up changing into a commercial enterprise.

Todd McLendon, 3481 D Rd.: Commented that if the Town made a mistake are they going to refund him all the money that was wasted. I find it very distasteful that there is a Town Council member that has a family member that has, under our new Code, opened up the exact type of business as he did, and that is acceptable. But, we want him to stick to the letter of the law and pay thousands of dollars to do the exact same thing that this Council member's relative is doing.

Councilman Rockett commented that there were certain operational procedures about directing something to Town Council members.

Ken Johnson, Collecting Canal: Commented that he was not talking about this business or what Todd just said, but I sit on the committee that he is talking about. If you look at the expenditures that the Town is paying up front every 30 days, all of those bills add up. We are incurring, as a Town, all of these costs, and that money is coming out of all of our pockets. We have got to recoup that money to keep our taxes where they should be.

Town Manager Kutney commented that this has been like the perfect storm for a code enforcement case. You have had two governments involved, two Special Magistrates involved, two code enforcement companies involved, and three management companies involved. You can see why it has been such a confusing mess.

Town Attorney Cirullo advised that he would confer with Mr. Coviello and get back to the Town Council within the next couple of meetings and give you my analysis in order for you to make a decision.

Councilman Rockett stated the following: that if Mr. McLendon was talking about this particular Town Council member he is completely incorrect. I do not have the same situation with a family

member. He has twisted information as he always does, and that needs to be said. If it is not me, then I don't know anybody else on the Council that has that problem either.

b. Solid Waste Collection Agreement

Town Manager Kutney provided a brief report regarding the Solid Waste and Recycling Collection Franchise Agreement with Waste Pro of Florida.

Councilman Rockett suggested more specificity regarding the schedule, to include the statement that recycling is on Saturday and vegetative is on Wednesday.

Town Attorney Cirullo stated that if the vendor objects he can get up or confirm that we can add those two sentences.

Chris Schulle of Waste Pro stated that the service days are going to stay the same.

Motion: Councilman Rockett made a motion to accept the contract with sentences added which would accomplish that service days of the week are vegetative pick-up on Wednesday, recycling on Saturday, and solid waste on Wednesday and Saturday. The motion was seconded by Councilman Goltzené.

Public Comments:

Ken Johnson, Collecting Canal Rd.: Commented regarding land values in Loxahatchee Groves, and suggested that the area could be cleaned up and look better; he suggested recycling as another way to obtain free money, which could help reduce taxes.

John Ryan, 3508 "A" Rd.: Commented as follows: Page 10 of 50, item 4.a.1. It implies that all vegetative waste will be containerized. I don't think that is the case. Then on page 32 of 50, there is a basis for complaint that I think would be unreasonably burdensome, item 21 – requires Waste Pro to have supervisory present on all of Town routes. That wording might be unduly burdensome.

The motion to approve the Waste Pro contract passed 3/0.

12. CLOSING COMMENTS

a. Public

Lisa Glenn, 1311 Folsom Rd.: Commented regarding a short dead end road, 13th Place North, which lies between her two properties. She asked if it was possible to acquire that road, as she was trying to put a perimeter fence around her personal property and put a gate on 13th Place.

Town Attorney Cirullo responded that there is a process of abandonment. He would speak with staff tomorrow to review it. It could eventually be done through Resolution; it could be abandoned and would no longer be a public road.

Town Manager Kutney commented that Ms. Glenn had called the town offices, and had been very patient. The Town Attorney would now be involved, and the road was on the Town gas tax map.

Mayor Browning commented that if any of the roads we are collecting gas tax on are really driveways, we need to get ahead of the game.

Keith Harris, 2580 C Rd.: Commented that he has heard the term Resolution used, and requested that the Town Attorney provide an explanation of a resolution and how it is legally binding.

Town Attorney Cirullo replied that matters of law are done by ordinance, and matters of procedure are done by resolution, and are binding.

Phyllis Maniglia, 359 West "D" Rd.: Commented regarding the security situation for the members of our Loxahatchee Groves management and where the offices are. She stated that she would like to see the offices in that corner unit where the bait and tackle used to be. Right now where they are, anybody could walk in there and they would not know it until they were right on top of them. She asked that it be considered seriously.

Frank Schiola, Marcella Blvd: The baton team that the Town Council sponsored won honors. His daughter was ranked in the nation. The baton group is going to come here and thank you all at your next meeting.

Marge Herzog: A Rd: Reminds everyone that Thursday, Aug 21st is the Loxahatchee Landowners Meeting. A representative from the TV and film commission will be present. Also

a representative from FAU will be talking about landscaping best management practices and concentrating on fertilizers. Next month. On Sept 21st, the National Honor Society would do a cleanup from Folsom to Seminole Pratt.

b. Town Attorney

c. Town Council Members

Councilman Rockett: Thanked everyone for coming.

Councilman Goltzené thanked Ken Johnson and Phyllis Maniglia for their concern about the area, and their community pride. We do have problems in the Plaza.

Mayor Browning: Thanked everyone for coming. Referred to keeping properties clean. We may have to come down harder on some of these properties that are owned by banks, etc.

Councilman Rockett: Requested that Town look at laws regarding foreclosed properties.

13. ADJOURNMENT

There being no further business, the Town Council Meeting of August 20, 2013, was adjourned at 8:45 p.m.


Susan Eichhorn, Town Clerk


David Browning, Mayor

(SEAL)