

**TOWN COUNCIL
SPECIAL MEETING
OCTOBER 23, 2001**

The meeting was called to order at 6:37 p.m. Present were Mayor Venis, Vice-Mayor Paul and Councilmembers Clark, Starkey and Truex. Also present were Town Administrator Willi, Town Attorney Kiar, and Town Clerk Muniz recording the meeting.

1. PUBLIC COMMENTS

Ordinance - First Reading (Second Public Hearing to be held November 7, 2001)

- 1.1 CODE AMENDMENT - AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF DAVIE, BY AMENDING THE DEFINITION OF "OPEN SPACE" AS DEFINED UNDER SECTION 12.503 AND ADD TO SECTION 12-33 (N) A SUBSECTION (10) AS CONCERNS FENCES IN "E" DISTRICTS ALREADY BUILT WITH VALIDLY ISSUED PERMITS AND AS CONCERNS FENCES ON LAKEFRONT PROPERTY IN "E" DISTRICTS; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Venis advised that a public hearing would be held on November 7, 2001. Town Clerk Muniz read the ordinance by title.

Development Services Director Mark Kutney summarized the amendment. He stated that staff was still investigating this issue with Mr. Kiar, as they were concerned with references to the "E" district. Mr. Kutney felt that this amendment addressed the needs of Council.

Vice-Mayor Paul asked if removing references to the "E" district would open this to other properties. Mr. Kutney explained that there were other areas in the Town that had similar situations, including the "old PRD" and other developments that staff was aware of. He felt that the definition of open space needed to be modified, especially for future projects. Mr. Kutney explained that many open space codes did not allow for residential lots and a minimum of open spaces was dedicated to the public. He stated that because the Town's Code did allow for this in certain instances, conflicts had occurred.

Mr. Kiar felt this ordinance would help to resolve some of the concerns that the Town had faced regarding the "E" zoning. He explained that even though the "E" zoning was repealed, there were still some parcels remaining with this zoning and the property owners and developers were still responsible. Mr. Kiar explained the purpose behind the "E" zoning, stating that it allowed developers to build more homes than were normally permitted, but they were required to make provisions for open space and to comply with other restrictions. He pointed out that this ordinance required developers with the "E" zoning to provide good, quality open space. Vice-Mayor Paul asked if this was part of a legal agreement. Mr. Kiar replied affirmatively.

Mr. Kutney explained that the "E" district was allowed to remain on several developments, even though it was repealed which was not common procedure. He stated that staff would probably be recommending new zoning categories once the final projects were built out. Mr. Kutney stated that the new zoning categories would probably be "suburban" or districts that were similar and added that if the "E" zoning was perpetuated, further problems would probably occur.

Councilmember Truex asked how many developments under this category had site plans approved before November 1, 2001. Mr. Kutney replied that the properties included West Ridge, Highland Lakes, Imagination Farms East and West, Long Lakes, and Long Neck

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Ranches. Councilmember Truex asked for the rationale of the lakefront property provisions. Councilmember Starkey explained that swimming pools necessitated this provision and added that some communities had prohibited building fences down to lakefronts through homeowner's associations.

Councilmember Truex referred to Town Code 12-33(A)(8), which made reference to swimming pool enclosures and Florida State Statute 515, which referred to barriers. He felt that Town code conflicted with the State statute. Councilmember Starkey explained that the Florida State Statute change was initiated by Representative Debbie Wasserman-Shultz, and it regarded child safety in and around swimming pools. Councilmember Starkey felt that this Statute had nothing to do with lakefront properties.

Neil Kalis, attorney for Stonebrook, addressed the Council. He referred to a letter written by Mr. Kiar regarding this issue and did not recall "an exemption." He added that his client would comply with State law.

Councilmember Truex again referred to the State Statute and asked Mr. Kutney what the rationale was for putting gates in backyards. Mr. Kutney stated that the intent was to allow the yards to be considered open space for use by neighboring residents. Councilmember Starkey added that this property was an easement for the South Florida Water District and the gates allowed for maintenance. Councilmember Truex felt the gates invited problems. Councilmember Clark stated that this was technically open space and that was the purpose for the gates. Councilmember Truex felt that if it was open space, then it should not be fenced in.

Vice-Mayor Paul stated that the issue at hand needed to be modified in order for it to be equitable. She added that most "E" districts were already built out, and hoped that more restrictions would be added as far as the permitting process for those properties still in progress under this zoning.

Mayor Venis explained the history of the gate issue as it pertained to open space. He stated that it was a compromise, which allowed the public to traverse open space property near lakes without having to walk around fences and through the water. Mayor Venis added that not every house in these developments had a fence down to the water.

Councilmember Clark referred to Section 2 and the term "grandfathered." She questioned the use of this term, as it was previously determined that there was no validity to it. Councilmember Clark was concerned that this ordinance included this term and felt the inclusion of it would invite other issues for the Town. Mr. Kutney stated that the term "grandfathering" was generally used for nonconforming situations. He believed that the permits issued for these fences were issued in error. Mr. Kutney explained that this was why the term "grandfathered" was used in this ordinance.

Mayor Venis asked if anyone wished to speak for or against the ordinance.

Susan Rolin, 1035 SW 119 Way, stated that she had been trying to get a permit for a fence since May 30th, however, it was denied because of the Open Space Code. Ms. Rolin explained that there were 11 homes in her area that had permits and she was being asked to move her fence 25 feet in from her property line. She was concerned because her lot was the only one that was being adversely affected, as her neighbors did not have to move their fences. Ms. Rolin advised that she had attempted to contact various Town staff, including Councilmember Clark and Mr. Kutney, but had not received any response. She added that she had attended a Council meeting and was told by Councilmember Clark that the open

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space issue was going to be addressed at this meeting. Mr. Kutney was under the impression that Mr. Katims had resolved this issue with Ms. Rolin in regard to this ordinance. Ms. Rolin explained that she did not have lakefront property.

Councilmember Starkey requested that Ms. Rolin's concern be addressed at a later date because the ordinance being discussed only dealt with lakefront property and "E" zoning, and it did not deal with the "E" categories and open space. Councilmember Starkey believed that fencing in common open spaces was not what Council wanted. She added that if they were issued in the past, it would have to be addressed at a later time.

Councilmember Clark felt that Councilmember Starkey's recommendation posed a double standard because it did not matter whether or not a lake was involved. She felt that it was inequitable to pick and choose districts and types of fences, and therefore she would not support this ordinance. Councilmember Clark also felt that there was not enough information and was concerned with future conflicts this ordinance might create.

Councilmember Starkey stated this ordinance addressed only lakefront properties, unlike Ms. Rolin's situation, which was in regard to open space and easements. She explained that many permits had been granted which allowed fencing to the lakes to homeowners who had pools. Councilmember Clark clarified that those permits were issued erroneously and it was inappropriate to perpetuate this practice by creating an ordinance.

Mr. Kutney stated that the only way to rectify this situation was to visit the areas, gather data on the number of properties then fall into this category, and then address them on a case-by-case basis. He also recommended revising the Code so that there would not be a problem in the future. Vice-Mayor Paul stated that this was an ideal point to address with the zoning in progress.

Councilmember Clark asked if the future objective was to make it more accessible to fence in open space. Mr. Kutney clarified that it should be looked at on a case-by-case basis because of the differences in the various developments.

Discussion followed regarding how this situation originated and how it could be rectified. Councilmember Starkey stated that she did not support other open space categories to be fenced. She explained that pool homes on lakefront properties were different than open space situations such as Ms. Rolin's, and added that this ordinance was permitting pool homes to install fencing down to the lake.

Mayor Venis asked Mr. Kutney to address this issue with Ms. Rolin.

Councilmember Clark asked if an ordinance would be required to help Ms. Rolin. Mr. Kiar responded in the affirmative.

Jason Curtis, 3801 Flamingo Road, asked who paid taxes on open spaces in the developments. He asked if the homeowner's associations or if the individual was responsible. Mr. Kutney replied that if it was common open space, then the homeowner's association was responsible but was not sure who was responsible in the "E" districts. Mayor Venis stated that individual homeowners were responsible for easements and waterfront. Mr. Curtis felt that if individuals were paying taxes, they should have the right to build fences, whether or not the property was open space, unless access was necessary for Florida Power and Light or the South Florida Water Management District.

Mr. Kalis urged Council to pass this ordinance. He understood that the "E" zoning district amendment, as proposed, handled the "E" zoning district problem. Mr. Kalis referred to the term "grandfathering" in Section 2 of the amendment and asked if the ordinance was amended to allow the fences, would it imply that there was no longer a legal

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non-conforming use. He recommended that the wording be modified to state that those fences that previously had permits issued would now be considered legal fences. Councilmember Clark agreed with this recommendation. Mr. Kalis clarified that this discussion was only regarding lakefront properties.

Mr. Kiar referred to the Residential Swimming Pool Safety Act and stated that there were provisions for certain requirements regarding access gates to swimming pools. Mr. Kalis stated that the question was whether the gate was needed, even if there were other gates around the property that did not fall between the 20 feet between the backyard and the water's edge. He advised that either way would be acceptable. Mr. Kiar reminded Mr. Kalis that this was a compromise offered to his client. He stated that some Councilmembers were concerned that the fencing might infringe upon trails and the rights of open space.

Mayor Venis closed public hearing.

Vice-Mayor Paul made a motion, seconded by Councilmember Starkey, to approve based on a rewording of the first sentence in 12-33(N) that was going to take out the word "grandfathering" and replace it with the wording to show that it was legal. In a roll call vote, the vote was as follows: Mayor Venis, yes; Vice-Mayor Paul, yes; Councilmember Clark, no; Councilmember Starkey, yes; Councilmember Truex, yes. (Motion carried, 4-1).

There being no further business to discuss, the meeting was adjourned at 7:24 p.m.

APPROVED _____

Mayor/Councilmember

Town Clerk