

**MEETING MINUTES**  
**TOWN OF BEVERLY BEACH, FLORIDA**  
**SPECIAL COMMISSION MEETING**  
**FIRST READING OF ORDINANCE 207-01**  
**DECEMBER 19, 2016 – 3:00 P.M.**

**A Special Commission Meeting for the Town of Beverly Beach was duly noticed and held on Monday, December 19, 2016, in the Town Hall Conference Room at 2735 N Oceanshore Boulevard. A quorum was present.**

**ATTENDEEES:**

Stephen Emmett	Mayor	
Larry Mathies	Commissioner	
Jeffrey Schuitema	Commissioner	
Ernie Sund	Commissioner	
Debra Wingo	Commissioner	
Donna Francis	Town Clerk	
Dennis Bayer	Town Attorney	
Justin Carron	UF Law School Assistant	
Sandra Siepietoski	Commissioner	<i>Excused Absence/Out of State</i>

Residents in Attendance (all from Surfside Estates):

James Ardell  
Ray Allebach  
Lonny Taylor  
Mike Richards and Karen Richards

**CALL TO ORDER** – The meeting was called to order at 3:00 p.m. by **Mayor Emmett**, who then led the Pledge of Allegiance.

**OPENING REMARKS AND DISCUSSION**

- a. **Mayor Emmett** turned the meeting over to the Town Attorney, who introduced University of Florida Law School student Justin Carron. Justin has been working under the guidance of his professor and Mr. Bayer to evaluate the floodplain management situation for the Town.
- b. Regarding the edited version of the proposed ordinance returned to us from the state’s review, **Mr. Bayer** stated that there is “an incredible amount of confusion” regarding the issue between what the state wants, what Flagler Beach has done, and what we’re trying to do in Beverly Beach. The state web site (emergency management) has a version of a state model ordinance adopted in 2013, which is the version we used as a model. Now there is apparently a newer version that is not on their web site. The state’s comments on our proposed ordinance are all in regards to the newer version.
- c. To add to the confusion, the City of Flagler Beach web site shows an ordinance that is not the one they adopted. If you go to the Municode web site it is also not the version that was adopted. Justin was able to figure out which version was current and which was not.
- d. In looking at a lot of the comments received from the state, Mr. Bayer does not believe we need to do as many extensive revisions as they would lead us to believe. We need to better codify certain sections to ensure that the language refers to Beverly Beach and not Flagler Beach.

- e. There is a question relative to if a structure is more than 50% damaged do you lose your grandfather status. We're (the Town) not doing a lifetime lookback and that is in the existing Beverly Beach Code. The state did not seem to have a problem with that.
- f. The Town needs to reach a policy decision regarding whether the two-foot freeboard required above base flood elevation is sufficient. Flagler Beach requires a foot-and-a-half.
- g. There are a couple of changes that the state questions, for example the issue of manufactured homes. The Flagler Beach ordinance in Section 4.07.13 states that new manufactured and replacement manufactured homes shall not be installed in coastal high hazard areas except in an existing manufactured home subdivision.
- h. The only other significant issue is that, due to the short gap in time between the December and January meetings, Mr. Bayer suggested postponing the second reading of the proposed ordinance to the February meeting so it gives us plenty of time to make revisions and get the new draft to the state for their review.

### COMMISSIONER COMMENTS AND QUESTIONS

- a. **Commissioner Sund** asked if it was “mandatory” that the Town accept the CRS (Community Rating System) program. Mr. Bayer replied that it is entirely voluntary; however, if the Town does not accept it and go along with the state residents *may not* be able to obtain flood insurance. **Mayor Emmett** asked if there is anywhere in writing that it states that face, because he had heard it verbally but had never seen anything in writing. **Mr. Bayer** said he would look into that question, but it is his understanding that Beverly Beach residents would not be eligible to participate in the Federal flood insurance program if the Town does not participate in the state CRS program.
- b. The **Town Clerk** asked if that would preclude residents from going to a private insurer to obtain flood insurance. **Mr. Bayer** stated that they could attempt to do so but he does not know if any company would underwrite flood insurance that was not endorsed by the Federal government.
- c. **Commissioner Mathies** stated he has always carried flood insurance and he believes it has always been with a private carrier. **Mr. Bayer** said that the Coastal Barrier Resources Act first started all the codes regarding minimum requirements, elevations, etc. Residents could also be at risk with lenders if they do not qualify for flood insurance coverage. Barrier islands are recognized as high hazard areas. Flooding can cause extensive loss of property value – it’s a policy decision the state has decided to follow up on.
- d. **Commissioner Sund** asked what the total financial obligations might be for the Town. **Mr. Bayer** said that the bulk of costs would be relative to inspections, permits, etc. following storm damage, with redevelopment needing to meet the new standards. Implementation would fall primarily with the Building Official after future damage. **Commissioner Sund** asked what would be the financial burden specifically to the Town. **Mr. Bayer** stated that the ordinance may have to be updated from time to time as the state changes standards, or the state may come back in three or four years and decide that a one-foot base flood elevation not sufficient and has to be changed. They may also come back and redraw flood maps that will have an impact on individual homeowners. The costs to the Town won’t be that high; the biggest impact will be on private property owners and their ability to get insurance.
- e. The **Town Clerk** asked about the financial impact to residents (for existing homes) for them to meet the standards required by a new ordinance. There are concerns that many homes, especially in Surfside Estates, do not meet the minimum requirements currently. The CRS team toured Surfside and noted multiple locations that were not in compliance. Bringing those homes up to requirements will be a financial burden to those residents. **Mayor Emmett** wants a concrete answer as to why Beverly Beach cannot do an Interlocal Agreement with Flagler Beach to cover the issue. The Town currently has an IA for building permits, inspections, etc. and they already have a floodplain manager in place on their staff. **Why can’t Beverly Beach just do an IA with Flagler Beach?** He does not agree with the Town having to have its own “floodplain manager” with such severely restricted personnel and financial resources. Mr. Bayer stated that Marineland is having the same problem. The only answer the state will give him is “up until this year” it could be done, but now they are saying you have to have your own local ordinance per each jurisdiction, your own floodplain manager designated within your own town. You can have an IA with another jurisdiction to implement components of the ordinance, but each town must

still appoint its own floodplain manager to be the central point directing compliance with the language of the ordinance.

- f. **Jim Ardell** stated that per his research, out of 468 municipalities in Florida being approached by the state to join the program, only 168 are participating at this time. Nationwide, the percentage is very low. **Mayor Emmett** stated that most insurance companies have not even heard of the CRS program. **Commissioners Sund and Mathies agreed**, stating that they each checked with their carriers and neither company had even heard of the CRS program. **Mayor Emmett** went on to say that if we sign up with the CRS it is going to be “very intrusive” and that the Town may have to raise taxes to cover the potential costs involved with implementation.
- g. **Commissioner Sund** asked if there is a mandate that the state notify insurance companies. **Mr. Bayer** said that FEMA delegated some authority to the state. He is not sure what the procedure is.
- h. **Commissioner Schuitema** stated that there is much confusion about flood zone designations. His insurer said that he is in a flood zone. FEMA/SBA assessed his home and said he’s not in a flood zone. The two entities just keep going back and forth. If FEMA controls the insurance companies, they need to communicate accurate information to the insurers. Multiple agencies are disseminating conflicting information. He sees a big conflict between FEMA and the state. **Mr. Bayer** reminded everyone that FEMA is currently redrawing the flood maps, and it is in draft state.
- i. **Commissioner Schuitema** asked **Mr. Bayer** if the Town is “fighting an uphill battle” against the state. **Mr. Bayer** said the Town does need to fine-tune the related ordinances to bring them up-to-date to current standards. He has no problem with a “one-shot” update but acknowledged that it would be a burden if the Town has to revise the regulations every twelve months or so. The Town needs to have an ordinance more consistent with the state model and the Flagler Beach current ordinance. The amended ordinance was passed in April 2016. UF student **Justin Carron** said one problem with the current Flagler Beach ordinance is that it does not comply with the state model, even though it was just passed in April 2016. **Mayor Emmett** said the last time he spoke with the County about their ordinance, they also were not in full compliance.
- j. **Commissioner Wingo** asked if the CRS deadline has passed. **Mr. Bayer** said the deadline had passed but that we were given an extension to February. She asked how it would impact residents if the Town does not act, could residents with existing coverage lose it. **Mr. Bayer** is unsure if it would impact renewals or just new policies.
- k. **Mayor Emmett** is concerned that it is going to cost the Town a lot of money for what little insurance discount residents might receive. In the long run someone has to pay for it. **Commissioner Schuitema** expressed concern that the whole subject is a gamble. He does not feel the Town should risk future action against the Town by the state if we do not comply. But he does not like the idea of gambling with the public’s interests.
- l. **Commissioner Mathies** stated that the Town does not have a qualified person to be the floodplain administrator. It should be someone who is technically qualified and credentialed like the Flagler Beach staff person and he does not believe the Town should be responsible for having to hire someone to fill that position. **Mr. Bayer** said that it could be addressed through an Interlocal Agreement with the costs being covered by increased fees for related building permits. **Mayor Emmett** asked what qualifications are needed for a floodplain manager. He is not willing to commit to moving forward until several questions are answered, including whether the CRS/state program are willing to help with the cost of implementation.
- m. **Commissioner Wingo** suggested that the Town move forward with adopting the proposed ordinance even if we choose not to join the CRS. She does not want to put homeowners at risk. She also stated that the Flagler Beach floodplain manager is very good, and she would be in favor of increasing permit fees to cover her services to Beverly Beach if we are able to do so.
- n. **Commissioner Schuitema** asked if the proposed ordinance would “adopt the CRS” program or if it is an independent part of the process. **Mr. Bayer** said it would be “adopting the state guidelines” which are supposed to be in compliance with FEMA. **Commissioner Sund** asked if we could hire “part-time” the Flagler Beach floodplain manager and pay for it with permit fees. The **Town Clerk** clarified that

the Town no longer collects fees so that individual would not be employed directly by Beverly Beach. **Commissioner Wingo** stated that we could incorporate the increased fees in an Interlocal Agreement to use the professional services of Flagler Beach's floodplain manager.

- o. **Mr. Bayer** explained that currently the Town Clerk is designated as floodplain manager. However, the Town Clerk can designate duties to other contractors or employees. The floodplain manager's main job is that proper inspections are done, proper documents on files, elevation records, etc. The technical part of the job may be delegated. **Mayor Emmett** again stated he wants something *in writing* that clarifies whether or not we are *required* to join the CRS. **Mr. Bayer** suggested a telephone conference with state officials to clarify some of the questions involved.
- p. **The Town Clerk** said it was her understanding that the actual CRS program was supposed to be "voluntary" but that the state and FEMA still want the Town to adopt a current floodplain management ordinance. The Town declined in writing to participate in CRS but the state continues to push back. **The Clerk** asked if the proposed ordinance was passed, would the Town be in compliance to the extent of residents being able to get flood insurance without actual participation in the CRS program with the state. **Mr. Bayer** said by adopting the ordinance the Town would essentially make the Town a member of the CRS program {*he later clarified this in response to a question from Commissioner Wingo, stating that passing the ordinance would make us "in compliance" with CRS guidelines, but not necessarily automatically a program member*}. **The Clerk** asked if there was any way for the Town to adopt an ordinance that would be in compliance *without* also becoming part of the CRS. **Mr. Bayer** said he did not know. **The Clerk** explained that some people might have a better comfort level with the issue if we could coordinate with Flagler Beach to provide our floodplain management service through an Interlocal Agreement, while not directly participating in the CRS. **Mr. Bayer** said his question was "why" there was resistance to joining the program. The prevailing opinion of the Town leadership is that the program is very expensive, intrusive, and burdensome.
- q. **Mr. Bayer** said that whether or not we choose to join the CRS, they can still implement a voluntary rating system once we have a compliant ordinance. **Commissioner Schuitema** is concerned that if that happens and some of our residents do not get a good rating, it could impact their ability to obtain adequate flood insurance, even with the compliant ordinance in place. Increased premium rates are also a concern. **The Town Clerk** reiterated that Surfside's residents were very upset when the CRS team came into the community unannounced, did not check in with the office, and proceeded to take photos and impose on neighbors' privacy. Town officials do not want to continue to give up autonomous control.

## **PUBLIC COMMENTS, QUESTIONS, CONCERNS**

- a. Surfside Estates residents are concerned about the inconsistencies in the floodplain designations. One resident also stated that his insurance billed him over \$1,000 after the storm claiming to have incorrectly billed him previously. They want specific direction on what is compliant and what is not, especially with regard to how high above flood plain they can raise a home. **Lonny Taylor**, a member of the Surfside ROC Board, stated that the height of a home in Surfside is limited to 15 feet. **Commissioner Schuitema** disagreed with that assessment. The height limit will be clarified not only with regard to Town Code, but also any specific ROC regulations.
- b. Concern continued to focus around how high Surfside residents are able to raise their homes to be in compliance with state and local ordinances. **Mayor Emmett** said that the ROC could implement a regulation of their own, but it would *have to comply* with state and FEMA regulations, meaning if FEMA dictates how high above flood plain a home must be sited, it could supersede an ROC regulation if the height does not meet minimum FEMA requirements.
- c. **Commissioner Sund** asked about current rules being grandfathered for existing homes. **Mr. Bayer** said once FEMA does their evaluation and determination, you are going to have to be in compliance with the 36" or 52" or whatever they dictate regardless of what our ordinance might say. Our ordinance has to be in compliance with FEMA specifications.
- d. Residents expressed frustration at not being able to obtain definitive flood zone maps. **Mr. Bayer** stated that they are available at the Property Appraiser's office. **The Town Clerk** said that there is a set of

proposed/draft maps at the Town Hall. The final version is supposed to be available in June 2017. The final map determination will have to be used by the insurance companies and could either raise or lower rates on a case-by-case basis.

- e. **Jim Ardell** stated that he thought the proposed ordinance was developed in the least restrictive way possible. He has extensively studied the topic. He also said that the state is requiring someone “legislatively employed” by the Town to be the floodplain manager, so subcontracting the Flagler Beach staff person would not qualify. As a result, the Town has to name the Town Clerk as the intermediate person to coordinate all parties involved and delegate tasks. Additionally, per FEMA regulations, CFR 5.2 one of the requirements is that the local municipality must “cooperate with state officials” although they do not define what “cooperation” is. **Mr. Ardell** suggests the Town pass the floodplain ordinance and then make every effort to avoid having to officially join the CRS program. The proposed ordinance does not contain the phrase “Community Rating System” so Mr. Ardell thinks the Town could avoid direct participation. He also had some concerns about the “50%” issue.
- f. At the Mayor’s request, **Mr. Bayer** said he would investigate the possibility of the duties of the floodplain manager being “delegated” to the Flagler Beach staff through an Interlocal Agreement. The Town Clerk would still be the designated “floodplain manager” for Beverly Beach, but would not be involved in technical decisions and determinations. Flagler Beach may be able to act as an agent of the Town. The increased cost of compensating that person would be covered by increased permit fees for Beverly Beach building permits. Technically the person in that position should be a licensed engineer or similar. In response to a concern about legal liability, Mr. Bayer confirmed that Town officials and Building Officials by and large cannot be held directly liable for issues that are a result of decisions on this matter.

**Commissioner Wingo made a motion to approve the first reading of the proposed floodplain management ordinance 2017-01 with the corrections discussed, and to pursue the option of using an Interlocal Agreement with the City of Flagler Beach to delegate technical work to their floodplain manager. Seconded by Commissioner Schuitema.**

*Motion Approved by a 4-0 Unanimous Voice Vote*

**ADJOURNMENT**

**There being no further comments or questions, the Mayor called for a Motion to adjourn; so moved by Commissioner Sund, seconded by Commissioner Mathies.**

*Motion Approved by a 4-0 Unanimous Voice Vote; Meeting Adjourned at 4:13 p.m.*

**Respectfully Submitted,**

**Donna Francis, Town Clerk**

