



**Town of Surfside
Special Town Commission Meeting
MINUTES**

February 12, 2015

7 p.m.

Town Hall Commission Chambers - 9293 Harding Ave, 2nd Floor
Surfside, FL 33154

1. Opening

A. Call to Order

Mayor Dietch called the meeting to order at 7:06 P.M.

B. Roll Call of Members

Town Clerk Sandra Novoa called the roll with the following members present: Mayor Dietch, Vice Mayor Tourgeman, Commissioner Olchyk, Commissioner Cohen and Commissioner Karukin.

C. Pledge of Allegiance

Chief Allen led the Pledge of Allegiance

2. Urging Resolution on Sand Chemical Testing – Mayor Daniel Dietch

A RESOLUTION OF THE TOWN OF SURFSIDE URGING THE STATE OF FLORIDA LEGISLATURE AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (“FDEP”) TO ESTABLISH CHEMICAL TESTING STANDARDS PRIOR TO ISSUING A COASTAL CONSTRUCTION CONTROL LINE PERMIT (“CCCL”) WHICH AUTHORIZES THE TRANSFER AND PLACEMENT OF EXCAVATED SAND SEAWARD OF THE CCCL ONTO A PUBLIC BEACH; RECOMMENDING ADDITIONAL CHEMICAL TESTING STANDARDS; ENCOURAGING SUPPORT FROM PUBLIC OFFICIALS AND UNITS OF GOVERNMENT TO SUPPORT THIS INITIATIVE; PROVIDING DIRECTION TO THE TOWN CLERK; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Dietch presented the item.

Commissioner Karukin said he commented on this item to Representative David Richardson and Mayor Dietch said he also mentioned it to David Geller and both thought the item was important enough to bring up to the State.

The Mayor opened the item for public comment.

Public Speakers:

Marianne Meischeid and George Kousoulas both were very supportive of the resolution.

Commissioner Karukin made a motion to approve. The motion received a second from Commissioner Olchyk and all voted in favor.

3. Beach Sand Quality Ordinance – Mayor Daniel Dietch

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING ARTICLE I OF CHAPTER 34 “ENVIRONMENT” AND SPECIFICALLY CREATING SECTIONS 34-2 to 34-8 “BEACH SAND QUALITY” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES; AMENDING CHAPTER 14 “BUILDING” OF THE TOWN OF SURFSIDE CODE OF ORDINANCES AND SPECIFICALLY AMENDING SECTION 14-28 “ISSUANCE OF BUILDING PERMITS”; AMENDING CHAPTER 90 “ZONING” AND SPECIFICALLY SECTION 90.5 “COMPLIANCE WITH REGULATIONS”; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Sandra Novoa read the title of the ordinance.

Jane Graham, Assistant Town Attorney presented the ordinance.

Commissioner Karukin made a motion for discussion. The motion received a second from Commissioner Cohen.

The Mayor opened the item for public comment.

Public Speakers:

-Marianne Meischeid feels we need more sand on our beach coming from developers and not smaller portions.

-George Kousoulas respectfully asked that all testimonials be heard before voting on the item. He explained in more detail the different exhibits in the residents report. Vice Mayor Tourgeman made a motion to allow Mr. Kousoulas an additional two minutes to speak. The motion died for lack of a second.

-Marcos Arancibia continued explaining the exhibits where Mr. Kousoulas left off. He mentioned that these were modest changes.

-Deborah Cimadevila said the ordinance does not include toxic materials and after consulting with a professional in the field, testing should also include for lead based paint and asbestos. She also asked that any debris be reported to the DEP as required. She also said the sand color should be seven as the Sand Committee agreed on.

-Tina Paul said we have been talking about this for ten months and the sand doesn't look right and doesn't feel right. She also said the ordinance should be retroactive and to fix the situation they have.

-Jeffrey Platt spoke about the sand color. He presented the color of 7.5 sand originally on the beach and what the Surf Club put down with the color of 6 sand which is what they all objected to. He cannot understand why the ordinance states that the sand color of 6 is acceptable when the Sand Committee was willing to compromise and accept the 7 color of sand. He feels the Commission is taking the advice from the developers and not listening to the citizens and the sand color should be brought back to a 7 in the ordinance.

-Larisa Alonso wanted the ordinance to include more strict regulations for lead. She further explained the danger of lead especially for children as defined by the Center for Disease Control.

-Norma Parron said we do not have control over what the Government puts on our beaches but we do have control over what developers put on our beaches. Therefore we should require strict regulations and whiter sand. She also was concerned that the Surf Club has put in larger dunes than others in the city, and how that would affect neighboring buildings if there was water intrusion from the ocean.

-David Raymond commended the Commission for presenting the ordinance for a first reading. He feels some issues have to be balanced out such as color. His primary concern is lead in the sand and also questions the size of the dunes of the Surf Club and how that will impact other buildings. He feels there should be more balance on the dunes throughout the city.

-Sharon Goldberg wanted to see stricter levels proposed for lead and numbers put in the ordinance such as the State of California does.

The Mayor asked the Town Attorney if the title of the ordinance would change if they were to make some changes in the ordinance. Attorney Miller said they could go forward even if some changes were to be made.

Vice Mayor Tourgeman would like to add to the ordinance Appendix A, Section 8, Phase 1, testing to include lead based paint and asbestos. He would also like to add under Appendix A, Item 5 language to be changed to "regardless of knowledge" instead of "if there is site specific knowledge" with regards to testing. He would like to add to Section A, Appendix B the value of the sand be changed from 6 to 7 and under number 5, to add testing for toxic materials.

Commissioner Karukin thanked all for their hard work on the issue. He would like to see this go forward as a necessary first step. He would like to get more staff and expert input before any changes are made. Commissioner Olchyk agrees with Commissioner Karukin to not make any changes at this time but to move the

ordinance forward. Vice Mayor Tourgeman was not in agreement and said the changes he suggested have been gone over by experts have been discussed before and is surprised they were not in the ordinance to begin with. Commissioner Cohen is in agreement with the Vice Mayor.

There was further discussion on changes to the ordinance and Assistant Town Attorney Graham explained why the changes were not included in the ordinance as presented. Commissioner Cohen said after hearing from Ms. Graham and the reasoning she presented, he now believes we should wait before changes are made this evening.

Gordon Thompson, consultant for the town of Surfside addressed the color of the sand which is at 6 and said if the sand is excavated it would most likely still be a 6 and if the ordinance reads sand must be a 7 then the developer would have to bring in new sand. Mr. Thompson said he recommended a 7 as that is what the citizens wanted. Vice Mayor Tourgeman was very strong in asking to make the change now to a 7 as this has been discussed and what the Sand Monitoring Committee recommended.

Vice Mayor Tourgeman made a motion to approve with his minor changes. The motion died for lack of a second.

Commissioner Olchyk made a motion to approve as accepted and upon the Mayor's direction to have the Town Manager work with the Town Attorney to meet with the experts and staff and present their report in time for the next Planning and Zoning Meeting. The motion received a second from Commissioner Karukin and the motion carried 4/1 with Vice Mayor Tourgeman in opposition.

Commissioner Olchyk made a motion to move forward on Zoning in Progress. The motion received a second from Commissioner Cohen and all voted in favor.

The Mayor invited Monica Grandeze to give the residents presentation. She thanked the Commission for allowing the residents the opportunity to express their views. She said the residents were traumatized to see their once pristine beach now filled with dark sand and debris. The presentation was very detailed with several graphs.

Ms. Grandeze pointed out the huge discrepancy in cost for removing the sand as their consultant estimated \$160,000 and the town estimated \$800,000. They have asked the town to get an actual quote from various contractors but the residents have not yet received that information.

A video was shown regarding dune revegetation and a video regarding dune height. Height of dunes at the Surf Club was also discussed.

Toxicology reports and graphs were presented and reasons why it should be included in the new ordinance.

Video was shown of past Sand Project Town Hall Meetings and what was agreed upon and questions why these agreements have not been met.

4. Sand Relocation Options – Guillermo, Olmedillo, Town Manager

Town Manager Olmedillo presented the item and gave an overview as to what had transpired over the months before he came into office and to date. He further said he wanted to review all the facts and expert reports before making any recommendations. He said conditions have changed from September 11th to date and that toxicology reports find no health hazards in the sand and that is why his recommendation was to leave the sand in place. He explained the discrepancy in estimated costs to relocate the sand. He is in favor of new vegetation as it would help preserve the dunes. He also explained the various costs that would be incurred going forward with other options. His report included three options consideration.

The Mayor opened the meeting for public comments.

Public Speakers:

-Attorney Claudio Riedi speaking on behalf of his client Debbie Cimadevilla and Glenn Taylor. He said as of today the DEP has not concluded its reports. He said if the mitigation plan was not executed properly then there would be a problem making the Surf Club and the town of Surfside liable. He also mentioned pollution into the waters and the Clean Water Act.

-Peter Glynn spoke regarding the dunes and said nature has already done its work and everything is mixed in and feels it is too late to do anything. If there is a cost to the city he believes nothing should be done.

-Jeffrey Platt related to the video previously viewed where Mr. Thompson of the Surf Club said just “tell us what to do and we will do it.” He feels the town never responded to what the residents wanted done and now all these different cost figures are coming up from the city. He believes when Mr. Thompson spoke he also was including the costs. He asked if the town went to the Surf Club and told them what needed to be done.

-Sharon Goldberg commented on the expert reports which indicate the levels of toxins and does not understand how they reported there is no evidence a health hazard and commented on the EPA standards.

-George Kousoulas does not see the Surf Club as the villain. The situation has been a mess for 11 months and now difficult to come to a conclusion. He said the issue has always been about sand transfer and not beach renourishment. He further said that if the town had previous standards regarding sand we would not have this problem. He asks the Commission to look at the ordinance very carefully.

-Marianne Meischied thanked Ms. Grandeze for the presentation and thanked Vice Mayor Tourgeman for taking an interest. She feels the other Commission members are washing their hands of making an informed decision and taking no action. The Surf Club has not complied with their permit and mitigation and asks the Commission why they are allowing them to run the town. She also inquired as to the \$1 million bond that the Surf Club provided to the town.

-Lou Cohen brought up two buildings on the beach that were built several years ago. The sand was dug up and spread along the beach and originally darker in color and a year later it had bleached out and there was no negativity input from the residents. The sand now being dug up is the same sand as before but now we have people looking at toxicology reports, the texture of the sand and color and feel the situation has been overblown.

-Peter Neville said previously the excavated sand was placed on the dunes. He also believes the extra sand should fill in the gaps between the streets and have bridges built

as once before and take this sand off the beach. He said his doctor has suspected that he has lead poisoning and he cannot go to the beach anymore as when he does he comes back with a rash. He is contemplating moving out of Surfside as he is very unhappy with the Commission and its decisions. He also doesn't understand how the city got involved with any costs as the Surf Club should be paying for all this.

-David Raymond said the recommendations of the Sand Committee was based on what the residents wanted and the expert reports which the city hired. He also addressed the costs that were quoted.

-Marcus Arancibia felt there was no point in having a Sand Committee, the Commission voting and when nothing was being done. He brought up two points he felt were incorrect in the Town Manager's report, the placement of sand on the dunes and the fact that the DEP has not concluded its report. He also questions why the city has to pay for this.

-Becky Hope commented on the budget costs and also believes the sand could stay and it has lightened up and supports the first option.

-Larisa Alonso wanted to remind the Commission that this was not about renourishment but excavated sand from the developers. She sees no conflict in wanting to have stricter standards and the sand put on the beach should have been the same as what was previously there. The town has the right to turn down the sand that was placed there and the town should not have to pay to have this remedied.

-Tina Paul said she does not go to the beach anymore and commented on the ordinance, resolution 15 and asked for an explanation.

-Norma Parron quoted from an article on page 2 of the Gazette and asked for an explanation of the mission on tourism.

-Ken Arnold feels there has to be some reasonability between the different sides. There is scientific data and then personal opinions. He suggests the new Town Manager meet with all sides and come up with a resolution to fix the problem. He also feels if the cost is in the low \$100 thousand we should fix it but if it should be around \$800,000 we should not.

-Michael Goldstein representing the Surf Club said the review from the FDEP is still ongoing and they have been working with them to satisfy all requirements. He feels there is no claim under the Clean Water Act and the town should not be intimidated by the Clean Water Act. He also said he believed there was no claim to be presented against the Surf Club and town and explained the liability and attorney's fees that Mr. Riedi mentioned.

He read a report from reputable scientists that said the sand placed on the beach was safe.

-Dr. Keith Tolson a faculty member at the University of Florida Miami was asked by the Surf Club to review the toxicology report and help DERM with the studies. His conclusion is that the sand on the beach is safe and the lead levels are not bad.

-David Goldman registered professional geologist said the findings of the hired consultants and experts were correct and the beach sand does not pose a health threat.

-Clara Diaz-Leal mentioned that the sand was to stay on the dunes but has been washed into the water and now it has to be replenished and someone has to pay for it.

-Attorney Alexander Tachnes of Fort Capital Management representing the Surf Club said according to all scientific tests and expert's reports we know there is nothing wrong with the sand. However they know that some residents are not happy and said their interests are aligned with the residents and the town of Surfside. He also mentioned the numerous times they have financially helped the town on projects even though they were

not legally obligated to do so. To help solve the problem and because they feel it is the right thing to do they are willing to donate \$250,000 to the town to purchase new sand and urges its neighboring developers to step up and help the town.

Commissioner Karukin made a motion to allow Mr. Tachnes additional time. The motion received a second from Commissioner Cohen.

Mr. Tachnes continued by saying there are two conditions that go along with the donation. (1) The existing sand is not to be removed from the beach; (2) the parties that have hired an attorney and threatened litigation enter into a settlement agreement that they will drop their objections in regards to this matter. Once that is done they will turn over the funds to the Town of Surfside.

-Juan Borges said all tests show that the sand meets the State's standards. The only outstanding issue is that the Surf Club still has a permit that has to be closed. He feels nothing should be done with the sand and sand does change color over time.

The Mayor closed the public comments.

Town Manager Olmedillo addressed some of the issues raised. He said that if one removes sand from the beach they must then replace it. Vice Mayor Tourgeman asked if the \$250K donation would cover the cost of bringing in new sand. An approximate amount may be \$300k. The Town Manager said he could not give an estimated dollar amount until a survey is done. The Mayor explained why a survey has to be performed.

There was further discussion as to permits and approximate cost of bringing in sand.

Moving sand on the beach to inner spaces and bringing in new sand was an option discussed.

Gordon Thompson spoke of various options in placing new sand and how he based the costs. To obtain a new permit and bring in the sand probably could not be done in time before turtle nesting season. The Mayor suggested using the existing permit which the Surf Club has which could expedite the project and this could be done by an amendment.

Vice Mayor Tourgeman thinks the best option is on Table 3 and suggests that the Surf Club revise the donation between \$250k-\$300k providing their conditions are met. Mr. Tachnes said he did not have the authority to up the amount and hopes that other beachfront property would help with the costs.

The Mayor asked the residents if this was acceptable by a show of hands. Residents had some questions and the Mayor allowed them ten minutes to speak.

-David Raymond said one of the issues was the sand now is all mixed in and what would be the objection to removing it and placing it in the dunes and bring in new sand on the beach. If the Surf Club thinks the sand is fine then leave their sand alone and place the new sand on the rest of the beach.

-Monica Grandeze asked if the height of the dunes could be adjusted as they are much higher than others so the walking paths are the same. Mr. Tachnes said if they give the money to the town it is up to the town how to use it.

-George Kousoulas said he can support this concept.

-Renee Tischler asked about the amount of sand which could be placed on the beach and the maximum height.

-Jeff Platt had a concern about the Surf Club's future development and would like to see an agreement where any sand excavated in the future cannot be placed on the beach but

perhaps put on the dunes. The Commission said that the ordinance would address these issues. Mr. Tachnes said the Surf Club would place newly excavated sand in the dunes.

-Nora Parron who lives next to the Surf Club said they have put up with the noise and traffic and as President of her condo association the Surf Club has never approached them to ask if everything was ok or apologize for the inconveniences. She mentioned an issue in the back of the building which causes a problem in getting to the beach. She said they are happy to have them as a part of Surfside but they should become better neighbors.

-Attorney Claudio Riedi representing Debbie Cimadevilla said she will be considering the Surf Club offer.

Commissioner Cohen gave his views on the issue and urged the residents to also attend future meetings on other issues and voice their opinions. He said this Commission has taken the brunt for past management and when the issue was brought to their attention they immediately looked into it and are now introducing new legislation so this cannot happen again.

Mayor Dietch said we can go forward and accept the Surf Club's offer subject to the conditions stipulated (one being the town has no control over) and also that the town can travel under the Surf Club's permit, perhaps in an amendment. Attorney Claudio Riedi speaking on behalf of his clients said the big issue was scraping the beach sand and until they know how the money is to be spent it is not feasible for them to make a decision.

Vice Mayor Tourgeman made a motion to accept the offer contingent upon the Surf Club's conditions being met with all parties involved coming to an agreement and satisfied with the funds, and upgrading the funds in good faith and an amendment that the town can piggyback under the Surf Club's existing permit to expedite bringing in new sand. The motion received a second from Commissioner Karukin. Commissioner Cohen gave reasons not to go forward as we are agreeing to agree when all depends upon the parties involved come to an agreement. He said the citizens that have hired an attorney must seriously reconsider their suit and the costs they will incur if they lose. All the evidence indicates the sand is safe and they have to work this out and we should defer. Nothing will be accomplished until the condition regarding legal action against the Surf Club is resolved.

Commissioner Olchyk left the meeting (time uncertain).

Commissioner Karukin made a motion to extend the meeting for not more than thirty minutes. The motion received a second from Vice Mayor Tourgeman. The motion carried 3/2 with Commissioner Cohen in opposition and Commissioner Olchyk absent for the vote.

After some further discussion a vote was taken and the motion carried 3/2 with Commissioner Cohen in opposition and Commissioner Olchyk absent for the vote.

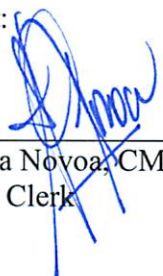
5. Adjournment

The meeting adjourned at 10:58 p.m.

Accepted this 10th day of March, 2015



Daniel Dietch, Mayor

Attest:


Sandra Novoa, CMC
Town Clerk