

**MINUTES  
LONGBOAT KEY TOWN COMMISSION  
SPECIAL MEETING  
APRIL 7, 2014 - 1:00 P.M.**

**Present:** Mayor Jim Brown, Vice Mayor Jack Duncan, Commrs. Terry Gans, Lynn Larson, Irwin Pastor, Phill Younger, Pat Zunz

**Also:** Town Manager Dave Bullock, Town Attorney Maggie Mooney-Portale,  
**Present:** Town Clerk Trish Granger

**CALL TO ORDER**

**Mayor Brown called the April 7, 2014, Special Meeting to order at 1:00 p.m., in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida, and Commr. Gans led the Pledge of Allegiance.**

**PUBLIC TO BE HEARD**

1. Opportunity for Public to Address Town Commission - No items were presented.

At each meeting the Town Commission sets aside a time for the public to address issues that are not on the agenda.

**QUASI-JUDICIAL RESOLUTION AND PUBLIC HEARING**

2. Quasi-judicial – Resolution 2014-14, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures

Chapter 158.138(B)(8)(b) of the Town's Zoning Code provides for property owners to file a petition with the Town Commission seeking a time extension for legally nonconforming land use and structures. A nonconforming use or structure not used for a period of one year is considered abandoned unless an extension is granted by the Town Commission. At the December 11, 2013 Special Meeting, the Commission adopted Resolution 2013-39 providing the Colony Beach and Tennis Club Association, Inc., with an extension of time until April 30, 2014 regarding its nonconforming uses and structures. On March 17, 2014 the Colony Beach and Tennis Club Association, Inc. petitioned the Town Commission to extend the deadline from April 31, 2014 through October 31, 2014 (or to such further time as the Town Commission may deem appropriate under the totality of the circumstances). Discussion of this request, and consideration of Resolution 2014-14, is scheduled for the April 7, 2014 Special Meeting. Recommended Action: The Town Commission will base its decision on competent substantial evidence presented at this public hearing.

Following comments by Mayor Brown, Town Clerk Trish Granger placed Resolution 2014-14 on record for public hearing by title only.

Following comments by Town Attorney Maggie Mooney-Portale, Commr. Larson disclosed conversations with various entities and individuals relating to the Colony property.

Commr. Gans noted that he had been in proximity to Mr. Murf Klauber at various times but had not discussed the property.

2. Quasi-judicial – Resolution 2014-14, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures - Continued

Mayor Brown noted the procedures to be followed for a quasi-judicial hearing. Town Clerk Trish Granger administered the oath to all individuals presenting testimony.

Assistant Town Manager Anne Ross, duly sworn, gave a PowerPoint presentation relating to the Colony property. Town Attorney Maggie Mooney-Portale noted that Section 158.138(8)(c) noted the maximum allowable extension of August 15, 2015. Discussions were held with Assistant Town Manager Ross, Town Attorney Mooney-Portale, and Police Chief Pete Cumming on the following topics/issues:

- Code requirements relating to the date of a maximum extension
- determination of the maximum allowable extension of August 15, 2016
- action required within five year period to retain density (any development plan filed before allowable extension would be required to be considered)
- option to establish abandonment date of August 15, 2011
- Police call summary.

Assistant Town Manager Ross noted the conditions outlined in Resolution 2014-14.

Attorney Donald Hemke, representing the Colony Association and duly sworn, noted a request for an additional six month extension on the non-conforming use and commented on the existing conditions on the property.

Attorney Jeffrey Warren, duly sworn, commented on the bankruptcy proceedings and determination of ownership issues.

The following individuals, duly sworn, commented on the extension request:

Mr. Julius Rauch, Norton Street  
Mr. Blake Fleetwood, New York City, Colony tourist unit owner  
Mr. Larry Grossman, St. Judes Drive North

Town Clerk Granger administered the oath to the following individuals wishing to provide testimony:

Mr. Alan Tannenbaum, duly sworn, 1990 Main Street, Sarasota  
Mr. Sy Sherr, 1100 Ben Franklin Drive, Sarasota

Attorney Hemke commented on speaker presentations, supported approval of an additional extension, submitted newspaper article on tourism units, and requested consideration to modify Resolution 2014-14 (page 4 of 8) to strike the first two Whereas clauses, as follows:

**WHEREAS**, owing to the passage of time and lack of maintenance, the vacant buildings on the Colony property have continued to deteriorate and have become a nuisance, a detriment to the neighborhood and a blight within the Town; and

2. Quasi-judicial – Resolution 2014-14, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures - Continued

**WHEREAS**, the existing buildings are a detriment to the redevelopment of the Colony property; and

Town Attorney Mooney-Portale noted no objection to removing or retaining the clauses and suggested a substitute Whereas clause, as follows:

**WHEREAS**, the Colony Association has obligated itself to maintain the property.

Attorney Hemke noted agreement to stipulate to language obligating the Colony Association to maintain the property. Discussion ensued with Town Attorney Mooney-Portale and Attorney Hemke on language to include in the Resolution as previously represented to the Town Commission relating to maintaining the Colony property.

Subsequent to discussion on proposed language to incorporate in the Resolution, there was consensus to amend the language in the Whereas clauses (additions shown as underlined text/deletions shown as ~~strikethrough~~ text):

**WHEREAS**, owing to the passage of time and lack of maintenance, the vacant buildings on the Colony property have continued to deteriorate and ~~have~~ may become a ~~nuisance~~, a detriment to the neighborhood and a blight within the Town; and

**WHEREAS**, the existing buildings ~~are~~ may become a detriment to the redevelopment of the Colony property; and

Upon inquiry, Attorney Hemke confirmed that the posting of the "No Trespassing" signs would be done in accordance with State regulations, requested consideration to retain the fencing on site that is six feet high in lieu of replacing with eight foot high fence due to cost considerations, and noted agreement to file (post-haste) a redevelopment plan once ownership control has been determined and to establish procedures to draw on the bond.

Discussion ensued on the following topics/issues:

- existing condition of the property
- the rodent traps/bait boxes on the parcel
- fence height on the buildings/property
- Town Code restrictions for construction fencing
- continued requests for extension
- nuisance hearing process scheduled for May 28, 2014
- existing conditions on the property creating hazardous conditions
- receiving information on the inspections completed
- options to require updates on the status of the property development.

2. Quasi-judicial – Resolution 2014-14, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures - Continued

Town Attorney Mooney-Portale requested a recess to provide for public hearing if conditions not met.

Commr. Zunz requested clarification on the abandonment date and Town Attorney Mooney-Portale noted that the final extension would be in 2016 and confirmed that the current Resolution provides for non-compliance issues and the Town's authority to schedule additional hearings.

**RECESS:** 2:32 p.m. - 2:43 p.m.

Town Attorney Mooney-Portale provided proposed language for inclusion in the Resolution, Section 4, subparagraph 8, as follows:

SECTION 4. The Colony shall:

8) Colony shall prepare and present a formal report to the Town every 6 months. Such report shall outline compliance with all of the items outlined in Section 4, subsections (1) through (7). In the event of unsatisfactory compliance with the above provisions, the Town Commission may request a public hearing be held pursuant to Section 5 of the Resolution.

Attorney Hemke noted agreement to the proposed language.

Individual comments followed on the possible termination of the extension if compliance with the conditions of the Resolution are not met.

Mayor Brown noted, prior to a motion to pass Resolution 2014-14, that several items needed to be considered and would be incorporated into the Resolution.

**Subsequent to discussion on the process to incorporate changes to the Resolution, there was consensus to insert the date of August 15, 2016, in Section 3 (on page 5 of 8) of Resolution 2014-14.**

**There was consensus to amend Section 4, subparagraph 6, as follows:**

**6) Within 21 30 days of this Resolution, shall install ~~an 8 foot~~ a code compliant security fence to deter access around the perimeter of the entire Colony property; and**

Town Manager Bullock advised that it was the intent of the Town to achieve an eight foot high fence wherever possible. Individual comments followed on the objective to achieve the eight foot fencing around the property and the type of fencing to be utilized (wood versus chain link). Following comments by Attorney Hemke, Mayor Brown noted that Town Staff will provide information to the Colony representatives relating to State officials.

2. Quasi-judicial – Resolution 2014-14, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures - Continued

**Subsequent to discussion on the length of time for the extension, there was consensus to amend Section 4, subparagraph 7, to incorporate the bond amount of \$50,000.00.**

Upon inquiry, Attorney Hemke advised that the bond amount of \$50,000.00 would not be contested.

Town Manager Bullock requested the following language amendments (additions shown as underlined text/~~strikethrough~~ text) could be deleted from Section 4, subparagraph 7:

- 7) The Colony shall maintain with the Town a cash bond in the amount of Fifty Thousand Dollars (\$50,000), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above. ~~The Colony shall maintain with the Town a cash bond in the amount of \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above. Unless additional time is needed by the Association to obtain the total amount of cash bond provided for above, the~~ The cash bond shall be provided to the Town no later than May 1, 2014. ~~If additional time is needed for good cause, the Association shall submit a written request for additional time to the Town Manager, submit at least \_\_\_\_% of the cash bond to the Town no later than May 1, and provide the Town with a date certain in which the remainder of such cash bond funds will be remitted to the Town.~~ If the cash bond is not provided by the Association to the Town by May 1, 2014, by the date certain provided by the Association, then the Town Manager may elect to bring this issue to the Town Commission at a public hearing in accordance with Sections 5 of this Resolution. Nothing herein shall be construed to prevent the Town from drawing on a portion of the cash bond remitted by the Association to the Town.

**There was consensus to amend the language as provided by the Town Manager.**

Commr. Larson inquired and Town Attorney Mooney-Portale reviewed Section 6 of the Resolution outlining the process to draw on the bond.

Upon inquiry, Attorney Hemke noted he did not have authority to modify Section 6, to delete subparagraph d, which requires a hearing before the Town Commission. Discussion ensued on past agreement's proffered by the Colony's legal representatives during public hearings.

3. Discussion of Colony Cash Bond

The Town Manager and Town Attorney will seek Commission direction regarding the Colony cash bond. Recommended Action: Pending discussion, provide direction to Manager.

3. Discussion of Colony Cash Bond - Continued

Town Attorney Maggie Mooney-Portale commented on the cash bond and advised that the current cash bond will expire on April 30, 2014. Town Attorney Mooney-Portale noted that the Cash Bond Agreement would provide a "bridge" until the delivery of the established cash bond pursuant to Resolution 2014-14.

2. Quasi-judicial – Resolution 2014-14, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures - Continued

Attorney Hemke noted he was unable to contact Mr. Yablon relating to the request to remove the public hearing process but advised that the team would be willing to accept modification to Section 6(d).

Commr. Larson suggested and discussion was held on requiring a specific time frame to schedule a meeting following written notice.

Town Manager Bullock submitted the following substitute language for Section 6d), as follows (additions shown as underlined text/deletions shown as ~~strikethrough~~ text):

- d) Should the Town Manager determine that the Association has failed to timely cure and eliminate the failings in the aforementioned notification, upon receipt of written notification, the parties shall hold a hearing ~~before the Town Commission in accordance with Section 5 above~~ meeting within 10 days of such notice to attempt to resolve the issue.

**Subsequent to comments, there was consensus to incorporate the revised language in Section 6d.**

**Commr. Younger moved to pass Resolution 2014-14, as amended. The motion, seconded by Commr. Larson, carried by a 7-0 roll call vote, as follows: Younger, aye; Larson, aye; Duncan, aye; Brown, aye; Gans, aye; Zunz, aye; Pastor, aye.**

3. Discussion of Colony Cash Bond - Continued

Mayor Brown inquired, and Town Attorney Maggie Mooney-Portale noted that formal action was required on Item 3.

**Following comments by Assistant Town Manager Anne Ross, Commr. Larson moved to authorize the Town Manager to sign the Cash Bond Agreement on behalf of the Town. The motion, seconded by Commr. Gans, carried by a 7-0 roll call vote, as follows: Larson, aye; Gans, aye; Pastor, aye; Zunz, aye; Younger, aye; Brown, aye; Duncan, aye.**

**ADJOURNMENT**

**Mayor Brown adjourned the April 7, 2014, Special Meeting at 3:27 p.m.**

Minutes Approved: 05-05-2014