TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON TUESDAY, MARCH 9, 2010

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order on Tuesday, March 9, 2010, at 9:30 a.m., at 355 S. County Road, Palm Beach, Florida 33480, in the Central Fire Station, in the Emergency Operations Center (EOC). On roll call, all elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Cunningham gave the Invocation. President Rosow led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Thomas M. Youchak, Architectural Commission, From March 2004 Through November2009.

Mayor McDonald presented Mr. Thomas Youchak a plaque for his service on the Architectural Commission from March 2004 through November 2009.

B. Information About the US Census [Pedro M. Guilarte, Partnership Specialist, US Department of Commerce-US Census Bureau]

Director of Building, Planning and Zoning introduced Mr. Pedro Guilarte. Mr. Guilarte, U.S. Census Bureau from the Atlanta office, noted that the U.S. Census was ongoing and stressed how important it was to participate. The census is conducted every ten years. The census drives economic growth, political boundaries, and federal monies allocated based on population. He noted that in the 2000 census, only 43% responded to the Census and encouraged the residents to respond to the census form that would be mailed out this week.

Council Member Diamond asked about the long form and if illegal immigrants are counted. Mr. Guilarte responded that there is no longer a long form, and that unless you were a tourist, you would be counted.

C. Presentations by Applicants for Architectural Commission.

The following applicants spoke regarding appointment:

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone (561) 838-5416 • Facsimile (561) 838-5417
E-mail: townclerk@townofpalmbeach.com • Website: www.townofpalmbeach.com

- Eugene Fagan
- Margaret Kaywell
- Peter Knowles
- Steven Stolman
- Ann Vanneck
- Nikita Zukov

The following applicants were not present:

- Martin Gruss submitted a letter indicating that that he was attending Winston S. Churchill's funeral in England and was unable to attend.
- Ken Karakul
- Robert Vila submitted a letter indicating that he was unable to attend.

Council President Rosow offered an alternate position to any applicant if they were not selected as a Regular Member. No one objected.

Council Member Wildrick thanked all of the applicants as they were a quality group of people. He stated that the decision to appoint new members today would not be easy, but encouraged those on the commission to be more helpful and courteous to the public and each other. He understood that their job was difficult, but the way they communicate with each other and the applicants needed improvement.

D. <u>Presentations by Landmarks Preservation Commission.</u>

The following applicants spoke regarding appointment:

- Marion Albergo
- Leslie Diver
- Edward Cooney
- William Feldkamp
- Rachel Lorentzen
- Dudley Moore
- Gene Pandula
- Charles Roberts
- Patrick Segraves
- Steven Stolman

The following applicant was not present:

- Lois Wideman

Council President Rosow stated that there were over twenty applicants and encouraged those who may not be selected today to keep trying. He noted their remarkable backgrounds and the desire to serve the community was commendable.

Council President Pro Tem Coniglio recounted a story that it took her three attempts to be appointed to the Seaview Advisory Commission, at which point she served sixteen years, two terms as the Chair. Due to the large number of applicants today, she also encouraged those not selected to please reconsider future appointments. She also shared her personal rationale in appointments. She looked very carefully at the background of education, the area of expertise, and balancing those areas of expertise, attendance, preparation and just as importantly, the ability to contribute to come to a consensus in a positive and cooperative manner. This is particularly apropos today in the current contentious climate.

IV. COMMENTS OF MAYOR JACK McDONALD

There were none.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council President Pro Tem Coniglio stated that she has lived in town for almost thirty years, worked, raised a family and participated in the community. She has never seen the sentiment of destructive negativity that the Town has experienced in the last few months. She had only one question and that was why. She asked if it was constructive or productive in finding solutions for the tough problems. She wondered if the name calling, bullying and threats would be behavior that was accepted by their own children. It has to stop. It was her hope, that again, they could treat each other with respect and courtesy, reaching out to one another to nurture and protect the community.

Council Member Kleid added that along the same lines as Council President Pro Tem Coniglio, there is a cancer growing in the Town of Palm Beach. Its growth started with a group of e-mailers who banded together under the guise of a "good government" group. They proceeded to disseminate mostly anonymous blogs critical in blatant terms, of the staff and appointed and elected officials of the Town. The application by the Sterling Munder Group to redevelop the Poinciana Plaza produced a fertile environment for the rapid growth of the cancer. They have had Landmarks Preservation Commissioners, some of whom have explicitly taken sides on the issues, both orally and in writing, and other Commissioners who implicitly by their actions or non-actions, have revealed their bias. This environment has produced the most egregious, and prejudiced e-mailer yet. A man, who at the Town Council meetings and again at the Town Caucus was rude, unprofessional, and bullying. He now, by disseminating e-mails, has maligned the character of numerous present members of the Landmarks Preservation Commission, as well as applicants and prospective applicants to the Commission. Not surprisingly, knowing his animosity to the Sterling Munder Group, he has targeted those individuals who he has perceived not to share his beliefs. What was most disheartening to Council Member Kleid was that he had succeeded in at least one case where a prospective applicant to the Commission has not made an application, because that applicant did not want their family subject to further abuse. It was clear to him that other prospective candidates had been turned off from volunteering their services by this bullying conduct. The Sterling Munder application spawned one group which had its employees wear "Stop Sterling" buttons and when entering their building it was like entering hostile territory. An ellemosynary organization conducted a simplistic survey; another group packed the hearings with their faithful; and there were increasingly more strident e-mails and letters to the *Shiny Sheet* from the Sterling Munder Group and the Preservation Foundation. That type of conduct does not bode well for those who in the future may want to present new ideas for projects in Palm Beach. The

Town was being eaten alive by spreading cancer. It was time for the silent majority in the Town to say enough. He, for one, was sick of the course of action. Palm Beach had always been known for its civil discourse. He called upon the Palm Beach Civic Association, the Citizens' Association, other civic groups and other individuals to publicly denounce individuals and groups who conduct themselves in that negative, destructive way. To paraphase Edmund Burke, All that remains for the triumph of evil, is for good men to remain silent.

Council President Rosow added that he was not opposed to being criticized, and anyone was free to come after him, say what they wanted to about him, he was fair game. They can use truths, innuendos, or lies. But when somebody says I have a problem that may affect his family, that had reached a new level. You have created a new problem when his family was mentioned. He stated that the person who sent the e-mails was Lowell Levine. He had made a threat against Council president Rosow's family, against Council Member Kleid's family and against Council President Pro Tem Coniglio's family. The three of them received a private e-mail from Mr. Levine, which he considered to be a threat against his family. He will deal with that appropriately.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

This item was heard after Item XI.B.2

Mrs. McNamara, 422 North Lakeside Drive, Lake Worth, stated that the cancer referred to by Council Member Kleid and the problems mentioned by Council President Pro Tem Coniglio had been created by their constant failure to represent the will of the people who elected them. She was critical of the Town Council Members and noted that they were part of the problem. She cited that the Council should follow all of the Laws, including the Comprehensive Plan, Robert's Rules of Order and not allow the Sterling Group to violate many Town Codes. She accused Council Members Kleid and Rosow of enabling the Royal Poinciana Plaza owner to perpetuate violations of Palm Beach Code. She stated that the Town Council deserved the inflammatory language that they received. Property Owner's neglect creates slums and suggested that Council President Pro Tem Coniglio remember that.

Council President Pro Tem Coniglio responded to Mrs. McNamara and stated that she did not understand the direct comment about her and being connected to slums and frankly, she was concerned about the blog naming a Council Member as a communist. There may be a reason for it, she was continually distressed by negative comments that have nothing to do with the business at hand.

David Barton, 216 Jamaica Lane, spoke of the first Town Council meeting that he ever attended was with Mayor Ilyinsky and the topic was long range planning. He spoke about planning and the need for a plan. He stated that the general public does not understand a comprehensive plan or a strategic plan.

John Grosskopf, General Manager of the Palm Beach Towers, he also has been target of rumors and threats at the Palm Beach Towers. He agreed with Council member Kleid's comments. He has been receiving many e-mails and threats recently and primarily they were about one of the Landmarks Preservation Commission applicants, Mr. Roberts. He introduced Attorney John Eubanks to discuss the specifics.

John Eubanks, 1209 N. Olive Ave., West Palm Beach, stated that he had sent a letter dated March 6, 2010 to the Mayor and Town Council. He submitted a copy to Town Clerk Cunningham for the record. He alleged that Mr. Roberts was not a permanent resident of Palm Beach County and should be excluded from consideration.

Council Member Wildrick stated when he received the letter from Mr. Eubanks, he had checked into the issue and was informed that Mr. Roberts was, in fact, a registered voter, and has been for some time. He asked Town Attorney Randolph about the situation and he responded that he relied upon the information provided to him by Town Clerk Cunningham from the Supervisor of Elections office. That research indicated that Mr. Roberts was a registered voter and that was what the Ordinance called for.

Charles Roberts responded that he was a resident and registered voter in Palm Beach. He was homesteaded in Georgia in 1990 and if he has any problem, it is with the State of Georgia. He submitted to Town Clerk Cunningham for the record a copy of correspondence to Georgia to rectify he homestead issue. Mr. Roberts stated that he files Florida taxes and the later issue is one not for the Town Council. He complimented Mr. Eubanks for bringing the issue to his attention.

Laurence McNamara, 422 Lakeside Drive, Lake Worth and Treasurer of Preserve Palm Beach PAC spoke about having a new referendum that is currently being certified and will have two referendums on the next ballot. He spoke of the current lawsuit within the fourth District Court. The two petitions came about as a result of the refusal of the Town Council to represent the desires of the constituents. He noted that over a quarter million dollars has been spent on legal fees to enforce the 1979 agreement.

Daniel McDonnell, 2784 S. Ocean Blvd., commented on the McNamaras'. He stated that Mr. McNamara's comments were the same comments he made when he ran for Mayor of Lake Worth and lost resoundingly to a newbie in the political arena. He questioned the PAC's legitimacy (President and Treasurer) when all do not live in the Town that they are trying to have a referendum in.

Anne Pepper, 333 Seaspray Ave., stated that no one can condone the actions of Lowell Levine and his behavior was completely out of bounds. Much of the negativity that Council Member Kleid spoke of stemmed from a growing deep distrust that many residents feel regarding the objectivity of the Town Council. Some of them were perceived as having a pro-development bias and a willingness to ignore current zoning conditions. There would be far reaching density, blue space, town scale and character consequences that many residents do not want. The Landmarks Commission and its Chairman have handled the issue properly. Mr. Cooley's letter clearly explains the Landmark Commission actions and they should be praised and not criticized. Further, the Landmarks Commission should remain an independent advisory body and their mission should be able to be carried out without influence by Town Council Members. She noted that the new appointee selection would show whether the residents' distrust and objectivity was well-placed or unfounded.

Pat Flynn, President of Palm Beach Theater Guild., 2600 N. Flagler Dr., West Palm Beach stated that he took exception to Mr. McDonnell's comments about the PAC. He noted that he had over one thousand resident signatures on the first referendum. There was an appeals court case currently. He supported Mr. McNamara's remarks, and said it was like living in Jerusalem by living the problem but you never solve the problem. He stated that Sterling and Munder Group should follow the law by following the landmarking and the 1979 Agreement.

The next item heard was Item VIII.

VII. APPROVAL OF AGENDA

Motion to approve the Agenda as presented made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously.

The next item heard was the 10:45 a.m. TIME CERTAIN, Item XI.B.2.

VIII. CONSENT AGENDA

A. MINUTES: FEBRUARY 9, 2010
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: FEBRUARY 9, 2010
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING-ATTORNEY/CLIENT SESSION-TOWN OF PALM BEACH VS THE UNITED STATES OF AMERICA

C. MINUTES: FEBRUARY 10, 2010
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

D. MINUTES: FEBRUARY 10, 2010
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING ATTORNEY/CLIENT SESSION-MENGONI VS TOWN OF PALM BEACH

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON FEBRUARY 24, 2010.

F. RESOLUTIONS

1. RESOLUTION NO. 26-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adding Newly Designated Historic or Specimen Trees from

Properties Located Within the Town of Palm Beach; Providing for the Recording of Said Designations; and Providing That a Copy of this Resolution Be Recorded in the Public Records of Palm Beach County, Florida.[H. Paul Brazil, Director of Public Works]

1

2. RESOLUTION NO. 29-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to D.B. Ecological Services, Inc, for Sea Turtle Monitoring for the Town of Palm Beach, Sealed Bid Number 2007-21.[H. Paul Brazil, Director of Public Works]

2

3. RESOLUTION NO. 30-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Purchase of Three (3) Police Patrol Vehicles as Previously Considered and Approved by the Town Council During the FY2010 Budget Process and Including in the Town's Equipment Replacement Program.[Kirk W. Blouin, Police Chief]

3

4. RESOLUTION NO. 31-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Murray Logan Construction for D-9 Storm Water Pump Station Improvements Establishing a Construction Phase Budget for Said Improvements, and Authorizing the Tow Manager to Take Actions Necessary to Complete Said Improvements.[H. Paul Brazil, Director of Public Works]

4

5. RESOLUTION NO. 32-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Kimley-Horn and Associations for the D-10 Storm Water Pump Station Design Services for the Town of Palm Beach.[H. Paul Brazil, Director of Public Works]

5

6. RESOLUTION NO. 34-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Maintenance Contract Between Bolo Corporation and the Town of Palm Beach Providing Service and Maintenance to the License Plate Reader (LPR) System Located in the Town of Palm Beach, Florida. [Kirk W. Blouin, Police Chief]

6

7. RESOLUTION NO. 36-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Recreation Department Fees for Fiscal Year 2010.[Jay Boodheshwar, Director of Recreation]

7

G. Other

8

1. Approval of Settlement in the Matter of Mengoni vs. Town of Palm Beach. [John C. Randolph, Town Attorney]

9

2. Approval of FY11 Budget Calendar. [Jane Struder, Director of Finance]

10

3. Acceptance of a Donation from the Palm Beach Police Foundation in the Amount of $70,000 for a New Weapons System.[Kirk W. Blouin, Police Chief]

4. Approval of Certificate of Correction of the Non-Ad Valorem Assessment Roll for the Worth Avenue Improvement Project.[Thomas G. Bradford, Deputy Town Manager]

Motion to approve the Consent Agenda as presented made by Council Member Diamond, seconded b Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

IX. BOARD/COMMISSION ANNUAL REPORT

A. Architectural Commission. [William P. Feldkamp, Chair and John S. Page, Director of Planning, Zoning, and Building]

Mr. William Feldkamp, Chairman, provided the annual report for the Architectural Commission and noted that he was the outgoing Chairman.

Council President Pro Tem Coniglio asked about the requirements of submitting plans, and having them stamped by a licensed engineer. Mr. Feldkamp indicated that they try to inform the presenters of the threshold and professionalism expected. Completed applications are required.

Council President Rosow stated to work with staff and the staff should know what the requirements are for presentations. Any errors should be caught by staff prior to being presented to the Commission. **Staff was directed to work with the next Chairman as to the minimum requirements for submission before the Commission.**

Motion to accept the Architectural Commission Report was made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

X. COMMITTEE REPORTS

A. Finance and Taxation Committee Meeting of February 18, 2010.[Robert N. Wildrick, Town Council Member]

Council Member Wildrick presented the report discussing the selection of the Internal Auditor Crowe Horwath and what the plan would entail. There were over ten firms screened, interviewed five firms were interviewed and Crowe Horwath was selected. They were assigned an audit project and came back with an assessment plan. They initially limited the amount of money not to exceed $200,000. The initial proposal came back at $91,770.00. After the plan was presented at the last meeting, it was decided that with the new bond money that more oversight may be needed and a template was developed. The new additional cost estimate would be $110, 710.00.

Motion to accept the report and retain Crowe Horwath made by Council Member Wildrick, seconded by Council Member Diamond.

Town Manager Elwell added that the money for the project would come from the General Fund Contingency for that purpose.

On roll call, the motion carried unanimously.

B. Ordinances, Rules, and Standards Committee Meeting of February 26, 2010. [William J. Diamond, Town Council Member]

Council Member Diamond presented the ORS report. He indicated that the conclusion was to codify the Ordinances as they occur instead of waiting to adopt the Code at one time. He outlined several of the proposed changes including the demolition by neglect of landmarked structures. He also noted that the Town Clerk would have to request additional monies in her budget for the additional advertising and continuous codification.

He also noted that Public Works was seeking to establish new bulkhead lines along on the ocean and Lake Worth Lagoon. Staff was asking them to be certified every ten years. Council President Pro Tem Coniglio expressed concern with that Ordinance proposal. Council Member Diamond thanked Council President Pro Tem Coniglio for all of her assistance.

Motion to accept the ORS report made by Council Member Kleid, seconded by Council Member Wildrick. On roll call, the motion carried unanimously.

Council President Pro Tem Coniglio was concerned about the costs and would be in favor of allocating monies to the Clerk's department for codification purposes. Council President Pro Tem Coniglio expressed concern with the enclosed machinery discussion and felt it was too vague and may cause undue harm from one neighbor to another. She also mentioned a recommendation from Code Enforcement regarding to a Coral Springs Ordinance.

XI. REGULAR AGENDA

A. Old Business

1. Island Cats Report Regarding Status of Funds and Fundraising Plan. [David Leavitt]

David Leavitt, 1480 Via Manana, thanked the Town Council and Town Manager Elwell for their donation last month. Since then he focused on expanding the Board of Directors and the results of reaching out to big donors of similar animal support projects such as Peggy Adams was not successful. He concluded that the real problem was the funding and not the board members. He outlined several upcoming events, mailings and fundraisers. The brick fund raiser was not going well and Council Member Diamond was personally thanked for his purchase of bricks.

To date he had $12, 200 committed. Donations last month were $6940.00.

He invited all of the Town Council Members to attend a nightly feeding. Mr. Leavitt reminded the Town Council that Island Cats did not create the problem. Mayor McDonald stated that he understands the scope of the endeavor but did not want to finance it. He did not feel any private group could fund this and it was a town problem.

Council President Rosow added that he hears from residents and expressed that they do not want tax dollars spent on cats Mr. Leavitt asked to come back again next month with his quarterly report and fundraising update.

The next item heard was Item XI.B.3.

B. New Business

1. Investment Policies. [Jane Struder, Director of Finance]

TIME CERTAIN: 11:00 A.M.

This Item was heard after Item XI.B.2.

Finance Director Jane Struder presented the item. Staff recommended approval of Resolution No. 33-10 adopting the new investment policy and Ordinance No. 7-10 rescinding the current investment policy. The Investment Advisory Committee had worked with the Investment Advisors to develop the new policy. She introduced Mr. David Chang who highlighted some of the changes to the policy and to answer any questions, as well as the Chair of the Investment Advisory Committee, Dr. Michael Andrews.

David Chang, from PFM Asset Management provided information on the new investment policy. Council President Pro Tem Coniglio asked if there would be quarterly reports. Finance Director Struder indicated that a more detailed quarterly report from PFM Asset Management, in addition to the staff generated monthly report would be provided.

a. RESOLUTION NO. 33-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a New Investment Policy for the Town; Rescinding Resolution No. 23-01, as Amended; Providing an Effective Date.

Town Attorney Randolph read Resolution No. 33-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid to approve Resolution No. 33-10. On roll call, the motion carried unanimously.

b. ORDINANCE NO. 7-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 2 of the Town Code of Ordinances Relating to Administration, at Article VIII, Investment Policy, as Amended, so as to rescind said Article as Amended in its Entirety; Providing for Severability; Providing for Repeal of

Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Town Attorney Randolph read Ordinance 7-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid to approve Ordinance No. 7-10. On roll call, the motion carried unanimously.

c. RESOLUTION NO. 35-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting Amendments to the Statement of Investment Policy for the OPEB Trust Board of Trustees of the Town of Palm Beach Pursuant to Section 82-153 of the Code of Ordinances of the Town of Palm Beach; Providing an Effective Date.

Town Attorney Randolph read Resolution No. 35-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council President Pro Tem Coniglio to approve Resolution No. 35-10.

Town Manager Elwell added for the record that Resolution No. 35-10 was different from the first two, and this one related to the trust fund for the post-employment retirement health trust. He clarified that those funds were managed by the Investment Advisory Committee (IAC) more in the manner of the pension funds.

Council President Pro Tem Coniglio asked Dr. Andrews if the IAC was cautious with the funds. She asked because of a newspaper article that stated many states are now going to very rigorous changes and investing in hedge funds, and other riskier investments. Dr. Andrews responded that the IAC was very cautious and methodical and it was their money.

On roll call, the motion carried unanimously.

The next item heard was item XVI.

2. Request for Permission for Commercial Establishments to Display Sale Signs During the Remainder of the Current Winter Season. [Patti Sans, President, Greater South County Road Association and William Cummings, President, Royal Poinciana Way Association]
   TIME CERTAIN: 10:45 A.M.

This Item was heard after Item VII.

Patty Sands, President of Greater South County Road Association, spoke regarding the placement of sale signs prior to the Easter break. She had spoken to twenty three business owners and they were in favor of signs as long as there was uniformity. She urged the Town Council to support a waiver to allow business signs for the next three weeks.

Bill Cummings, President of the Royal Poinciana Business District, also urged the Town Council to allow the use of temporary signs. He noted that the plaza has unprecedented vacancies and anything to help the business owners would be appreciated.

Former Mayor Deedy Marix, 1570 N. Ocean Blvd., was opposed to any deviation from the current code and was concerned about the aesthetics of the Town. She felt that there was no good reason to have signs and would cheapen the appearance of the Town and make it look like a honky tonk.

Council President Pro Tem Coniglio asked the Town Attorney what the current parameters were. John Page, Planning Zoning and Building Director, read the Town Code regarding temporary signs which allows the use of signs from April 1- November 1.

Town Manager Elwell indicated that the Worth Avenue Association was opposed to having signs. Council President Pro Tem Coniglio stated that the image of Palm Beach was one to protect but the economic parameters may dictate otherwise

Council Member Wildrick added that inventory is like bananas- it doesn't get any newer. In this case, it may help with business to liquidate their inventory. Exceptional times require exceptions. Town Attorney Randolph indicated that this provision of sign prohibition was part of the zoning code and the Town Council would be granting a waiver to the Town Code.

Town Manager Elwell added that simplest action to take was to direct staff not to enforce the code for the next three weeks. It would not change the ordinance and it would be a one-time event, and would have to comply with the size restrictions.

Motion to waive any Code Enforcement immediately and for the next three weeks (Until April 1, 2010) to allow for temporary signs made by Council Member Wildrick, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

Mr. Cummings added that he appreciated the attention of the Town Council.

The next item heard was the 11:00 a.m. TIME CERTAIN, Item XI.B.1

3. Proposed Royal Poinciana Way Car Show.[Thomas G. Bradford, Deputy Town Manager]

This Item was heard after Item XI.A.1.

Council President Pro Tem Coniglio recused herself from the discussion and left the dais. Form 8B was filed with Town Clerk Cunningham.

Deputy Town Manager Bradford presented the request from the Royal Poinciana Business Association which contacted him a few months ago to have a car show event in the Royal Poinciana Plaza and ultimately make it an annual event. They are hosting it in hopes of increasing foot traffic into that shopping district.

Harry Welsh, of Main Street Marketing, identified the parameters of the event. He indicated there would be no auction, no loud speakers, no engines would be running, and no sales would occur on the property in response to Council member Diamond's questions. Council Member Wildrick asked about cost and was informed there was no cost or admission charge. Approximately 100 cars would be in the lot which houses over 300 spaces. Mr. Welsh asked for a time extension of the event to be six hours.

Town Manager Elwell stated that the record should reflect that this is again a request for relief to the business community and would be a technical, but minor violations of Town Code. But for special events, each is reviewed on a case by case basis. He recommended that the Town Council take individual action on this event and not allow it to be an annual event. Council President Rosow was concerned about the precedent. He suggested that the Planning and Zoning Commission should look at these types of events in their entirety.

Town Manager Elwell indicated that ORS Committee could discuss this, but staff is only recommending this as a one-time exception.

Motion to approve the request to allow the Royal Poinciana Way Association to hold an Auto Show event this one time only, and for a duration of six hours including all other outlined conditions from staff, made by Council Member Kleid, seconded by Council Member Diamond. On roll call, the motion carried 3-1 with Council President Rosow dissenting, and Council President Pro Tem Coniglio recused.

4. <u>RESOLUTION NO. 28-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Kimley-Horn and Associates for a Sewage Force Main Subaqueous Crossing and Sewage Pump Station Analysis for the Town of Palm Beach. [H. Paul Brazil, Director of Public Works]</u>

Town Attorney Randolph read Resolution No. 28-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid to approve Resolution No. 28-10. On roll call, the motion carried unanimously.

5. <u>Strategic Plan-Annual Review of Implementation.[John S. Page, Director of Planning, Zoning, and Building]</u>

John Page Director of Planning, Zoning and Building, introduced Veronica Close, Assistant Director, to present the item. Ms. Close indicated that the information was received from the various departments for the update. Last year, the plan was formally updated and adopted by Resolution. This year, the update is provided in accordance with the Strategic Plan.

Council President Rosow announced that there was no requirement to adopt an update this year on the Strategic Plan and that this was simply an update. The actual update would be in two years.

Town Manager Elwell informed the Town Council that they did not need a motion to approve the report but that a Resolution would be presented next month to accept it.

Council President Pro Tem Coniglio asked about the moving of the critically eroded beaches. Town Manager Elwell indicated that they are working on it and are actively pursuing it but the timeframe had changed. She also asked about having a Charter Review commitment and was opposed to having an open-ended time frame.

Motion made by Council president Pro Tem Coniglio to propose that by December 2010 to make a commitment to begin the process of having a Charter Review Commission and include a timeline for Commission appointment. Motion died for lack of a second.

Council Member Wildrick stated there were enough issues on their plates that were not pleasant and to open up another can of worms at this time was not good. A few more months would not matter.

Motion made by Council Member Diamond, seconded by Council Member Kleid to approve the content of the review by staff of the strategic plan. On roll call, the motion carried unanimously.

6. Non-action of Landmarks Preservation Commission.[Richard M. Kleid, Town Council Member]

Council Member Kleid read the following prepared statement into the record:

I put this item on the agenda because I felt it was important to discuss what happened or did not happen with respect to the Sterling Munder application for a Certificate of Appropriateness.

The recent withdrawal of this application does not, in my opinion, negate the need to discuss what transpired.

My concern is that several members of the Landmark Preservation Commission raised inquiries as to legality which is outside the purview of their code responsibility to hold a hearing following specific criteria and to reach a decision within a specified time frame. Furthermore, these members were not responsive to the specific directions of the unanimous Town Council, supported by the lengthy legal opinion of the Town Attorney, who represents them, which opinion was rendered at the January Landmarks meeting and reiterated at the February meeting.

In addition, judging the competence of future voting members of Landmarks and their ability to assume immediately the responsibilities of their position exceeds, in my opinion, the code responsibility of Landmarks commissioners and properly lies with the Town Council who appoints these members.

Let us now review together the history of what happened.

Our code provides that when an individual or an entity wants to develop a project they come to the Town Council either through ARCOM or Landmarks. Because of the landmarked designation of the Royal Poinciana Plaza, this path was through Landmarks. The Town Council early on recognized the complexity of the Sterling Munder application since approval of the same, either totally or in part, would require amendments to the Comprehensive Plan, the 1979 Agreement and Zoning ordinances.

It was decided by unanimous vote of the Town Council to begin the process with the Landmarks Preservation Commission since, proceeding through Planning and Zoning would be a waste of time and money if Landmarks did not ultimately approve of any part of the plan.

An assignment was given to Landmarks to hear the application with specific instructions to not concern themselves with the Comprehensive Plan, the 1979 Agreement or Zoning provisions, An opinion by the Town's attorney buttressed the legal underpinning of this assignment. At the January 2010 Landmarks meeting not only was the Sterling Munder group present, but so were the Palm Beach Theatre Guild, the Palm Beach Towers, the Preservation Foundation, the Metzger group, and the so-called Leadership group, all of whom were prepared to present their points of view. This was exactly the forum I advocated over a long period of time for hearing the application.

At this meeting some members of Landmarks were concerned about legal matters and requested a delay in the hearing in order to petition the Town Council to hire independent counsel, at Town expense, or in lieu thereof to hire independent counsel at their own expense. At such time the Town Attorney, who represents among others, the Landmarks Preservation commission, opined in a lengthy prepared statement that all legal safeguards were in place. Despite this a motion to delay the hearing was passed. The Town Council, at its regular meeting, did not agree to allow Landmarks to hire independent counsel and directed that the Town Attorney, at Landmarks next meeting, reiterate his legal opinion, which he did.

I maintain that it was not required by the Code that Landmark commissioners deal with legal matters. The Town Council instructed them to ignore the same and this was supported by a lengthy opinion of the Town Attorney.

At the February meeting of Landmarks, a majority of the commission voted to defer the hearing for 60 days rather than the 30 days requested by the applicant on the grounds that potential new members of the commission would not be prepared for the March meeting. This decision was reached despite the warning of the Town Attorney that if the demolition application was not ruled on by the end of April, it would have to be deferred until November.

Since the April meeting was scheduled for April 21, that would have left only eight working days to reach a decision. During this eight day period, because Shore Protection Board and ARCOM meetings were scheduled respectively for April 22 and 28, only six days were available unless different venues were chosen, which would prevent live audio hearings of the moved meetings.

It could be reasonably assumed that presentations by the Sterling Munder group and interested parties, such as the Palm Beach Theatre Guild, the Palm Beach Towers, the Metzger group, the Preservation Foundation, and the leadership group, many of whom were represented by counsel, would be time consuming. After this would come many citizens who would want to be heard under the PUBLIC COMMENTS portion of the proceedings. Following this would be staff comments and only then the executive session of the Landmarks Preservation commission where the members could ask questions and discuss a decision. Even if Landmarks held consecutive day hearings, a decision by April 30 was speculative.

Interestingly, of the eleven applicants seeking to serve on the Landmarks Commission, the majority of them either previously served on or are serving on other commissions in Town and are well versed in Ethics requirements and the operations of Town Commissions. Nevertheless, as stated before, I do not believe that judging the competency and ability to serve immediately of prospective commissioners is the Code responsibility of Landmark commissioners. It is the responsibility of the Town Council. If commissioners feel they cannot abide by these guidelines set forth in the Code, they should resign immediately.

My concern is not with potential decisions of Landmarks on the substance of any application, including this one, which is already a moot point, but on the inability of the Landmark Commissioners to follow their Code responsibility and their responsibility to the Town Council. The technical points raised by some Landmark Commissioners diverted attention from the real job of the Landmarks Commission, that is to hear the application.

I am equally concerned about insuring that we have commissioners serving who are open-minded and have not formed an opinion before hearing in full any application.

I put this matter on the agenda because I was interested in learning if any of my fellow council persons shared my concerns and I could not engage in this dialogue except in the Sunshine.

Council Member Diamond said with all due respect to Council Member Kleid he strongly disagreed with the idea that it was the fault of the Landmarks Preservation Commission. The fault was that of the Sterling Group's proposal as withdrawn by Sterling. It was, he believed, the fault of the Sterling Proposal in the first place, which would have done among other things:

- Destroyed a landmarked theater
- Ripped up the 1979 Agreement covering the use of the property.
- Strongly contradict the Town's Comprehensive Plan
- Require large scale zoning changes

All of this was being done in opposition to the wishes of a large part of the Palm Beach community. No wonder it took the Landmarks Preservation Commission time and effort to go through the implications of the Sterling proposal. If Landmarks had rushed the application through in its normal course, it would have been derelict in its duty. The Sterling application was a unique complex application and the Landmarks Preservation Commission should be applauded for taking the time and effort to judge it fairly.

Council Member Kleid responded to Council Member Diamond that he was not judging the substance of any proposal that was presented. Any developer has the right under the Town Code, to ask for redevelopment under any circumstances they wish. It was the duty of the Landmarks Preservation Commissions or ARCOM, etc. to hear the application. They are free to turn it down, and are free to approve it in part or in its entirety. They are free to participate in negotiations with the applicant in the Sunshine. What he was concerned about was hearing the application and not precluding people from putting in an application just because some members of the community do not feel it would be an appropriate thing to do. That was up to the Commission and for the Town Council eventually to rule on.

Council Member Wildrick stated that first of all, he agreed with part of what Council President Rosow and all of what Council President Pro Tem Coniglio stated earlier and the individual threats have to cease. That being said, he was concerned and disagreed with Council Member Kleid on one particular point and that part of a group's complaining, and wearing buttons is democracy. If you are going to be an elected official, you have to listen to those groups providing they conduct themselves in an appropriate manner. That is called democracy. He did not have the same problem that others have with the exception of threatening people like Council President Rosow, Council President Pro Tem Coniglio and Council Member Kleid's families. That was wrong and inappropriate and he stood 100% in opposition to it and condemned it. He condemned the individual who did it because it was wrong and inappropriate.

Council Member Wildrick continued that you have to listen to what everyone has to say on the subject as it is part of the process. He had listened to the Council Members for a year now on the subject. He felt at least three of them have made up their mind on both sides of the issue, but he is trying to remain neutral. He would like to give a reasonable judgment which he feels is his job when it comes to the Town Council. The Town Council is prejudiced as Landmarks is being accused of. The Town Council needs to begin to figure out how to pull the town together.

His big concern was that the proposed project was the largest project in Palm Beach, the project was the largest life changing project and financially, it was the most viable. Nothing of this magnitude comes easily. One of the things he was concerned with is the lack of skill in working through the problem in a fair way. There will be hot debates. They do not need to name call, or throw people off the Commission, but because they (Landmarks) delayed it for one month, after Sterling had asked for the previous month. That was just throwing more oil onto the fire. It was unnecessary and the Landmarks Commission should do their job, conduct themselves in the proper manner and all respect each other and respect the people that disagree. He respects Council Member Kleid, but added that he disagreed with him a lot. He stated that you cannot cry out civility every time someone disagrees with you. This was not going to be an easy project to get through but you could not talk parent-child to people every time that somebody disagrees with you. The Town needs to work together. He would not sponsor any resignation in mass from the Commission. He was totally opposed to that.

Council President Pro Tem Conglio stated that she wanted to separate the two issues. First of all, the Sterling application is now off of the table. It was by their own volition and frankly, that was part of the process. Her concern was the procedure. Procedures needed to be assured and not a moving target. Each applicant, as they come forward to Landmarks or ARCOM, has the ability to ask for a deferral. There is no precedent for a Commission then extending that deferral. All of the Commissions, ARCOM and Code Enforcement, need to treat the residents the same, respecting their time, their money and their requests. Again, it was a unanimous decision. Every single person on the dais made the decision to send the application to Landmarks to get their expertise and their consideration.

Council President Pro Tem Coniglio stated that she was extremely disappointed in only one aspect. The reasoning behind the decision to delay the application vote one more month was the unsaid messages Landmarks Preservation Commission had no trust in the Town Council. Preparing for the meeting, she guaranteed that everyone studied the applications prior to coming to the meeting, and listened carefully to one and a half hours of presentations. The appointment process was done with careful consideration and determination that the most qualified and expert addition to the Commission is appointed. Three architects applied to the commission and it was assumed that they should be competent enough to read blueprints, study architectural plans, and critique and read architectural plans. That was the part of the last few weeks' decisions that had disappointed her. Our residents have right to fair and due process

Council President Rosow concluded the discussion by stating that his disappointment was that as he watched Landmarks and ARCOM, they entered into the negotiation session as they go through the process. The applicant, public and opposition go into a dialogue about what happens in the process and thought it would take a long time and involve a back and forth dialogue. There is a process in both Landmarks and ARCOM in which the Commissioners and the Applicant and the public go back and forth. He never dreamed or imagined that the process would only take one month, one meeting or even two months. Any process on the application was going to take a considerable amount of time, because it deserved the consideration and input from everyone. It would involve a back and forth. He announced that the Sterling application had been withdrawn and he would only say that they should be careful what you wish for. That was an adage that was taught to him a long time ago in business. He also stated that he had no insider information about anything.

Council Member Kleid clarified that he had no intention of asking for anyone's resignation. He wanted a discussion of the process and he felt the process was flawed. The Town Council never got to hear the applications. He thought the delays and reasons for the delays were not within the province of the Landmarks Preservation Commission. As far as the legality was concerned, they had an opinion from the Town Attorney and they had instructions from the Town Council to disregard some of the other legalities because they would be handled at a later date. The other postponement for thirty days to question the competency and qualifications of the Landmarks Commission appointed by the Town Council did not lie within their Code responsibilities. That was the responsibility of the Town.

Mayor McDonald disagreed with his honorable colleague, Council Member Kleid and stated that concern was that that the appointment of three or four new commissioners really was a short period of time to review and familiarize themselves with the project. He felt that was reasonable. He was not critical of any of the Landmark Commissioners. Delays are a very common thing especially in the justice system, and noted that democracy is not mentioned in the constitution once. It does not mean that there was any sinister concept or motive behind it. Council Member Diamond agreed with Mayor McDonald.

7. <u>Landmarks Preservation Commission Appointments.[John S. Page, Director of Planning, Zoning, and Building]</u>

This item was heard after item XII.B.2.

Council President Rosow announced the following appointments:

Regular Members: Gene Pandula, Charles Roberts, Edward Cooney and Dudley Moore.
Alternate Member: William Feldkamp

Motion to ratify the appointments to the Landmarks Preservation Commission made by Council Member Wildrick, seconded by Council Member Diamond. On roll call, the motion carried unanimously.

8. Architectural Commission Appointments.[John S. Page, Director of Planning, Zoning, and Building]

Council President Rosow announced the following appointments:

Regular Members: Robert Vila, Kenn Karakul and Nikita Zukov
Alternate Members: Martin Gruss and Peter Knowles

Motion to ratify the appointments to the Architectural Commission made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously.

XII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 5-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Town Code of Ordinances at Subdivision IV, Police Officers, Section 82-110(c), Police Officer Board of Trustees, to Provide for Quarterly Meetings; Amending Section 82-111, Term of Office, to Provide for Staggered Terms; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William Hanes, Pension Administrator]

Town Attorney Randolph read Ordinance No. 5-10 by title, as printed above.

Motion to adopt Ordinance 5-10 made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 6-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for an Amendment to the Town's Budgets Adopted for the Fiscal Year Commencing October 1, 2009, Providing an Effective Date.[Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 6-10 by title, as printed above.

Motion to adopt Ordinance 6-10 made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 8-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 22, Businesses, Article V, Entertainment Establishments, at Section 22-273 So as to Include, in Addition to the Reference to Residential Districts, a Reference to Residential Units Within 500 Feet in Any Direction of the Entertainment Establishment; Amending Section 22-274 So as to Modify the Reference to Building to the Premises in Which Said Activities Are Conducted, Amending Section 22-275 to Also Reference the Premises as Opposed to the Confines of a Building; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

This item was deferred at the request of Town Attorney Randolph to the next Town Council Meeting.

2. ORDINANCE NO. 9-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 of the Town Code of Ordinances at Subdivision III, Firefighters, Section 82-90(c), Firefighter Board of Trustees, to Provide for Quarterly Meetings; Amending Section 82-91, Term of Office, to Provide for Staggered Terms; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [William P. Hanes, Administrator for the Firefighter Board of Trustees]

Town Attorney Randolph read Ordinance No. 9-10 by title, as printed above.

Mr. William Hanes, Pension Administrator, indicated to the Town Council that this was a similar Ordinance to the one adopted last month regarding the Police Officer Board of Trustees.

Motion to adopt on first reading Ordinance No. 9-10 was made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

XIII. ANY OTHER MATTERS

There were none.

XIV. ADJOURNMENT

There being no further business, the Tuesday, March 9, 2010, Town Council Meeting was adjourned at 1:03 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk