

# TOWN OF PALM BEACH

Office of The Town Clerk

## MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON TUESDAY, JANUARY 13, 2009

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Tuesday, January 13, 2009, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald  
President Richard M. Kleid  
President Pro Tem Gail Coniglio  
Council Member Denis P. Coleman  
Council Member Susan Markin  
Council Member David A. Rosow

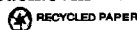
Others present for all or a portion of the meeting were:

Town Manager Peter B. Elwell  
Deputy Town Manager Thomas G. Bradford  
Assistant Town Manager Sarah E. Hannah  
Town Attorney John C. Randolph  
William Amador - Fire-Rescue Chief  
Paul Brazil - Public Works Director  
Eric Brown - Public Works Assistant Director  
Jay Boodheshwar - Recreation Director  
William Crouse - Human Resources Director  
Charles Langley - Public Works Assistant Director  
John Page - Planning, Zoning and Building Director  
James Palmer - Systems Analyst  
Tim Pompos - Fire Marshal  
Michael Reiter - Police Chief  
Jane Struder - Finance Director

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1-13-09 TC Mtg

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01/29/2010

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009

1 Karen Temme - Risk Manager  
2 Spencer Wilson - Information Systems Manager  
3 Joanna Cunningham - Town Clerk

4  
5  
6 II. INVOCATION AND PLEDGE OF ALLEGIANCE

7  
8 Town Clerk Cunningham gave the invocation. President Kleid led the Pledge of Allegiance.  
9

10  
11 III. PRESENTATIONS

12  
13 A. Mayor's Community Service Award Presented to Rampell & Rampell, P.A.  
14 Recognizing Community Service for Supporting Passage of the Palm Beach County  
15 Home Rule Amendment on November 4, 2008.

16  
17 Mayor McDonald presented a plaque to Attorneys Richard Rampell and Walter Maxwell for  
18 recognition of community service for supporting passage of the Palm Beach County Home Rule  
19 Amendment.

20  
21 B. Presentation by Applicant for the General Employees Retirement Board of Trustees.

22  
23 James Karman provided a brief presentation to the Town Council for re-appointment to the  
24 Board.

25  
26  
27  
28 IV. COMMENTS OF MAYOR JACK McDONALD

29  
30 There were none.  
31

32  
33  
34 V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

35  
36 Council Member Rosow:

- 37  
38 • He indicated that Senator Martinez, agreed to send a letter to the Army Corps of  
39 Engineers relative to the Sand Transfer Plant.  
40

Regarding federal funding for the expansion project at the Port of Palm Beach, Senator Martinez indicated that there would be a low level of interest, due to the controversy surrounding the project.

- Senator Martinez would assist the Town with the Economic Stimulus Plan for repair of infrastructure items, and to submit any and all projects for consideration.

Council Member Markin:

- A Public Safety Committee Meeting will be held on Friday, January 16, 2009, at 11:00 a.m., in the Council Chambers. She provided an overview of the items that would be discussed during the meeting.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE  
(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

- David Leavitt, 1480 Via Manana, commented regarding his opposition to the feral cat program.
- Carla Herwitz, resident of the Reef, commented regarding the erosion of the beaches. She indicated that a report, by Karyn Erickson, would be submitted to the Town Council regarding the beaches.
- Donald Singer, Harbor House resident, announced that the Citizen's Association of Palm Beach meeting will be held on Thursday morning at 9:00 a.m., at the Paramount Building, to discuss the beach erosion. He suggested that the condominium associations have a prior meeting to evaluate the Erickson Report.

Council Member Coleman commented regarding the Erickson Report on the beach erosion.

- Peter Pettie, 3400 S. Ocean Boulevard, commented regarding Reach 8.

Council Member Coleman indicated that the Shore Protection Board was created for discussion of beach erosion matters in detail, as the Town Council would not be able to go into the level of depth that was necessary for this matter.

Town Manager Elwell noted that the Shore Protection Board's next meeting would be held

on January 27, 2009.

- Alexandra Anlyan, 154 Atlantic Avenue, commented on the arrest records of PB Cats, Inc., employees.

Discussion occurred among the Town Council and Town Manager regarding the rules of PB Cats, Inc., concerning the residents and their private property. Council Member Rosow suggested that the Town eliminate the ordinance to have only one feral cat feeding organization in the Town and stop funding the feral cat program.

**Motion made by Council Member Rosow to eliminate the ordinance to have only one feral cat feeding organization in the Town and stop funding the feral cat program. Motion seconded by Council Member Coleman.**

Discussion continued and several of the concerns were that the issue should be addressed during the budgetary meetings, that the Ordinance would need to be discussed, and a motion should not be made in Citizen's Comments, after hearing only one side of the issue. It was also considered that whether to postpone it or not would not change anything, and that both sides had been heard on numerous occasions.

**Amended motion by Council Member Rosow to cease funding to PB Cats, Inc., going forward in the next fiscal year (FY 09-10). Secoder agreed.**

Mayor McDonald commented that the problem had not improved in the past years.

**Upon roll call, the motion carried 3-2.**

|                                   |            |
|-----------------------------------|------------|
| <b>President Kleid</b>            | <b>No</b>  |
| <b>President Pro Tem Coniglio</b> | <b>Yes</b> |
| <b>Council Member Coleman</b>     | <b>Yes</b> |
| <b>Council Member Markin</b>      | <b>No</b>  |
| <b>Council Member Rosow</b>       | <b>Yes</b> |

**Amended motion by Council Member Rosow to determine at the February 10, 2009, Town Council meeting, whether or not, to continue having an ordinance that restricted the care of feral cats to only one organization, and that feeding animals on public property was prohibited, without homeowner's permission.**

Town Manager Elwell clarified that the adoption of the ordinance prohibited any individuals or groups to feed or maintain feral cats on public property, and allowed that an organization,

1 approved by the Town, would be allowed to feed and/or maintain feral cats on public property, and  
2 everyone else was prohibited from public spaces. This item would be brought forward for discussion  
3 on the Agenda.

4  
5 **Upon roll call, the motion carried unanimously.**

- 6
- 7 • Wendy Victor, 208 Via Tortuga, pointed out that on the updated Strategic Plan, on  
8 page 22, that the feral cat program was scheduled for discussion.
  - 9
  - 10 • Allen Mason, 1485 Via Manana, commented on the feeding and neutering of the feral  
11 cat program.
  - 12
  - 13
  - 14

15 **VII. APPROVAL OF AGENDA**

16  
17 **Motion made by Council Member Rosow, seconded by Council Member Markin, to**  
18 **approve the Agenda. On roll call, the motion carried unanimously.**  
19

20  
21  
22 **VIII. CONSENT AGENDA**

- 23
- 24 A. MINUTES: DECEMBER 8, 2008  
25 APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING
  - 26
  - 27 B. MINUTES: DECEMBER 9, 2008  
28 APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING
  - 29
  - 30 C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL  
31 COMMISSION AT ITS MEETING ON  
32 DECEMBER 19, 2008.
  - 33
  - 34 D. RESOLUTIONS
  - 35
  - 36 1. RESOLUTION NO. 1-09 A Resolution of the Town Council of the Town of  
37 Palm Beach, Palm Beach County, Florida, Approving a Contract Between the  
38 Town of Palm Beach and SunGard Public Sector Inc. to Provide the OSSI  
39 Public Safety Software System to the Town Based on the Attached Contract  
40 and Authorizing the Town Manager to Execute the Contract and this

Purchase on Behalf of the Town.

[Thomas G. Bradford, Deputy Town Manager]

***[Removed from Consent Agenda and added to the Regular Agenda as Item XI.B.5]***

2. RESOLUTION NO. 2-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the First Amendment to the Interlocal Agreement to Promote Undergrounding of Utility Facilities and Related Implementation Activities Between the Town and Florida Municipalities, and Authorizing the Mayor to Execute the Same on Behalf of the Town.

[Thomas G. Bradford, Deputy Town Manager]

3. RESOLUTION NO. 3-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of Amendment No. 1 to the Agreement Between the City of West Palm Beach and the Town of Palm Beach for Payment of Certain Water Main Improvements Within the Work Area in Connection with the 2008 Town of Palm Beach Water Main Improvements.

[H. Paul Brazil, Director of Public Works]

4. RESOLUTION NO. 5-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Recognizing the "Building Citizenship in the Community: Back to Basics" Initiative of the Florida League of Cities, Inc., and Pledging Support for this Statewide Effort. [Sarah E. Hannah, Assistant Town Manager]

5. RESOLUTION NO. 6-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Agreement Between Commerce Bank and the Town of Palm Beach for an Automated Accounts Payable System and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Jane Struder, Director of Finance]

***[Removed from Consent Agenda and added to the Regular Agenda as Item XI.B.6]***

6. RESOLUTION NO. 7-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Amendment No. 1 to FDEP Contract No. 07PB6 Between the State of Florida Department of Environmental Protection and the Town of Palm Beach, under the Bureau of Beaches and Coastal Systems Florida Beach

Management Funding Assistance Program for the South End Palm Beach Restoration, Reach 8 Project, and Authorizing the Town Council President to Execute Same on Behalf of the Town.. [H. Paul Brazil, Director of Public Works]

E. Other

1. Ratification of CCNA Selection Committee Ranking of Water Supply Consultants RFQ 0-0-2008/JMB.  
[H. Paul Brazil, Director of Public Works]
2. Ratification CCNA Selection Committee Ranking of Marine Resource Assessment and Monitoring Consultants RFQ 0-3-2008.  
[H. Paul Brazil, Director of Public Works]
3. Authorization and Funding for Removal of Vessel From Beach. [H. Paul Brazil, Director of Public Works]  
*[Removed from Consent Agenda and added to the Regular Agenda as Item XI.B.7]*
4. Re-appointment of James Karman to General Employees Retirement Board of Trustees.  
[William C. Crouse, Director of Human Resources]

President Pro Tem Coniglio added Communication to the Town Council - signage for Worth Avenue under New Business, Item XI.B.8.

**Motion made by Council Member Rosow, seconded by Council Member Coleman, to approve the Consent Agenda as amended. On roll call, the Motion carried unanimously.**

IX. BOARD/COMMISSION ANNUAL REPORT

- A. Investment Advisory Committee. [Dr. Michael Andrews, Chair and Jane Struder, Director of Finance]

Dr. Andrews gave a brief history of the Committee and stated he has been Chairman for the

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009

1 past three years. The Committee manages the Town's fund in four different investment vehicles:  
2 The Evergreen Government Money Market Fund, the Florida League of Cities Bond Funds, U. S.  
3 Treasury Bills, and the health insurance trust (OPEB). Dr, Andrews informed the Council that 13  
4 months ago, the Town withdrew \$51 million dollar cash balance form the State Board of  
5 Administration's governmental investment pool fund the day before the funds were frozen. It was  
6 placed in the Evergreen fund where it resides today. The fund currently has \$64 million dollars in  
7 it. The balance of the investments, \$32 million dollars, is invested with the Florida League of Cities  
8 Bond Funds and U.S. Treasury Bills. He indicated that the funds are further broken down in the  
9 information provided in the Council back-up materials.

10  
11 The decisions that the Committee made during the past year resulted in returns of \$273,000  
12 of additional available monies.

13  
14 President Pro Tem Coniglio asked if any of the Town's investments with the Florida League  
15 of Cities were monitored. Dr. Andrews responded that Jane Struder, Finance Director, serves on the  
16 Investment Advisory Committee at the Florida League of Cities and is aware of the investments  
17 being made. Town Finance staff also has the responsibility of monitoring all of the Town's  
18 investments.

19  
20 President Pro Tem Coniglio wondered if Prime Buckholz's also advises the other retirement  
21 boards. Dr. Andrews indicated that they advise the Police and Fire Fighter Boards. She then asked  
22 how often they are reviewed. Ms. Struder responded that a year and a half ago, when the OPEB  
23 trust was established, the Town interviewed Prime Buckholz, Callan and Florida League of Cities,  
24 and Prime Buckholz's was selected. President Pro Tem Coniglio asked how long the Police and  
25 Fire Board s have been advised by Prime Buckholz. Town Manager Peter Elwell indicated he  
26 thought it was approximately four to five years. This occurred when the boards split into two boards.

27  
28 Council Member Markin asked for the record, if there was any exposure relative to the  
29 Madoff ponzi scheme. Ms. Struder responded that the Town was not involved and had no exposure  
30 to any Town funds. Dr. Andrews encouraged members of the community to apply to serve on the  
31 Investment Advisory Committee.

32  
33 President Kleid thanked Dr. Andrews for his excellent, dedicated service to the Town.

34  
35  
36  
37 X. COMMITTEE REPORTS

38  
39 A. Administrative and Personnel Committee Meeting of December 11, 2008.  
40 [Richard M. Kleid, Town Council President]

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009**

1 President Kleid indicated that the Committee heard the appeal of the termination of George  
2 Seeholzer from the Grievance and Resolution Board which upheld the termination. The  
3 Administrative and Personnel Committee upheld the termination, but agreed to recommend to the  
4 Town Council that they would advance the date of termination to September 22, 2008, in order to  
5 permit his pension to vest. They also recommend adoption of the other conditions set forth in the  
6 Committee Report.

7  
8 Council Member Markin commented that as much as she appreciates the work and due  
9 diligence of the Committee, she feels this decision would give a very bad message to employees and  
10 to the community by backdating a gentleman's retirement date, in order that he may receive pension  
11 benefits for the rest of his life and his wife would also receive benefits. She knew this individual and  
12 liked him very much, but this is a decision that needs to be made without emotion. It gives a bad  
13 message that someone could willingly taken items from inventory, placed them on Ebay to be sold,  
14 and deposited the money into his personal bank account. There was nothing done in error or by  
15 accident. It was willful, and a done in a determined fashion. She feels it is the wrong thing to do to  
16 back date his retirement to take advantage of a pension plan that our taxpayers are going to pay for.

17  
18 Council Member Rosow agreed with Council Member Markin. The next time this happens,  
19 it may be \$350.00 worth of material that is absconded. Where do we draw the line. Council Member  
20 Rosow feels very very badly for the gentleman, and made a tremendous error in judgement. He  
21 doesn't think this would send the right message to any employee in Town. It would not be permitted  
22 in the private sector. It should not be permitted in government.

23  
24 President Pro Tem Coniglio asked a few questions. She wondered what happens to his  
25 medical benefits, as she saw he did not opt for COBRA coverage. President Kleid indicated Mr.  
26 Seeholzer would have to pay for health benefits if he wishes to participate in the plan.

27  
28 Town Manager Elwell clarified that if the Council upholds the termination without the  
29 modification that the Committee is recommending, then there would be no insurance coverage. The  
30 Town would not be involved in any insurance coverage. If the Council accepts the recommendation  
31 of the Committee and he becomes a retiree of the Town, he will be eligible to receive the Town  
32 subsidized retirement health benefit which is a 50/50 cost share between the retiree and the Town  
33 for the payment of the premiums.

34  
35 President Pro Tem Coniglio reiterated that in addition to the pension there is an additional  
36 cost to the taxpayer for health benefits. Town Manager Elwell confirmed that. President Pro Tem  
37 Coniglio asked about the lawsuit that Mr. Seeholzer has agreed to drop if the termination is  
38 forwarded.

39  
40 Town Attorney Randolph indicated it is a lawsuit that Mr. Seeholzer and another employee

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009**

1 relating to overtime benefits that he claims he is due. It was then asked if the other employee's  
2 lawsuit would continue, and the answer was yes.

3  
4 President Pro Tem Coniglio asked if there was any figure of what the taxpayer responsibility  
5 would be for that employee would be over a ten-year time frame. Town Manager Elwell indicated  
6 that it is more of a liability to the retirement fund vs. the taxpayer. The bottom line is that the fund  
7 would be paying out \$15,000 per year that it would not otherwise be paying out. President Pro Tem  
8 Coniglio then asked what was the reason for the appeal the Administrative Committee. Town  
9 Manager Elwell explained that the Grievance Resolution process in the Town allows employees,  
10 when they have exhausted the administrative process, going through supervisors, the Department  
11 Director, and Human Resources Director, they are permitted to appeal to a Grievance Resolution  
12 Board. The Board holds a hearing about the matter. The Town Manager chairs the hearings and  
13 Grievance Resolution Board and there are two employees that sit on the Board with him, and there  
14 is a process that is followed. The three employees that sat to hear this matter upheld the termination,  
15 after a day of testimony and consideration. The final step that was available to Mr. Seeholzer was  
16 to appeal the Grievance and Resolution Board Decision to the Administrative and Personnel  
17 Committee of the Council.

18  
19 President Pro Tem Coniglio stated that the employees actually upheld the termination date,  
20 and as a group of employees, they made the decision that Mr. Seeholzer should not have extended  
21 his separation date. Town Manager Elwell indicated that the Grievance Resolution Board voted  
22 unanimously to uphold the termination as it occurred. President Pro Tem Coniglio indicated that  
23 there is no winner in this situation. She stated that it is heartbreaking but unfortunately, in business,  
24 if the shoes were on her feet, she would have to make a very clear decision.

25  
26 Council Member Coleman stated that in a black and white world, we would not have made  
27 the recommendation to the Council that the Committee is making. He thinks that the Grievance  
28 Committee that Mr. Elwell Chairs, is supposed to deal with facts. They made the appropriate  
29 determination. The Council is supposed to look at context and make some subjective determination.  
30 The determination that President Kleid and he made was that this was not black and white, it was  
31 gray, and it really is a judgement call of where the intersection is between justice and mercy. The  
32 Committee felt that there were extenuating circumstances. The man is not getting the full benefits  
33 of being able to retire, and take advantage of the early retirement. That would have been  
34 approximately \$100,000. The Committee felt that was a pretty significant penalty. The process up  
35 until the Council is supposed to be a black and white process and the Council is supposed to use its  
36 subjective judgement and weigh these things, his age, the circumstances and the history. He urged  
37 the Council to support the Committee's recommendation.

38  
39 President Kleid added that there were other things that Mr. Seeholzer lost as well. He was  
40 entitled to sick pay, and he will not be receiving that. He asked that he be allowed to resign. That

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009**

1 was not approved - he was terminated. This will be a mark on his record forever, that he was in  
2 essence, fired by the Town. He too, agreed with Council Member Coleman. He listened to the  
3 entire testimony before the Grievance and Resolution Board. The Committee heard Mr. Seeholzer  
4 speak, and heard the plea, and he thought that taking away a pension from a person who has given  
5 the Town, other than this one incident, which has some questions involved with it, was draconian.  
6 The Council should have a little bit of mercy with being strict on these things. President Kleid also  
7 pointed out that the West Palm Beach Police Department were in charge of this investigation,  
8 because the alleged crime occurred in West Palm Beach, and they chose not to prosecute.

9  
10 President Pro Tem Coniglio stated that the Council is grappling between the level of mercy.  
11 She asked if it was possible to terminate the pension gift, in essence, at a shorter time frame.

12  
13 Town Manager Elwell deferred to the Town Attorney. He added that the observation in  
14 asking for that is that the Council would be allowing something extraordinary that is not called for  
15 in the Ordinance, and so you could put on it any conditions that you choose, since he would not be  
16 retiring in a normal manner in accordance with the Ordinance. You would be providing Mr.  
17 Seeholzer with an opportunity to receive something that the Council chooses to grant.

18  
19 Town Attorney Randolph indicated that in the terms of a settlement, you could do that. But  
20 today we are talking about what the Ordinance provides and in this particular case, the Committee  
21 had before it a situation they were looking at pursuant to the terms of the Ordinance. And frankly,  
22 that is how you should look at this situation today.

23  
24 Council Member Markin cited reading about Mary McCarty, and the County  
25 Commissioners, we read about government being less than trustworthy and she commends the  
26 employees for, normally you would think that employees would be lenient with one of their peers,  
27 holding themselves to a higher standard being government employees. This is not a private business,  
28 where we are using our own monies and our own funds that we raise to do with as we please. We  
29 are using taxpayer monies that are not ours. They are taxpayers' monies. The public entrusts us to  
30 run our Town and our government to a high standard. She believes therefore, that government  
31 employees, government officials, should be held to a much higher standard. In the private sector,  
32 there is no doubt in her mind what the decision would be. If she had heard that there was any doubt  
33 whatsoever, that he did what he did, she may take a different stand. But all of the facts that she has  
34 heard relative to this case is that he willingly did what he did, there is no doubt about the fact that  
35 the money was deposited into his personal bank account. She feels that as much as she would like  
36 to be lenient, and give some mercy, this is the Town's money and the Council should not be  
37 merciful with the Town's money. The example that this would set, there have been several cases  
38 now, one case in almost every department, of dishonesty or theft. She feels that the Council needs  
39 to give a message to the employees as indicated by the choice of the employees on the Grievance  
40 Committee, to hold a firm line on how to interpret any dishonest behavior. That is why she feels as

1 strongly as she does. Council Member Markin then asked if it was because of the Ordinance that  
2 Mr. Seeholzer was not allowed to resign, instead of being terminated. She would not allow him to  
3 receive the pension, but allow him to resign.

4  
5 Town Manager Elwell responded that the Council can make that request but the other  
6 Committees and Boards upheld the termination. The difficulty in allowing that under these  
7 circumstances is that it would be re-writing the record of what actually occurred. It would not be  
8 representing fairly to other employers what occurred in this instance. That choice, if made,  
9 motivated by mercy, would be substantively different from the choice the Council would make to  
10 grant something from the Town that did not change or describe the facts as they were.

11  
12 **Council Member Markin made a Motion to uphold the decision of the employees'**  
13 **recommendation that Mr. Seeholzer be terminated based on the terms upheld by the**  
14 **Ordinance.**

15  
16 Town Attorney Randolph stated that the item that is before the Council today is the  
17 recommendation of the Administrative and Personnel Committee. The Motion should relate to that,  
18 not to the Grievance Resolution Board. **An appropriate Motion would be to accept the**  
19 **recommendation of the Administrative and Personnel Committee as it relates to the**  
20 **termination but not to accept the recommendation relating to the pension.**

21  
22 **Council Member Markin stated that was the Motion that she stated. Motion was**  
23 **seconded by Council Member Rosow.**

24  
25 Council Member Rosow stated that he understands what President Kleid and Council  
26 Member Coleman were trying to do and he appreciates that, The problem that he has is the pattern  
27 it will set for other employees to look at. It is not the right one. This man, Mr. Seeholzer, made a  
28 huge mistake. The next person who comes before the Council, who makes a mistake is going to  
29 plead this same type of argument. He doesn't feel the Council should be going down that perilous  
30 path. He wishes he could do something differently, but it doesn't set the right tone for the Town.

31  
32 President Pro Tem Coniglio reiterated that Council Member Markin asked if the employee  
33 could resign and that puts the onus on another employer. Town Manager Elwell offered a clarifying  
34 comment that it is not unusual as a business decision, as a matter of performance, to allow a person  
35 to resign when you are about to terminate their employment. There are judgement calls to avoid  
36 litigation when the issue is performance. This was a situation different than that. It is appropriate  
37 to allow an employee to resign prior to them being fired, and yes, the Town has done that in the past  
38 when it relates to issues of performance. The facts of this case indicate that the employee sold Town  
39 Materials inappropriately and the monies went into Mr. Seeholzer's personal account.

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009**

1 President Pro Tem Coniglio declared that there was an incredible error in judgement. Does  
2 that allow the Council to make resignation a condition of the ...

3  
4 Town Attorney Randolph intervened and indicated that it was not appropriate for the Council  
5 to be changing the conditions of the recommendations that is before the Council. This is not a new  
6 hearing today. If the Council is going to start adding new items, there should be an opportunity for  
7 the employee's attorney to be present as part of a settlement. That is not what's before the Council  
8 today.

9  
10 Council Member Coleman was against changing the record, plus there is no benefit for the  
11 employee to resign. President Pro tem Coniglio added that he would then be able to get another job.  
12 Council Member Coleman wanted to go through some of the facts. The facts are black and white.  
13 He cannot say whether or not his intent was black and white. Initially when he took the money, and  
14 put it in an envelope in his desk with Cheryl Somers' (Asst. Finance Director) name on it, his intent  
15 was to not take the money. He never conceded that was his intent, to take. Now the context - Mr.  
16 Seeholzer is 67 years old, and asked Town Manager Elwell for some history.

17  
18 Town Manager Elwell added that he and his wife both worked in the airline industry for  
19 decades and lost the two pensions they had earned in their prior jobs before his Town employment.  
20 He came to the Town in his mid to late fifties.

21  
22 Council Member Coleman added that after working for nine years and eleven months, he had  
23 a record which was very satisfactory. This has cost him over \$100,000 by not being able to avail  
24 himself of the early retirement. How much do you want from a 67 year old man. He is not Mary  
25 McCarty. This is too harsh of a sentence for him. How much blood do you want out of a stone.

26  
27 President Kleid added that council Member Coleman and he sat through the meeting. Their  
28 personal evaluations of Mr. Seeholzer resulted in the same conclusions. This person has been beaten  
29 over the head too many times and the least the Town could give him is his pension. Otherwise, there  
30 will be a disastrous result.

31  
32 Police Chief Michael Reiter addressed the Council. He stated that this was investigated by  
33 the West Palm Beach Police Department. Mr Seeholzer was arrested, and it is very typical for minor  
34 cases, in the grand scheme of things, for there to be some type of pre-trial intervention program. It  
35 was the Chief's understanding, that he did enter a pre-trial intervention program in lieu of  
36 prosecution. But the West Palm Beach Police Department did believe Mr. Seeholzer did commit  
37 a crime and they went through a full arrest procedure.

38  
39 President Kleid announced that there was a Motion on the floor and asked for roll call.  
40

1           **Upon roll call, the Motion carried 3-2.**

2  
3   **President Kleid**                               **No**  
4   **President Pro Tem Coniglio**               **Yes**  
5   **Council Member Coleman**               **No**  
6   **Council Member Markin**               **Yes**  
7   **Council Member Rosow**               **Yes**

8  
9   [Please also see the reconsideration of this item later in the meeting where the recommendation  
10                               was approved under XIII ANY OTHER MATTERS]  
11  
12  
13

14           **B.     Finance and Taxation Committee Meeting of December 16, 2008.**  
15                       **[Denis P. Coleman, Town Council Member]**  
16

17           Council Member Coleman gave a brief summary of the December Finance and Taxation  
18   Committee Meeting. He mentioned that there was discussion regarding the combining of the Police  
19   and Fire Fighter Pension Boards.  
20

21           President Pro Tem Coniglio added that she attended and indicated that it was a very  
22   informative meeting. She asked about the item where the health insurance stop loss deductible was  
23   going to be raised to \$100,000 from \$60,000. Council Member Rosow indicated that it is the  
24   Committee's suggestion to increase it the next time it comes before Council, but no action is needed  
25   immediately.  
26

27           Town Manager Elwell added that another item that was discussed was the elimination of the  
28   extraordinary longevity pay for employees. It was the recommendation of the committee to eliminate  
29   the program if the report is accepted.  
30

31           **Motion made by President Pro Tem Coniglio, seconded by Council Member Markin**  
32   **to accept the report with its recommendations. The motion passed unanimously.**  
33

34           After a five minute recess, President Kleid made an announcement: The Citizens Committee  
35   Meeting which will be held on January 21, 2009, will be limited only to the Presidents and their  
36   nominees of the various condominium associations, or part of the Citizens Association. It is not an  
37   open meeting. Council Member Markin asked if that excluded Council Members and she was  
38   informed by Mr. Lee Goldstein from the Citizens Association that this is not a meeting for Council  
39   Members. It is one of their seminars, and for their Board of Directors. Mr. Goldstein asked the  
40   Town Manager if the Shore Protection Board could attend the meeting to observe, but not

participate.

XI. REGULAR AGENDA

A. Old Business

1. Update Regarding Ordinances, Rules, and Standards Committee (ORS) Recommendations/Referrals of Certain Projects to the Architectural Review Commission (ARCOM).  
[H. Paul Brazil, Director of Public Works]

Mr. Brazil made some recommendations to Town Council which were accepted by the Council were the townwide Aesthetic Standards and holiday Decorations. Both items were presented to the Architectural Review Committee. The first item, townwide Aesthetic Standards started with a presentation of the Ordinances, Rules and Standards Committee showing visual clutter, overabundance of signs, duplicate signs and other oddities in the public right-of-ways. The Architectural review Commission agreed these issues should be addressed on a town wide basis and expanded the conversation to include to include standardization of signs, signage etc. on private property as well.

The concern with the Architectural Review Commission is that they are not designers. They typically review suggestions. They are working with staff through this process, but there may be a need for some professional assistance in developing these standards to review and recommend to the full Council.

Staff has been working with the Florida Department of Transportation (DOT), and have identified four more signs in the short term that can be eliminated. They will continue on with that effort with DOT and Town signs were also applicable.

The second item was Holiday Decorations. The Town sponsors and participates with three holiday trees. All other holiday decorations are donated by various business groups and interests. Generally, that has included Royal Poinciana Way, South County Road, and Worth Avenue. It had been suggested by ORS, and ARCOM agreed, that perhaps there could be some standardization and some improvement over what has been sponsored for decorations throughout the Town. ARCOM very strongly agreed that there could be some improvement. They also viewed a brief presentation by one of their members, showing things other communities had done. Again, ARCOM informed Mr. Brazil that they are not a design studio and perhaps sometime in the future, they will need some outside professional help to develop some alternatives in order to make a solid recommendation to the Council. Staff will continue to work with them. He is meeting next month to discuss the

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009

1 Holiday decorations as he will need several months to design and implement the suggestions.

2  
3 Lastly, there was a type of project that has not come up before and that would be a landscape  
4 improvement project. Typically and historically, the Public Works Department works with the donor,  
5 and presents it to the full Council. The Garden Club has sponsored the large majority of these  
6 projects, especially the larger ones such as the Royal Poinciana median work. The Garden Club  
7 prefers that historic arrangement. ARCOM would like to be in the review process. Staff is asking  
8 for how to handle that specific issue.

9  
10 Betsy Mathews, 417 Chilean Ave, President of the Garden Club expressed that they have  
11 always had a good working relationship with the Council and would like to continue it that way.

12  
13 Council Member Rosow agreed and said the Garden Club work is great and there is a good  
14 relationship with them.

15  
16 Council Member Markin agrees that there was lack of unity and continuity and sited that the  
17 bows on the trees are placed at different heights.

18  
19 Town Manager Elwell informed the Council that the Holiday Decorations and the Aesthetic  
20 issues are being discussed at ARCOM currently and will be coming to the full council for approval  
21 of their recommendations at a later time.

22  
23 Mayor McDonald was opposed to the Garden Club having to report to ARCOM. There is  
24 an excellent relationship now and he would like to see it continued.

25  
26 President Pro Tem Coniglio said that the Garden Club has a good reputation and they should  
27 be permitted to come before Council for approvals.

28  
29 **Motion made by President Pro Tem Coniglio and seconded by Council Member Markin**  
30 **to allow the Garden Club to continue to present items directly to Town Council, without going**  
31 **to ARCOM first. On roll call, the Motion passed unanimously, with Council Member**  
32 **Coleman absent.**

33  
34 \*\*\*\*\**Lunch Recess*\*\*\*\*\*

35  
36 B. New Business

- 37  
38 1. Proposed Worth Avenue Commercial District Assessment Area.  
39 [Harvey Oyer, Esq.]  
40

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009

1 Mr. Harvey Oyer spoke on behalf of the Worth Avenue Restoration Association, Inc., which  
2 is a Florida not for profit corporation. He submitted a letter dated December 30, 2008 to the Town  
3 Manager and was followed up with a staff recommendation that pursuant to Section 197.362 Florida  
4 Statute, he is asking for adoption of a Resolution to the tax collector and property appraiser at the  
5 February Town Council meeting. This would allow them to impose a non ad valorem special  
6 assessment on the Worth Avenue area property owners for beautification and maintenance projects.

7  
8 Council Member Coleman asked who is in the affirmative in the association. Mr. Oyer stated  
9 that they don't know, the Worth Avenue Restoration Association as an entity is a newly formed  
10 entity. The president is Murray Goodman, the vice president is Burt Handlesman. They have a  
11 majority of the avenue in the association. Mr. Oyer indicated that they do not know what they are  
12 proposing. Council Member Coleman requested that when they make improvements, as he supports  
13 the venture, that they bury the utility lines on Worth Avenue.

14  
15 Mr. Oyer responded that burying the utility lines is a priority for Worth Avenue and County  
16 Road.

17  
18 President Kleid asked if any of the tenants have been consulted and would the fees be passed  
19 on to the tenants. Mr. Oyer indicated that this was driven by the tenants.

20  
21 President Pro Tem Coniglio was concerned about the tenants. She declared that she has  
22 spoken with Sherry Frankel and the Worth Avenue Association has shown tremendous support for  
23 this. She is in favor to give the go ahead, and ARCOM will maintain the aesthetic oversight. She  
24 reminded him that final approval is still with the Town Council.

25  
26 Mayor McDonald expressed his support.

27  
28 Council Member Markin stated that in theory, she supports this, but if it results in extra costs  
29 to the tenants, she would not be in favor of it.

30  
31 Council Member Rosow agreed with Council member Coleman's request of the burying of  
32 utilities be required in the Resolution. You will bury the lines. Period.

33  
34 **Motion to approve made by Council Member Rosow and Seconded by Council**  
35 **Member Coleman. Upon roll call, the Motion passed unanimously.**

36  
37  
38  
39 2. Concerns and Objections on Proposed Intracoastal Waterway Master Plan.  
40 [Thomas G. Bradford, Deputy Town Manager]

1 Council Member Rosow indicated that he had read the report and agreed with Deputy Town  
2 Manager Bradford that the Town should object to the Plan. He should send a letter of objection on  
3 behalf of the Town to be on the record that we oppose the plan. Deputy Town Manager Bradford  
4 indicated he had discussed this with Palm Beach Shores, but would reach out to other municipalities.

5  
6 President Pro Tem Coniglio stressed that we should get support in opposing the plan form  
7 neighboring municipalities. Deputy Town Manager Bradford indicated he had discussed this with  
8 Palm Beach Shores, but would reach out to other municipalities.

9  
10 Council Member Markin wants a brief summary from Deputy Town Manager Bradford for  
11 the public notice. She announced that she serves on the League of Cities Lake Worth Lagoon  
12 Initiative Plan.

13  
14 Deputy Town Manager Bradford announced that the Metropolitan Planning Organization  
15 (MPO) had hired the Treasure Coast Regional Planning Council to do a Master Plan for the  
16 Intracoastal Waterway in Palm Beach County. There are some items of concern to the Town of Palm  
17 Beach:

- 18 • Cited the Port of Palm Beach Master Plan for the widening and deepening of the  
19 channel and harbor.
- 20 • Proposed Megayacht mile running from the Riviera Beach CRA to Rybovitch  
21 Spencer Waterfront area in West Palm Beach
- 22 • Creation of Jewel Cove, in the small section of Lake Worth on Palm Beach Island at  
23 the foot of the Lake Worth bridge - to make it a marine destination, which includes  
24 boat slips and stop-off and pick-up for water taxis.

25  
26 Town Manager Elwell summarized that if the Town agreed with Deputy Town Manager  
27 Bradford's objections were approved by Council, then staff will draft a letter of objection for the  
28 Council President to sign.

29  
30 **Motion made by Council Member Rosow and seconded by President Pro Tem Coniglio**  
31 **to send a letter of objection on behalf of the Town. On roll call, the Motion passed**  
32 **unanimously.**

- 33  
34  
35  
36 3. Par 3 Golf Course Restoration Project.  
37 [Jay Boodheshwar, Director of Recreation]  
38 **TIME CERTAIN: 11:00 A.M.**

- 39  
40 a. Par 3 Golf Course Restoration Project Update.

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009**

1  
2 Mr. Jay Boodheshwar, Director of Recreation, gave a brief overview of the project and  
3 introduced, former Professional Golfer, Mr. Raymond Floyd, to discuss the parameters of the  
4 renovated golf course plan. The restoration project will be done in two phases, beginning March 2,  
5 2009, and deletion of the reverse osmosis plant. There still will be drilling a well and using the  
6 Floridan Aquifer to water the greens. The treatment plant is not necessary to irrigate the course.

7  
8 The clubhouse, which is in Phase II, will not be ready for construction until 2010 due to the  
9 design process and fund-raising progress. The existing clubhouse will be maintained. The Fund-  
10 raising committee has been extremely successful with 42.8 million dollars pledged to match the  
11 Town's \$2 million dollars. Over \$2.2 million has already been collected.

12  
13 Mr. Floyd announced that he is a Town resident, and has donated his services in golf course  
14 design to the Town. He would like to see this as a family project and bring national notoriety back  
15 to the Par 3. He would like to see more youth and seniors get involved with golfing. The  
16 Groundbreaking will be April 3, 2009 at 4:00 p.m. All can come to see the progress to date.

17  
18 Jim Bowser, Town Engineer briefly discussed the permits obtained from the South Florida  
19 Water Management District for the consumptive use permit. The permit is issued based on a  
20 quantity of water used monthly, not allocated to how much usage per day. Mr. Bowser was asked  
21 by the Council to provide them with the uses and restrictions of the current permit that was obtained.

22  
23 Mr. Floyd cited the example of his other golf course, Old Palm, in Palm Beach Gardens,  
24 where they reduced the amount of watering by over 50% and the course still looked great.

25  
26 President Pro Tem Coniglio commended Mr. Boodheshwar on the monies raised.

27  
28 Council Member Markin asked when the re-opening would occur. Mr. Boodheshwar  
29 responded that November 2009 is the targeted date.

30  
31 Council President Kleid thanked Mr. Floyd and his wife for their service to the community  
32 and for the informative presentation.

33  
34  
35  
36 b. Request for Waiver of Section 42-198-Use of Certain Types of  
37 Equipment and Section 42-199-Hours of Construction.

38  
39 Mr. Boodheshwar asked the Council for a waiver of construction hours by ½ hour, which  
40 would include Saturdays and the use of heavy construction equipment. He indicated that staff had

1 met with the neighboring condos and residences to inform them of the project and had no objections.

2  
3 **Motion to approve by Council Member Coleman and seconded by President Pro Tem**  
4 **Coniglio. Upon roll call, the Motion passed unanimously.**

5  
6  
7  
8 c. Financing Options for Town Portion of Par 3 Restoration Project.  
9 [Jane Struder, Director of Finance]

10  
11 Finance Director Jane Struder addressed the Council and outlined several options for funding  
12 the Town's \$2 million dollar commitment to the golf course renovation project. Some or all, of the  
13 monies could be taken from the General Fund, The M & I fund, the dock replacement reserve, or  
14 with bank notes, or many combinations of sources.

15  
16 Council Member Coleman indicated that liquidity is an issue and suggested that they use a  
17 bank loan, and if the economy improves and the Town could pay off the loan, they could refinance  
18 later.

19  
20 Council Member Rosow indicated that it is the Town policy is to have 25% in reserves. He  
21 feels that they should self-finance this project by using one million from the enterprise fund and one  
22 million from the dock reserve fund and apply interest when repaying those funds, instead of to a  
23 bank.

24  
25 Town Manager Elwell suggested since they do not know the exact numbers, to allow staff  
26 to issue an RFP to the banks, and come back at the February 10, 2009 Town Council Meeting with  
27 more specific numbers.

28  
29  
30  
31 4. Demolition of Structures During the Winter Season.  
32 [David A. Rosow, Town Council Member]

33  
34 Council Member Rosow indicated that earlier in the year, the Council spent a lot of time  
35 discussing the noise from leaf blowers. At that the same time, there is a loophole in the Ordinances  
36 regarding the demolition of homes during the season. That overwhelms the noise of a leaf blower  
37 and has had several neighbors contact him regarding the noise from a demolition that is next door  
38 to him. He wanted to know why demolition of homes is allowed during the season. The use of loud  
39 and noisy equipment is not permitted.

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009**

1 Council Member Rosow stated he had discussed the matter with Chief Reiter and that there  
2 is a fundamental loophole in the Ordinance. The project he referred to began the day after Christmas,  
3 halted for New Year's Day, and now has been going on for over three weeks. He would like to close  
4 the loophole by not allowing demolitions of any kind during season.

5  
6 Council Member Markin also heard the demolition of that particular property. She stated that  
7 she tore down a home on South Ocean Blvd., to build a new house, and was told by the Contractor  
8 that it had to be torn down before a certain date. She was of the impression that you could not  
9 demolish structures during season. Upon checking with staff, she was informed that it is allowed,  
10 but certain equipment must be used to make it quieter. She agrees with Council Member Rosow,  
11 that if argue about leaf blowers, then we should look at the inconvenience of a demolition that is  
12 loud, regardless of the equipment used, and loading up all of the demolition material and hauling it  
13 down the streets. She does not understand how the Town is allowing that to happen. There is ample  
14 time to do it off-season.

15  
16 **Motion made by Council Member Rosow and seconded by Council Member Markin**  
17 **to prohibit demolition during season.**

18  
19 Council Member Coleman stated that there is a difference between leaf blowers and  
20 demolition. Leaf blowers are continuous and weekly whereas tearing down a home is a one time  
21 event. He feels it is ok to tighten the Ordinance, or to limit the time the person has to do the  
22 demolition, or restrict dates that the demolition cannot be done in, but to preclude it for the entire  
23 season is unreasonable. He feels a home could be demolished in one week.

24  
25 President Pro Tem Coniglio agrees with Council Member Coleman. Property rights are being  
26 infringed upon. She would hope that her neighbors would allow her to demolish her property if she  
27 desired, just as she has tolerated her neighbor's demolition. She suggested banning demolitions from  
28 Thanksgiving through New Year's and then she would support the Motion.

29  
30 Council Member Coleman asked that staff come back with a report next month as to how to  
31 limit, and where it has been a problem. Perhaps it can limited by periods of time, or amount of time  
32 a person is permitted to demolish. Council Member Rosow stated he did not want to amend the  
33 Motion. He tore down his home and was told he could not do it during season, his contractor  
34 informed him he had to wait until May 1. He would have liked to have been in his new home earlier.  
35 Council Member Rosow does not want the inconvenience during season.

36  
37 Mayor McDonald asked what about exceptions, such as a burned structure. Council Member  
38 Rosow indicated that in those instances they could come before the Town Council and ask for an  
39 exception.

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009**

1 Town Attorney Randolph clarified that the Motion is to bring back the Ordinance next month  
2 regarding time limits on demolitions. He informed the Council that this has been discussed before  
3 and is not a loophole. It has been discussed before and it has involved contractors as well.

4  
5 Council Member Markin indicated that many of the contractors already are operating under  
6 the conditions that they are not permitted to do demolitions during season. Demolitions are well  
7 thought out by the owners. She suggested defining what the season dates are and more than the  
8 sound of demolition, is the traffic issue with debris trucks, increased traffic on the roads and the  
9 noise.

10  
11 Town Manager Elwell indicated that the season is typically December 1 through April 30<sup>th</sup>.

12  
13 Mr. Robert Moore, Former Planning and Zoning Director, pointed out that there is a tax  
14 liability issue. If a home is demolished by December 31, it becomes a tax roll and timing issue. A  
15 solution could be to use the noise meters and enforced by the Police Department.

16  
17 Council Member Markin stated that the noise meter issue is an invalid point and calling the  
18 Police Department won't help.

19  
20 **Upon roll call the Motion passed 4-1 with Council Member Coleman dissenting.**

- 21  
22  
23  
24 5. RESOLUTION NO. 1-09 A Resolution of the Town Council of the Town of  
25 Palm Beach, Palm Beach County, Florida, Approving a Contract Between the  
26 Town of Palm Beach and SunGard Public Sector Inc. to Provide the OSSI  
27 Public Safety Software System to the Town Based on the Attached Contract  
28 and Authorizing the Town Manager to Execute the Contract and this  
29 Purchase on Behalf of the Town.

30 [Thomas G. Bradford, Deputy Town Manager]  
31

32 Council member Rosow indicated that he had this item pulled from the Consent Agenda due  
33 to the cost of the contract. He felt that \$60,000 could hire an additional staffer and wanted more  
34 information on the product. Deputy Town Manager Bradford informed the Council that the current  
35 software the Town is using is over twenty years old. Spencer Wilson, Information Systems Manager  
36 added that the cost is really an additional \$20,000 a year and not \$60,000 for the ongoing support  
37 and maintenance of the software.

38  
39 President Pro Tem Coniglio asked what the down side would be if the software was not  
40 purchased. Mr. Wilson responded that the current software does not integrate with other programs

1 and the current reports are done "piece meal". There would be some savings in man hours if the new  
2 software were purchased.

3  
4 Police Chief Reiter spoke and indicated the software would not reduce staff, but would  
5 increase efficiency in doing reports. The Town of Palm Beach is one of the last municipalities still  
6 using carbon copies for citations. There would be a search function with the new software that is  
7 not currently available. What the department is using now is very outdated. The new software is  
8 compatible with neighboring municipalities, such as West Palm Beach. Chief Reiter also indicated  
9 they have not asked for anything like this in the past, and it will benefit the public as well. He gave  
10 an example that if a person inadvertently called West Palm Beach and was lost, the info could be  
11 transmitted immediately to the Palm Beach Police Department without the citizen having to repeat  
12 all of the details.

13  
14 Council Member Markin commented that if other municipalities use this software, and it will  
15 benefit the citizens, then she would support the purchase.

16  
17 **Motion made by Council Member Markin, seconded by President Pro Tem Coniglio.**  
18 **On roll call the Motion passed unanimously.**

19  
20  
21 6. RESOLUTION NO. 6-09 A Resolution of the Town Council of the Town of  
22 Palm Beach, Palm Beach County, Florida, Approving an Agreement Between  
23 Commerce Bank and the Town of Palm Beach for an Automated Accounts  
24 Payable System and Authorizing the Town Manager to Execute the Same on  
25 Behalf of the Town. [Jane Struder, Director of Finance]

26  
27 Town Attorney Randolph read Resolution No. 6-09 by title, as printed above.

28  
29 President Pro Tem Coniglio asked Finance Director Struder to explain why she is proposing  
30 Commerce Bank over Suntrust Bank. Finance Director Struder indicated the two vendors that do  
31 the vendor process, Commerce and Suntrust. There are a variety of things that differentiate the two  
32 banks:

- 33 • Suntrust charges a set up fee between \$5-10,000 for this program, Commerce does  
34 not charge anything.
- 35 • Suntrust pays the revenue share on an annual basis and Commerce pays it monthly
- 36 • Suntrust does not enroll the vendors, the Town staff would have to go out and enroll  
37 all of the vendors, Commerce does all of the legwork and contact the vendors on the  
38 Town's behalf
- 39 • Suntrust requires a one year contract, Commerce does have a thirty day notice in  
40 which to cancel at any time.

- Suntrust requires a certain minimum, Commerce has no minimum.

President Pro Tem Coniglio indicated that everything is crystal clear and encourages the Finance Director to get all of our vendors registered with Commerce Bank. The float is a week or two, which allows the Town to keep its money longer.

Christina Pujoh, with Commerce Bank spoke to the Council and indicated that the vendor enrollment team will contact each Town Vendor, but they cannot require them to participate.

**Motion to approve made by President Pro Tem Coniglio and seconded by Council Member Markin. On roll call, the Motion passed unanimously.**

7. Authorization and Funding for Removal of Vessel From Beach. [H. Paul Brazil, Director of Public Works]

Mr. Brazil explained that there is an abandoned on the dry beach at 1906 S. Ocean Blvd. and had migrated to 1920 S. Ocean Blvd. and as of today has migrated further south. The vessel is beginning to break up. The boat is in State waters, but could be pushed into private or public property. The State does have a reimbursement program for local government who takes care of and removes the vessels, and the Town may receive reimbursement. Mr. Brazil also contacted Palm Beach County, who in the past, has assisted with removal, but do not have any grant monies at this time.

Town Manager Elwell indicated the amount to be expended will not exceed \$3,000.

**Motion to approve resolution No. 6-09 made by President Pro Tem Coniglio and seconded by Council Member Markin. On roll call, the Motion passed unanimously.**

8. Communication to Town Council regarding Signage on Worth Avenue.  
[President Pro Tem Gail Coniglio]

President Pro Tem Coniglio announced that this request is being made based on a memorandum that was received from Sherry Frankel as the representative of the Worth Avenue Merchants Association. The Town Code prohibits sales signs at this time of year.

**Motion to approve signage on Worth Avenue during season by Council Member**

1 Coleman and seconded by President Pro Tem Coniglio. Upon roll call the Motion passed  
2 unanimously.

3  
4 \*\*\*after the lunch recess, and as a housekeeping matter, the Council voted to extend the signage to  
5 all business districts, and not just Worth Avenue.\*\*\*\*

6  
7 Motion made by Council Member Coleman and seconded by President Pro Tem  
8 Coniglio to expand the use of signs to all business districts. Upon roll call, the Motion passed  
9 unanimously, with Council Member Markin absent.

10  
11  
12  
13 XII. ORDINANCES

14  
15 A. Second Reading

- 16  
17 1. ORDINANCE NO. 31-08 An Ordinance of the Town Council of the Town  
18 of Palm Beach, Palm Beach County, Florida, Amending Chapter 2 of the  
19 Town Code Relating to Administration, at Article V Code Enforcement,  
20 Division 3 Procedure, Section 2-439 Citation Fine Schedule, So as to Provide  
21 That Violations of Section 10-4, Relating to Depositing of Feces or Excreta,  
22 Shall Be Considered a Class III Violation and Further that Section 42-230,  
23 Relating to Lawn Maintenance Equipment, shall be considered a Class III  
24 Violation Thereby Imposing a Penalty for a First Offense of \$250.00 in Lieu  
25 of \$125.00 for a First Offense for Class II Violations; Providing for  
26 Severability; Providing for Repeal of Ordinances in Conflict; Providing for  
27 Codification; Providing an Effective Date.  
28 [John C. Randolph, Town Attorney]

29  
30 Town Attorney Randolph read Ordinance No. 31-08 by title, as printed above.

31  
32 President Pro Tem Coniglio asked Chief Reiter if the increased fine was effective. Chief  
33 Reiter explained that these violations are not a priority of the Police Department. President Pro Tem  
34 Coniglio expressed her disapproval with the Ordinance as she stated it gives a negative image of the  
35 Town.

36  
37 Motion made by Council Member Markin and seconded by Council Member Coleman.  
38 Upon roll call, the motion passed 4-1, with President Pro Tm Coniglio dissenting.

- 1  
2           2.     ORDINANCE NO. 32-08 An Ordinance of the Town Council of the Town  
3               of Palm Beach, Palm Beach County, Florida, Amending the Code of  
4               Ordinances of the Town of Palm Beach at Chapter 18, Building and Building  
5               Regulations, Article III, Architectural Review, Division 2, Architectural  
6               Commission, Section 18-175, Issuance of Permits, So as to Include  
7               Additional Language Relating to Conditions for Demolition and Adding a  
8               Requirement as a Condition of Being Granted a Permit for Construction of  
9               all Structures other than Single Family Structures, That Financial Guarantees,  
10              including a Demolition Bond, Shall be Provided to the Town and Recorded  
11              in the Public records of Palm Beach County, Florida, providing for  
12              Demolition of Construction in the Event of Failure to Complete; Providing  
13              for the Substitution of Planning Zoning and Building Department Director for  
14              Building Official; Amending Section 18-201, to Substitute Planning, Zoning  
15              and Building Department Director for Building Official; Amending Section  
16              18-205, Relating to Criteria for Permit to Incorporate the Financial Guarantee  
17              Required in Section 18-175; Incorporating a New Section 18-206 Setting  
18              Forth Conditions for the Granting of a Demolition Permit; Renumbering  
19              Existing Sections 18-206 setting forth conditions for the Granting of a  
20              Demolition Permit; Renumbering existing Sections 18-206, 18-207 and 18-  
21              208; Providing for Severability; Providing for Repeal of Ordinances in  
22              Conflict; Providing for Codification; Providing an Effective Date.  
23              [John C. Randolph, Town Attorney]

24  
25           Town Attorney Randolph read Ordinance No. 32-08 by title, as printed above.  
26

27           Discussion ensued about the ramifications, if any, of the Ordinance. President Pro Tem  
28   Coniglio felt this would negatively impact the business owners. Mayor McDonald expressed  
29   concern over legal implications. As a real estate attorney, he had concerns over clients being able  
30   to obtain a loan for a project with these requirements. Council Member Rosow did not want to see  
31   a repeat of the abandoned hotel on Royal Palm Way and feels the Council should do something to  
32   prevent it in the future. Council Member Coleman felt that this was very simple: require the  
33   demolition bond and obtain serious bonds from developers. Council Member Markin agreed with  
34   Council Member Coleman.  
35

36           Town Attorney Randolph was asked his opinion and he does foresee major litigation. His  
37   concern was that citizens may not want to declare their financials in a public record, as is required.  
38   He does note that there is ample notice given to the builder to complete the project.  
39

40           Council Member Coleman indicated that there are several options for a project, and it brings

1 all parties to the table to discuss them.

2  
3 **Motion made by Council Member Rosow, seconded by Council Member Markin. On**  
4 **roll call, the Motion passed 4-1 with President Pro Tem Coniglio dissenting.**  
5

6  
7  
8 B. First Reading  
9

- 10 1. ORDINANCE NO. 1-09 An Ordinance of the Town Council of the Town of  
11 Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic  
12 and Vehicles; at Article III, Parking, Stopping and Standing, Section 118-92,  
13 Penalty for Violating Parking Regulations Generally, to Include a New  
14 Subsection (b) Providing for the Issuance of Additional Citations for Each  
15 Two Hour Period or Increment Thereof During Which the Vehicle Remains  
16 in Violation Beyond the Time of the Initial Citation; Providing for  
17 Severability; Providing for Repeal of Ordinances in Conflict; Providing for  
18 Codification; Providing an Effective Date.  
19 [John C. Randolph, Town Attorney]  
20

21 Town Attorney Randolph read Ordinance No. 1-09 by title, as printed above.  
22

23 **Motion made by President Pro Tem Coniglio, seconded by Council Member Coleman**  
24 **to approve Ordinance No. 1-09 on first reading. On roll call, the Motion passed unanimously.**  
25  
26  
27

- 28 2. ORDINANCE NO. 2-09 An Ordinance of the Town Council of the Town of  
29 Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances  
30 of the Town Palm Beach at Chapter 18, Buildings and Building Regulations,  
31 Article XIII, Signs and Awnings, So as to Provide a New Section 18-932  
32 Regulating the Period of Time During Which the Cloth Part of Canopies and  
33 Stationary Awnings May Be Removed on Commercial Buildings or on  
34 Residences Located Within Predominately Commercial Buildings; Providing  
35 for a New Article XVI Regulating the Use of Storm Shutters and Hurricane  
36 Protection Devices and Providing That the Use of Shutters and Hurricane  
37 Protection Devices May Not Exceed a Period of Fourteen Days During the  
38 Period June 1 to November 30 of Each Year on Commercial Buildings or  
39 Residential Dwellings Located Within Predominately Commercial Buildings;  
40 Providing Exceptions; Providing for Severability; Providing for Repeal of

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009

Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Council Member Rosow indicated he had received a letter from a resident and would like to table the Ordinance, as it has become much more complicated than he originally thought it would be. He would like to have the Ordinance tabled, redrafted, and brought back to Council at the February 10, 2009 meeting.

President Pro Tem Coniglio agreed and suggested that only the commercial district businesses be unshuttered, and not the residences. Town Attorney Randolph indicated that language should not be interlineated today, as suggested until it is clear what the intent of the Ordinance will be.

Council Member Rosow reiterated that they do want the commercial enterprises within town to be unshuttered and awninged except in the event of an impending storm event. It was extended to residents associated with those same buildings. The problem is that some of those residences are not occupied during the summer months and would create an undue burden on those residents. He would like to have the Ordinance redrafted to pertain only to the commercial businesses and to eliminate the individual residences that may be above or around the commercial businesses.

Town Manager Elwell stated that the correspondence received was not from a person who resides within a commercial building, but within a purely residential structure within the commercial district. It was his understanding that from prior meeting discussions, that this building the resident lived in was excluded from the Ordinance. He suggested deleting the line pertaining to residential dwellings.

Town Attorney Randolph clarified that it is more complex than deleting one line. Council Member Rosow reiterated he would like the Ordinance tabled and redrafted for review at first reading next month.

**Motion made by Council Member Rosow and seconded by Council Member Coleman. Upon roll call, the motion passed unanimously.**

3. ORDINANCE NO. 3-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 2, Administration, Article III, Officers and Employees, Division 1, Generally, to Include a New Section 2-141, Titled Post Employment Restrictions, So as to Prohibit Employees from Personally

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009

Representing Another Person or Entity for Compensation Before the Town for a Period of Two Years Following Termination of Employment with the Town; Providing for Penalties; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification, Providing an Effective Date.

[John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 3-09 by title, as printed above.

**Motion made by Council Member Rosow and seconded by Council Member Markin.**

President Kleid asked for clarification that if someone had to give counsel as long as they did not personally appear before the Council, if that would be a violation and it is not.

President Pro Tem Coniglio while in favor of a Code of Ethics, is opposed to the Ordinance because it does not mirror the State Provision at all. The State Code of Ethics applies to the Legislature, appointed and elected officers, which would include people like the Town Council Members. She feels that they are creating an onerous situation for a garbage collector, or a fireman who has worked within the Town and now is unable to do safety inspections. She encouraged the Council to consider the long range effects. Two years seems like a long time to her to be prohibited.

Town Attorney Randolph explained that it would not impact a garbage collector, but rather persons that would come before the Boards or Town Council to conduct business.

Town Manager Elwell clarified the Ordinance would include regulatory or enforcement situation where such a person acting upon a private entity in the Town, would be addressing their former fellow employees. A person who leaves Town employment, works for someone private in Town, this would preclude them for a period of two years, not just from coming before Town Council or a Town Advisory Board, but also coming in and meeting with the Town Manager or other staff members on behalf of their new employer, some situation, whatever that may be. The most common cases will be lobbyists, or consultants but there may be other services.

Council Member Markin agrees with the Ordinance. It acts as a non-compete clause for employees, therefore precluding an employee from being hired away from the Town to then work in a capacity where they are using the knowledge that they gained in the Town and use that information to further the concerns of a developer or other entity. It is healthy.

President Pro Tem Coniglio asked her fellow Council Members if two years was too long of a time period. If this is an ethical situation that can be controlled within one year, She would be much more in favor of it. Council Member Markin indicated she was satisfied with the two year

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009

1 limit.

2  
3 Council Member Rosow indicated that in all fairness, the same rules should apply to the  
4 Council and the Mayor. He stated it would send a wonderful message to the public and he likes the  
5 two year term.

6  
7 Council Member Coleman asked about the members of the Town Boards where the people's  
8 livelihood depends on this.

9  
10 Council Member Rosow discussed the Conflicts of Interests with ARCOM and the Shore  
11 Protection Board. He stated that is Ordinance is referring to the lobbying of staff, not participating  
12 as an elected or appointed commissioner. He understood it to mean not lobbying the staff by former  
13 employees.

14  
15 Mayor McDonald stated that as a practicing Real Estate Attorney, this would be very  
16 problematic for him personally. He would be prohibited from contacting staff regarding zoning  
17 changes etc. President Pro Tem Coniglio agreed with the Mayor. Council Member Coleman  
18 agreed that this would be a legitimate concern.

19  
20 Anita Seltzer, 44 Cocoanut Row, asked for a point of clarification. She asked if the  
21 Ordinance would apply retroactively. President Kleid assured her that it would not apply  
22 retroactively.

23  
24 Council Member Markin wanted to know what the point would be of extending this to  
25 beyond employees. President Kleid said that was not the Motion that was before the Council now.  
26 Town Manager Elwell clarified that the Ordinance is only addressing employees.

27  
28 **On roll call, the Motion passed 4-1, with President Pro Tem Coniglio dissenting.**

29  
30 Council Member Rosow would like to have the Town Attorney draft the same restrictions  
31 as the employees to ensure that they too, won't generate a conflict of interest with the residents.  
32 He also added that Mayor McDonald made a good point with his personal profession. Council  
33 Member Coleman suggested that the members think about his some more. Council Member  
34 Markin added that she does not want to add the Council because in future Councils, they may  
35 include younger, working members who put their career on hold to serve in the Town, which is a  
36 non-paying job.

37  
38 Council Member Rosow does not like the idea of an employee leaving the Town and then  
39 profiting from his Town relationships after they leave Town employment. Town Manager Elwell  
40 suggested that each Member reflect on this until the next Town Council Meeting on February 10<sup>th</sup>

1 for the second reading. This could be amended and hold a third reading, or direct staff to draft a  
2 new Ordinance to accomplish the new purpose.

3  
4  
5 XIII. ANY OTHER MATTERS

6  
7 President Kleid discussed the Nightingale Trail Association and the Code Enforcement  
8 Board's wish to suspend the fines because the Town Council is still considering the matter. Town  
9 Attorney Randolph stated that Code Enforcement suspended the fine because the Nightingale Trail  
10 Association was supposed to comply by a date in September, and if they didn't, then fines would  
11 begin accruing. But, the Town Council indicated that they wanted to look at this matter, and abate  
12 any further action until the Council had discussed it.

13  
14 Currently the item is at Planning and Zoning, and it won't be back before the Town Council  
15 until they have concluded their discussion. Because the item was not on the agenda today, he is not  
16 asking for any action, but at some point give guidance to Code Enforcement on what the Council  
17 would like to see done.

18  
19 President Kleid asked to have the item on the next Town Council Agenda on February 10,  
20 2009.

21  
22 \*\*\*\*\*

23  
24 President Pro Tem Coniglio asked that the other Council Members reconsider the decision  
25 regarding Mr. Seeholzer's retirement benefits ( Item X.A.). She asked if there was anyone that  
26 would like to have additional conversation regarding the decision.

27  
28 Council Member Coleman and Mayor McDonald indicated that they would like to discuss  
29 the matter. President Kleid indicated that as the prevailer, she would have the right to make a  
30 Motion to Reconsider.

31  
32 **Motion made by President Pro Tem Coniglio and seconded by Council Member Rosow**  
33 **to reconsider the earlier decision. On roll call, the Motion passed 4-1, with Council Member**  
34 **Markin dissenting.**

35  
36 Council Member Rosow thanked President Pro Tem Coniglio for bringing the topic up again  
37 because he had been thinking about it since the Council voted earlier this morning. He used the  
38 example that in a private corporation the actions would not be tolerated. The concern that he has,  
39 is that in a private corporation, in a situation like this, there is a great deal of latitude that the  
40 officers and owners of that corporation can have in dealing with the issue. They certainly don't have

1 to make decisions in the Sunshine, either, which makes the Council's decision more difficult.  
2 Council Member Rosow stated that the employee made an egregious error, and he is concerned that  
3 anything the Council decides will set a precedent going forward, for future employees. He  
4 reminded himself that the Council has the ability to make its decisions without concern of  
5 precedent. Council Member Rosow wants to reconsider the severity of what the Council decided  
6 that morning to the 67 year old man who has lost one pension, who gave up \$100,000, and it should  
7 be discussed further.

8  
9 Mayor McDonald thanked Council Member Rosow and agreed with his comments. The  
10 Employees Committee determined the facts in the case. But it is really up to the Town Council  
11 Committee is to weigh more subjectively the aspects of the case. They did that and came to the  
12 Council with a unanimous recommendation. He finds it difficult to understand that the Council  
13 would overturn the Administrative and Personnel Committee Recommendation when they fulfilled  
14 the purpose of what the Committee was intended for.

15  
16 President Kleid reiterated that the Committee did listen to the tape of the Grievance  
17 Resolution Board where they heard the facts, listened to the appeal, and felt that with all of the facts  
18 and circumstances, that the Committee would like to give a bit of mercy in this particular case,  
19 because of the background of the individual.

20  
21 President Pro Tem Coniglio echoed Council Member Rosow's sentiment. It was a terrible  
22 thing for the employee to do. On the other hand, mercy is a funny commodity. Here is a gentleman  
23 who is 67 years old, with no retirement, terrible health problems that will now preclude him from  
24 having health benefits, and probably preclude him from finding other employment. At some point,  
25 the Council need to convey to all employees that this may be a one time event. Her heart says  
26 mercy for Mr. Seeholzer.

27  
28 **Motion made by Council Member Rosow and seconded by President Pro Tem Coniglio**  
29 **to approve the recommendation of the Administrative and Personnel Committee.**

30  
31 Council Member Rosow stated he does so reluctantly because he has charity in his heart and  
32 he really does not want to hurt this person, nor does he want to send the wrong message to  
33 employees that the Council is too benevolent and we acquiesce too easily. This is a very unusual  
34 set of circumstances his motion today will not portend how he may act in the future.

35  
36 Council Member Markin objected and said that this was not a unique situation. She stated  
37 that she has as big of a heart as anyone up on the dais, but the Town is in difficult financial times  
38 and you are going to see other circumstances that will come forward with somebody else and you  
39 are now saying to them and opening the door that says if you steal from the Town, willingly steal  
40 from us, put money into your bank account, sell assets of the Town, that if you are not well and you

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON JANUARY 13, 2009

1 have financial problems, that it is okay. There was a person in another department who took money  
2 that was intended for very good reasons (educational). That person was let go, and was asked to  
3 return the money. You are going to see more of these situations. As heartfelt and merciful as you  
4 want to be, everyone will have a sad story. It's like going out there to try to rescue all of the lost  
5 puppy dogs. They never end. She urged the Council to send a message to the employees that it is  
6 not appropriate. The message she would like to give is that we are all part of the same family here  
7 and if you are having a problem, come to your manager, come to the person you report to and let's  
8 try to deal with it above the law vs. against the law. Because if you don't come to somebody and  
9 let people help you, then you will see circumstances that are not in your favor. She has a difficult  
10 time going against what the employees themselves voted for in this circumstance.

11  
12 Mayor McDonald quoted William Jennings Bryan who said "you shall not crucify mankind  
13 on a cross of gold", and he knew George personally and spent a day working with him in  
14 purchasing. There was enough extenuating circumstances in this case and enough facts that are  
15 different to distinguish it from any other case. Mercy is the message to deliver today.

16  
17 **On roll call the Motion passed 4-1 with Council Member Markin dissenting.**  
18  
19  
20

21 XIV. ADJOURNMENT  
22

23 There being no further discussion, the January 13, 2009, Town Council meeting was  
24 adjourned at 3:17 p.m.  
25

26 APPROVED:

27  
28   
29 Richard M. Kleid  
30 Town Council President  
31  
32  
33  
34

35 ATTEST:

36  
37   
38 Joanna Cunningham  
39 Town Clerk  
40