TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON TUESDAY, JANUARY 11, 2011

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Tuesday, January 11, 2011, at 9:30 a.m. in the Town Council Chambers. On roll call, all elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Administrative Assistant Anne Boyles gave the invocation. Council President Rosow led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Joanna Golino, Landmarks Preservation Commission, From March 2009 Through July 2010.

Council President Rosow announced that Joanna Golino was not present due to illness.

Clerk's Note: Due to a technical issue, the ethics presentation was heard later in the meeting. The next item heard was Item. IV. Comments of Mayor Jack McDonald.

B. County Commission on Ethics. [Alan Johnson, Executive Director of the County Commission on Ethics]

Alan Johnson, Executive Director of the County Commission on Ethics (COE), gave a power point presentation explaining the history, jurisdiction, functions, and composition of the Commission. A copy of the presentation was submitted for the record. Mr. Johnson stated that people could visit the COE website *palmbeachcountyethics.com* to review all 2010 advisory issues. He answered questions from Council Member Diamond:

- The Election Law is not under the jurisdiction of the COE.
- The local Ethics Committee cannot be less stringent than the County or the State; the COE cannot enforce the local ethics code; but the COE would work together with the local Ethics Committee.
- There is a complaint form and a description on how to fill it out on the web page.

Council Member Kleid asked about the tradition of the Council having lunch together on Council meeting days along with members of the Town staff. He explained that a Council member would pay for the lunch and the Council did not discuss Town Council items. Mr. Johnson replied that he could not speak to a specific set of circumstances but could address the issue in broad terms. He explained that the Sunshine Law was not within the jurisdiction of the COE. He stated that as long as there is no discussion regarding any item that is likely to come before the Council, it was okay to get together. He explained there is a reporting requirement for gifts more than $100 and. if the lunch was valued at more than $100, the employee would have to report it. He added that as long as the lunch was not given by a lobbyist or a principal of a lobbyist then it is not prohibited. He suggested the issue be sent to his office in writing for an advisory opinion. Council President Rosow thanked Mr. Johnson for his report. Mr. Johnson stated that the COE would provide two live training sessions and a DVD for training on ethics.

IV. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald commented that this was the best dressed Town Council he had served with in sixteen years.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Kleid spoke about the Centennial banners hanging from the light poles in Town and stated that the Town owes the Civic Association a debt of gratitude for bringing the idea forward and executing it.

Council Member Diamond congratulated Council President Pro Tem Coniglio on her election to Mayor and Michael Pucillo for being elected to the Town Council.

Council Member Diamond expressed his disappointment in the actions taken by the Architectural Commission in twice unanimously rejecting an application to build a new office structure on the long vacant property that was formerly the Howard Johnson location at 2880 South Ocean Boulevard. He stated that ARCOM never told the applicant what would be considered to be a suitable structure. He further stated that the applicant had withdrawn his proposal for a new structure and had agreed to use the old fashioned Howard Johnson facade.

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

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

Leslie Evans, 135 Seminole Avenue, spoke about the disrepair and numerous violations issued for the property located at 332 South County Road, which would be coming before the Council at the January 12 meeting. He asked the Council to deny the appeal by Mr. Roddy.

Sherry Frankel, President of the Worth Avenue Association, reported that the lease for the twinkle lights on the trees on Worth Avenue had ended. She asked the Council's permission to pick up the lease. Town Manager Peter Elwell clarified that the Council did not need to take action on the transition for funding of the lease, but would need to decide whether it was appropriate to have the lights up for the remainder of the season; not just the holiday period.

Motion was made by Council Member Kleid and seconded by Council Member Diamond to approve the Worth Avenue Association keeping up the lights during the remainder of the season at the expense of the Association. On roll call, the motion carried unanimously.

Dr. Jerome Klein, 225 Emerald Lane, addressed the Council regarding the many construction and demolition projects around his home and his loss of quality of life due to the work. He asked for a moratorium on construction during the season, December to March, and suggested that contractors be required to post a bond for potential damage to homes adjacent to the construction site. Council President Pro Tem Coniglio responded that the Council had changed the construction regulations for the benefit of seasonal and year-round residents last year by reducing the time frame of construction from December to March. She spoke about the problems with balancing the needs of the seasonal residents and those of the year-round residents. Town Manager Elwell informed the Council that a meeting had been held with the Mayor, staff, and Dr. and Mrs. Klein. He stated that there had been multiple construction projects near the Klein's home and it appeared there would be more projects. He further stated that there had been some violations, which had been addressed through Code Enforcement, through the right-of-way permits on the parking, or through the construction inspection process. He said that reconsideration of even tighter regulations may be the only option available when there is a concentration of projects in one neighborhood. Council Member Diamond suggested Dr. Klein attend the Ordinances, Rules, and Standards Committee (ORS) meeting on January 25th.

Clerk's Note: Item III.B. Presentation by the County Commission on Ethics was heard at this time.

Sunny Sessa, 1 Via Sunny, asked about using the $26,000 that was not used for the election to pay to keep the lighting on Royal Palm Way and Royal Poinciana. She asked why the lights were taken down. Council President Rosow responded that the lights were also up last year and paid for through donations. He stated that the Council was holding the line on expenses and he did not believe there would be support for paying for the lights. Council Member Diamond agreed, suggesting that the private sector, particularly the merchants, pay for the lights.

Jimmy Ryan, 2860 South Ocean Boulevard, expressed his disappointment that the Town could not come together with Gene Lawrence and Mr. Sloan on the derelict building on the south end of Town (2880 South Ocean Boulevard).

Robert Deziel, 311 Brazilian Avenue, spoke in strong disagreement of a recent letter in the Shiny Sheet asking for Town support of the police officers' position on the wage discussion. He said that the newspaper is the wrong forum for debate between the Town Council and any given employee group. Council President Pro Tem Coniglio stated that Town Manager Elwell was working on a meaningful way to educate the residents of the Town and the employees on factual information. Referring to a comment made by Mr. Deziel, Council Member Kleid clarified that the dance held recently for police officers was sponsored by the police foundation, which is not associated with the FOP (Fraternal Order of Police) or the police department, and the reason for the dance was to raise money for college scholarships for children of police officers.

VII. APPROVAL OF AGENDA

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

VIII. CONSENT AGENDA

A. MINUTES: DECEMBER 14, 2010 APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: DECEMBER 14, 2010 APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING CLOSED-DOOR SESSION

C. MINUTES: DECEMBER 15, 2010 APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

D. MINUTES: JANUARY 7, 2011 APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON DECEMBER 17, 2010.

F. RESOLUTIONS

1. RESOLUTION NO. 3-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Designation of Historic or Specimen Trees from Properties Located Within the Town of Palm Beach; Adding Newly Designated Historic or Specimen Trees; Providing for the Recording of Said Designations; and Providing That a Copy of this Resolution Be Recorded in the Public Records or Palm Beach County, Florida. [H. Paul Brazil, Director of Public Works]

2. RESOLUTION NO. 4-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Mathews Consulting, Inc., in the Amount of $36,028 for the A-39 and A-41 Sanitary Pump Stations Improvements, Establishing a Design and Bid Phase Budget of $40,000 for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete this Phase of Said Improvements. [H. Paul Brazil, Director of Public Works]

3. RESOLUTION NO. 7-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Professional Design Consultant Fee Proposal with Bridges, Marsh & Assoc. In an Amount Not to Exceed $65,000 for Possible Alterations and Renovations in Conjunction with the Worth Avenue Improvement Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Thomas G. Bradford, Deputy Town Manager]

G. OTHER

1. Approval to Use CM at Risk for Force Main Project. [H. Paul Brazil, Director of Public Works]

2. Approval of Preservation Foundation Request to Waive Parking Fees at Phipps Ocean Park for Centennial Event on January 15, 2011. [Jay Boodheshwar, Director of Recreation]

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

IX. REGULAR AGENDA

A. Old Business

1. Report from Publix Regarding Possible Temporary Store. [William Rayburn, Director of Asset Management, Publix]

William Rayburn, Director of Asset Management for Publix, reported that plans were to start construction on the new Publix store on February 1. He spoke about the considerations for a temporary store in Palm Beach. He read a list of individuals who had been involved in the process including Ed Crenshaw, the CEO of Publix. He announced that after collection of all the data, Publix had come to the conclusion that it would not be able to open a temporary store in Palm Beach. He gave the consideration of safety, the ability to satisfy customers, and the ability to translate the Publix experience as reasons for not opening a temporary store. The Council members expressed their disappointment with the decision.

Council President Pro Tem Coniglio reminded Mr. Rayburn that the construction of the new store was to be completed the day before promised so that the community could be served appropriately.

In response to questions from Council Member Kleid, Mr. Rayburn discussed the two locations that Publix had considered for a temporary store, Testa's gas station and the Amici (formerly Salamander) Market, and the reasons they were not selected.

Council President Rosow reported that he had a phone conversation with Mr. Crenshaw and had talked about the business perspective and safety perspective for the decision. He asked about a telephone service for the delivery of groceries to residents. Mr. Rayburn responded that Publix did not have curbside pickup or delivery service but there were third party companies that shop at the local store and provide the service. Council Member Diamond suggested Publix offer residents something to ameliorate the problem.

Allen Mason, 1485 Via Manana, stated his disappointment with the renovation program of Publix and said that renovations should have been made while the store remained open.

2. Foreclosure of Code Enforcement Liens. [John C. Randolph, Town Attorney]

Town Attorney Randolph reported he had met with Code Enforcement staff, reviewed the list of existing liens, and had made a determination of ownership of properties and whether they were homesteaded. He listed four properties to be recommended to the Code Enforcement Board for foreclosure:

1. 230 Atlantic Avenue - $5,150 lien
2. 226 Pendleton Avenue - $43,400 and $290,250 liens
3. 2283 West Ibis Isle Road - $122,500 lien
4. 237 Brazilian Avenue - $35,000 lien

Raychel Houston, Code Enforcement Manager, stated that the next meeting of the Code Enforcement Board was scheduled for January 20, but to provide service and notice to the residents, the properties would not be brought forward until February 18.

Council Member Kleid questioned why other properties on the list were not recommended. He stated that if there is a substantial amount of money owed to the Town, and that the Council had said they would like Code Enforcement to move expeditiously and foreclose on the properties.

Mayor McDonald asked why Code Enforcement did not start foreclosure action on properties where a financial institution was in the foreclosure process. He said it may take years for the lender to foreclose.

Code Enforcement Manager Houston reported that the publication letters had been mailed and the publication of names would occur after January 1. She added that she had been working with the Finance Department to turn some of the fines over to a collection agency.

Council Member Diamond requested a status column be added to the list of fines to give an explanation of the actions on the lien.

Council President Rosow reiterated that Code Enforcement should be aggressive and let the property owners prove they are homesteaded.

Town Attorney Randolph stated that the recommendations would be presented to Code Enforcement and then brought back to Council.

3. Staff Update Regarding Proposed Restaurant on Peanut Island. [John S. Page, Director of Planning, Zoning, and Building]

John Page, Director of Planning, Zoning, and Building, reported that in order to build a restaurant on Peanut Island, the Palm Beach County Comprehensive Plan would have to be amended. He shared five facts he had received from Barbara Alterman, Director of the County's Planning, Zoning & Building Department, regarding the status of the issue. He reported that County Commissioner Karen Marcus had scheduled an information meeting for neighboring municipalities on the morning of January 18. He spoke about the timeline for approving a change to the Land Use Plan saying it could take four-to-six months at the County level and up to a year for approval from Tallahassee. There was consensus for Council President Pro Tem Coniglio, as Mayor Elect, to attend the meeting

Motion was made by Council Member Diamond to oppose the project.

Council Member Kleid said he was not comfortable giving instructions at this time. Council President Pro Tem Coniglio suggested she attend the meeting and report back to the Council in February at which time the Council could formalize an approach. The Council agreed.

Council Member Diamond withdrew his motion.

B. New Business

1. Update from Palm Beach Island Cats. [David Leavitt and Jeff Giangrande]

Jeff Giangrande addressed the Council about the Palm Beach Island Cats Program. He stated that the current finances were unsustainable. He suggested the Council share in the expense of the program and contribute 50% of the $250,000 budget. David Leavitt explained that residents were not responding to their marketing program.

Council Member Diamond asked what would happen to the cat population without the efforts of Island Cats. Jan Corbin, 381 South Lake Drive, replied by giving the history of the cats program. She stated that by maintaining a feral cat population, other animals would not come in.

A lengthy discussion followed on the program, the apathy of the residents, and the public health and safety issues related to the feral cats.

The Council members praised Island Cats for their efforts.

Motion was made by Council Member Wildrick and seconded by Council Member Diamond to take the $27,000 that was to be used for the Town election and give it to Island Cats.

Council Member Kleid stated that the Council had to make a determination, because of health and safety issues, as to whether it is an obligation of government to fund the cats program.

Town Manager Elwell clarified that for proper accounting of the expenditure of the funds, the money needed to be appropriated from the contingency account.

Council Member Wildrick amended his motion to appropriate $27,000 from the Contingency account and bestow it on Island Cats with the understanding that Island Cats would come back to Council with a financial plan. Council Member Diamond seconded the amended motion.

Town Manager Elwell stated that the $27,000 in the Town Clerk's budget would not be spent for other issues.

On roll call, the motion to appropriate $27,000 to Island Cats carried unanimously.

Council President Rosow suggested Island Cats put together a financial plan and take it before the Finance and Taxation Committee for review. He stated that the Committee would then bring the plan to the Council. He reiterated the Council's comments for Island Cats to do a better job of selling the program to the residents.

2. Request for Permission to Use Scaffolding in Town Right-of-Way at 205 Royal Palm Way. [Mike McKnight, Prodigy Contracting Group]

Paul Brazil, Director of Public Works, reported that Public Works had received a request for a right-of-way permit to complete renovations at 205 Royal Palm Way. He explained that seventeen windows on the east façade of the building would be replaced, which would affect the right-of-way. He stated that the hardship stated was that the contractor

had already mobilized on the site. He further stated that Town staff does not recommend the Council approve the request.

Keith Spina of Spina Partners Architects reported on the deteriorated conditions in the landmarked building. He said that the property line is five feet east of the building and it is not clear if the work would occur in the right-of-way. He read from Section 2.24 of the Construction Code and stated that the work would not negatively affect the public right-of-way.

Town Manager Elwell responded to Mr. Spina's comments stating that application of the regulations is applied equally in all cases. He explained that there are areas all over Town that have 5' of public and 5' of private right-of-way, but it functions as public sidewalk and is protected as a public sidewalk during the season.

Council President Pro Tem Coniglio expressed concern for the safety of children attending one of the two schools nearby who may walk under the scaffolding. Danny Brown of GSBR explained that the scaffolding would be three feet from the building and there would be two seven-foot sections of scaffolding that would be set up at 9:00 a.m. and taken down at 5:00 p.m. every day.

Referring to remarks made earlier in the meeting by Dr. Klein regarding disruption caused by legal construction during the season, Council Member Diamond made a motion to deny the request.

Council President Rosow reported he had looked at the site and he did not see a lot of foot traffic in the area.

Council President Pro Tem Congilio seconded the motion. On roll call, the motion to deny the request carried 4-1 with Council President Rosow dissenting.

3. RESOLUTION NO. 6-11 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing D.S. Eakins Construction Corporation, Foster Marine Contractors, the Whiting-Turner Contracting Company, Murray Logan Construction, Inc., and Johnson-Davis, Inc., to Receive Bid Packages for Projects Meeting the Scope of Work of RFQ No. 2011-04. [H. Paul Brazil, Director of Public Works]

Town Attorney Randolph read Resolution No. 6-11 by title, as printed above.

Town Manager Elwell explained that the resolution was a result of lessons learned in the past year and the advice received through the forensic audit and the internal audit process to pre-qualify firms to do the work for the Town. He stated that in the future every job of this type would be competitively bid among the five pre-qualified firms.

Motion was made by Council Member Diamond and seconded by Council President Pro Tem Coniglio to approve Resolution No. 6-11. On roll call, the motion carried unanimously.

X. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 31-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 86, Planning, Section 86-90, Standards, at Subsections (c) and (d); Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. Amending Town Code at Chapter 86, Planning, Section 86-90, Standards, at Subsections (c) and (e). [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 31-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 31-10. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 32-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 94, Sales, Articles II, III and IV; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 32-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 32-10. On roll call, the motion carried unanimously.

3. ORDINANCE NO. 33-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 98, Secondhand Goods, Article II, Secondhand Dealers, by Deleting Sections 98-32 and 98-33 in Their Entirety; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

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

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

4. ORDINANCE NO. 34-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 106, Streets, Sidewalks and Other Public Places, at Article V, Section 106-158, Relating to the Prohibition of Bicycle Riding on Sidewalks Within Commercial Zoning Districts; Amending Article VIII, Section 106-291, Relating to Certificate of Compliance; and Section 106-292, Relating to Standards for Newsrack and Modular Newsracks Including Maintenance, Installation and Locations; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 34-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 34-10.

Council President Pro Tem Coniglio expressed concern with Segway tours on the sidewalk. Council Member Wildrick responded that Segways are not permitted on sidewalks in the business district by ordinance. He noted they are allowed on the bike path.

Council Member Diamond asked if Segways were allowed on the streets. Town Manager Elwell suggested the issue of the use of Segways be sent to ORS for further review.

Council President Pro Tem Coniglio asked for clarification if Segways fall under the bicycle description. Town Manager Elwell responded that one effect of the Ordinance, if approved, would be to prohibit the use of the Segways on sidewalks in the commercial areas. He said he would get answers to Council's questions regarding any regulations on the use of Segways elsewhere in Town on sidewalks outside of the commercial areas and the use of Segways on the roadways.

On roll call, the motion to approve Ordinance No. 34-10 carried unanimously.

5. ORDINANCE NO. 35-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 18, Buildings and Building Regulations; Article III, Architectural Review; Division 2, Architectural Commission; Section 18-169, Removal Provisions; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

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

Council Member Diamond read Section 18-169 of the Ordinance.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 35-10. On roll call, the motion carried unanimously.

6. ORDINANCE NO. 36-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 110, Subdivisions, So as to Modify the Term "Building Official" Used Throughout to "Director of Planning, Zoning & Building"; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 36-10 by title, as printed above.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve Ordinance No. 36-10. On roll call, the motion carried unanimously.

B. First Reading

None

XI. ANY OTHER MATTERS

Council President Rosow reported that as a result of a conversation with Council Member Diamond, he had looked up the Statute under the United States Code regarding the conduct of veterans and the salute to the flag. He reported that veterans can only salute out of uniform when the flag is hoisted, lowered, or passing. He said it is not acceptable to salute out of uniform for the Pledge of Allegiance.

XII. ADJOURNMENT

There being no further business, the Town Council Meeting of Tuesday, January 11, 2011, was adjourned at 1:32 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Cheryl A. Somers
Acting Town Clerk